

AGENDA

- <u>BCGD</u>: Code of Judicial Conduct
- ${\color{red} \circ} \textbf{Campaign speech and conduct}$
- Campaign contributions
- <u>Secretary of State</u>: campaign finance law, reports, and disclaimers
- Question and answer session

OVERVIEW OF MATERIALS

- Rules
- Contribution limit chart
- Advisory opinion summaries
- Breakdown of judicial campaign sanctions
- Case summaries
- Contact and website information

THE SUPREME COURT of OHIO	
Board of Commissioners on Grievances & Discipline	
JUDICIAL CAMPAIGN MISCONDUCT	
OVERARCHING PRINCIPLES	
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Canon 4: A judge or judicial	
candidate shall not engage in political or campaign activity that is	
inconsistent with the independence, integrity, or	
impartiality of the judiciary.	
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OVERARCHING PRINCIPLES	
♦ Rule 4.2(a)(1) : A judicial	
candidate shall be responsible	
foracting at all times in a manner consistent with the <i>independence</i> ,	
integrity, and impartiality of the judiciary.	
judiciary.	

OVERARCHING PRINCIPLES

❖Rule 4.3, Comment [1]: A judicial candidate must be scrupulously fair and accurate in all statements made by the candidate and his or her campaign committee.



- "She will be a tough judge that supports the death penalty and isn't afraid to use it...she favors the death penalty for convicted murderers."
- "My opponent is a liberal who is soft on criminals."
- "Endorsed by the Neighborhood Protection Council." (a fictitious entity)
- "You need to step up to the plate and contribute to my campaign."



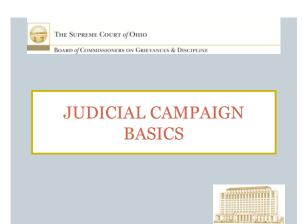
- "As a lower court judge, his error allowed Larry Flynt to go free and continue selling pornography in Hamilton County."
- "My opponent got appointed by the political bosses in Columbus."
- "I earned six college degrees in seven years."
- To a defendant: "Tell all your family how you feel about me because I'm running this year for the common pleas court."



- Past photographs of candidate in judicial robe without explanatory language (Lilly I, Lilly II, Moll)
- Failing to distinguish current judicial seat from the one being sought (*Michael I*)
- Using the title "Judge" in campaign materials while not currently a judge (*O'Toole*)
- During campaign, former judge wearing name badge stating she holds her prior judicial seat (O'Toole)

BREAKDOWN OF SANCTIONS

Suspension (partially stayed): D. O'Neill ** (\$4,600)	Stayed Suspension and Other Sanctions: Hildebrandt* (\$23,000) Beery (\$16,400)	Stayed Suspension: Evans ** (\$1,000) Kaup * (\$1,000)
Public Reprimand, Fine, and Attorney Fees: Burick* (\$13,900) Hein* (\$7,600) Kienzle* (\$6,700) Davis* (\$15,700) O'Toole* (\$6,000) [PENDING]	Public Reprimand and Fine: Lilly II** (\$3,300) Michael II* (\$6,300)	Public Reprimand and Attorney Fees: PurDue II (\$3,700)
Public Reprimand: Harper(\$1,300) Morris* (\$100) Spicer (\$1,800)	Fine and Attorney Fees: Brigner** (\$2,200) Michael I* (\$6,100) Moll* (\$7,100)	Fine Only: Carr (\$2,600) Emrich (\$1,450) Roberts (\$200) PerDue I (\$300) O'Reilly (\$6,600) Lilly I (\$1,600)
Other: Keyes/Tailer (cease and desist order)	Notes: - Figures in parentheses = total of all fines, costs, and attorney fees - Cases in italics were decided by the Supreme Court	Notes: * Indicates more severe sanction than initially recommended ** Indicates less severe sanction than initially recommended



CODE OF JUDICIAL CONDUCT

- Rule 4.1 Political and campaign activities (judges and candidates)
- Rule 4.2 Political and campaign activities (candidates)
- Rule 4.3 Campaign standards and communications
- Rule 4.4 Campaign solicitations and contributions
- Rule 4.5 Judges who become candidates for nonjudicial office
- ❖Rule 4.6 Definitions

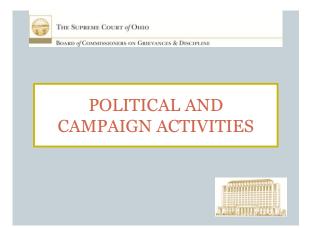
WHAT'S DIFFERENT ABOUT A JUDICIAL CAMPAIGN?

- Campaign prohibitions and limits
- oPledges, promises, and commitments
- oEndorsements of other candidates
- Appearance in joint campaign advertisements w/ nonjudicial candidates
- oFundraising with nonjudicial candidates
- Leadership positions in political parties

WHAT'S DIFFERENT ABOUT A JUDICIAL CAMPAIGN?

- Fundraising prohibitions and limits
- •Personal solicitations: w/ 3 exceptions
- Limited time period
- Non-campaign uses
- o"No carry-in" rule
- KEY = the judicial candidate is responsible for the campaign - Rule 4.2

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* Rule 4.1 and comments [8]-[13]

- * Rule 4.2
- NO pledges, promises, statements that commit or appear to commit
- <u>NO</u> comments on pending cases before ANY judge
- NO statements affecting outcomes or impairing fairness
- OK to state personal beliefs on issues – add statement re: duty to apply the law fairly and impartially
- OK to make statements on court administration

CAMPAIGNING WITH OTHER CANDIDATES

DO'S

DO NOT'S

- Raising funds w/ other judicial candidates
- Advertising w/ other judicial candidates
- Party-sponsored fundraising activities
- Slate cards, ballots, etc. that identify ALL party candidates
- Public endorsement or opposition
- Fundraising w/ nonjudicial candidates (except partysponsored activities)
- Advertising w/ nonjudicial candidates

"ON THE CAMPAIGN TRAIL"

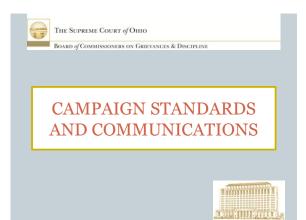
YES

NO

- Attending political gatherings and fundraisers of other candidates
- In general, speaking at political gatherings
- Speaking on behalf of political party or another candidate for public office
- Introducing candidates at political events (see Adv. Op. 92-11) – public endorsement

PARTY AFFILIATION AND ENDORSEMENTS

- OK to advertise and speak about party nomination, endorsement, membership, or affiliation – at any time during the campaign
- OK to seek and advertise endorsements
- Statements cannot be false, misleading, or deceiving
 - o Endorsement must be current
 - o Endorsing entity must be clearly identified
 - Avoid short-hand terms to describe endorsement
- o No "made up" endorsing entities



1/1/2013 CODE AMENDMENTS

- New Rule 4.3(C): may not use title of public office or position "immediately preceding or following" name when the candidate does not hold the office or position
- New Rule 4.3(E): may not use "former" or "retired" immediately preceding "judge" unless in <u>prominent lettering</u> and appears each time "judge" is used

DefinitionsRule 4.6(N)
*effective
1/1/2013

What is "prominent lettering?"

oNot less than the size of the largest type used to display the title of office or the court to which the judicial candidate seeks election

1/1/2013 CODE AMENDMENTS

- New Rule 4.3, Comment [3]: use of title of public office or position
 - Reserved for those who contemporaneously hold the office by election or appointment
 - OUse of title by one not entitled to the office falsely states incumbency and is inherently misleading and deceptive
 - OMisuse of a title violates the "3 I's"

RULE 4.3

Prohibited:

- Posting, publishing, broadcasting, transmitting, circulating, or distributing...
 - Information about self or opponent
 - Knowing information is false OR
 - Reckless disregard of whether or not false or, if true, deceiving or misleading to a reasonable person

RULE 4.3

Prohibited:

- OUse of title of an office preceding the candidate's name when the office is not currently held
- OUse of "judge" if not a judge UNLESS "magic language" (elect or vote or for)
- Ouse of "re-elect" if never elected to office being sought or not the current occupant of the office for which a candidate

RULE 4.3

Additional prohibitions:

- Misrepresentation of identity, qualifications, position
- False statements re: education, training, awards, licensure, employment
- False statements re: criminal background, mental illness, military discipline
- False endorsements
- Bias or prejudice toward opponent based on race, sex, religion, etc.

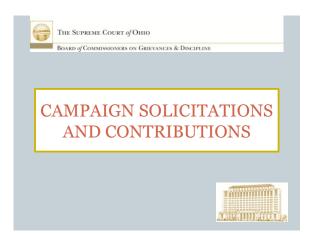


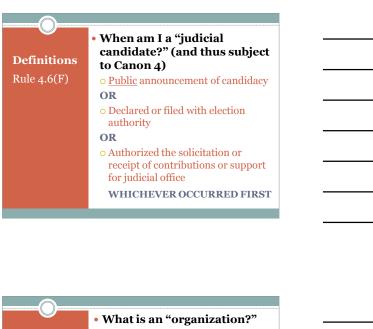
- o<u>Burick</u> false and misleading statements about opponent's appointment and the sentence opponent imposed in a specific case
- <u>Kaup</u> "endorsement" by nonexistent entity
- o <u>Beery</u> false and misleading statements about opponent's appointment and handling of a criminal case while a prosecutor



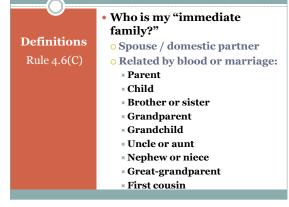
2002-08

- ${\circ}$ Issued after Republican Party of Minnesota v.White
- Guidelines on scope of permissible judicial campaign speech (many now codified in Canon 4)
- 2010-7 and ABA Formal Op. 462
 - O Judicial use of and participation in social networking sites
- Advice applicable to campaigns





• What is an "organization?" • Any entity • Any combination of two or more persons • PACs • Law firms • Organizations affiliated w/political parties • Labor organizations • Other campaign and caucus campaign committees • NOT "organizations" - political parties



Definitions
Rule 4.6(D) and
Terminology Section

- What is a "domestic partner?"
- Person with whom another person maintains a household AND an intimate relationship
- Other than a person to whom one is legally married
- See Michael I

Rule 4.4(A) – Solicitation of Contributions

- Ban on most personal solicitation except:
- General request when speaking to an audience of 20 or more individuals
- Letters from campaign that direct contributions to the committee not candidate
- NEW 4.4(A)(3): may make general request in text format (not voice) via an electronic communication (eff. 1/1/2013)
- <u>NEW</u>: Immediate family members: See AFSCME v. Brunner, 912 F.Supp. 556 (12/10/2012)

Rule 4.4(A) – Solicitation of Contributions

- <u>Absolute ban</u> on personal *receipt* of campaign contributions
- "Tiered" fundraising events no longer prohibited (eff. 1/1/2013)
- <u>No</u> exception for close friends of judicial candidates (see AFSCME v. Brunner)

Fundraising Period – Rule 4.4

- Fundraising may begin 120 days before the primary
- Fundraising ends 120 days after the general election except:
 - If defeated in primary fundraising may continue until 120 days after the primary
- "Seeding" period (personal funds) 90 days prior to 120-day fundraising period

CONTRIBUTION LIMITS

CANDIDATE FOR:	INDIVIDUAL		ORGANIZATION		POLITICAL PARTY	
	Primary*	General	Primary*	General	Primary*	General
Supreme Court Chief Justice and Justice	\$3,600	\$3,600	\$6,700	\$6,700	\$181,600	\$333,000
Court of Appeals	\$1,200	\$1,200	\$3,600	\$3,600	\$36,300	\$72,700
Common Pleas, Municipal, and County Court more than 750,000	\$600	\$600	\$3,600	\$3,600	\$36,300	\$72,700
750,000 or less	\$600	\$600	\$3,600	\$3,600	\$30,300	\$60,500

CONTRIBUTION LIMITS

- * Contested primary: primary limits apply
- * <u>No contested primary</u>: general election limits apply throughout fundraising period
- <u>No limits</u>: contributions from the candidate and the candidate's immediate family
- Contributions from the same source are aggregated <u>however</u>: lawyers and their law firms are separate contributing entities

CONTRIBUTION RESTR	ICTIONS – RULE 4.4(C)
OK	NOT OK
Family members of court employees Lawyers who are not court employees or contractors Court appointees (but must be identified as such in campaign reporting) Unincorporated labor organizations, union PACs, union PCEs (but verify with the Secretary of State's Office)	Court employees (current court and prospective court) Contractors and others doing business w/ the court (over \$250 last 6 yrs) For-profit and non-profit corporations (R.C. 3599.03) Incorporated labor organizations (R.C. 3599.03) — seek guidance
CAMPAIGN ACTIVITY B	Y PUBLIC EMPLOYEES
 Rule 4.4(B) – a judicial candidate MUST prohibit public employees subject to his or her direction or control from soliciting or receiving contributions Court employees cannot serve as treasurer or member of committee Court employees cannot sell tickets or collect money at a fundraiser 	
CAMPAIGN ACTIVITY E	Y PUBLIC EMPLOYEES
"Direct report" employee employees cannot be inverceipt of funds	es of public officials / colved in solicitation or
• Restrictions only apply t	
officials • Campaign volunteering on private time	OK if not compelled and
• Thank you notes – OK b committee send	ut should have campaign

MAGISTRATES

- Magistrates are subject to the Code of Judicial Conduct
- Advisory Opinions on magistrate campaign activity
 - <u>02-13</u>: Campaign activities by magistrates on behalf of judicial candidates
 - 03-8: Appearance in robe when running for
- *In Re Moll*, 2012-Ohio-5674 (magistrate as candidate)

USE OF CAMPAIGN FUNDS

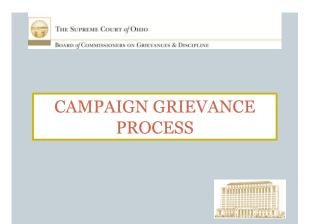
- Rule 4.1(A)(4), (B)(2) and (3)
- Rule 4.2(B)(3)
 - THESE RULES ARE <u>NOT</u> APPLICABLE TO PERSONAL FUNDS
 - * Personal contribution to another candidate is NOT an endorsement
 - o<u>NO</u> NON-JUDICIAL CAMPAIGN CARRY-INS

USE OF CAMPAIGN FUNDS

ONO POLITICAL DONATIONS – EXCEPT:

- *Tickets to other candidates' fundraisers
- *Contributions to political party for administrative and operational expenses
- *Tickets to party events purpose of the event must be to raise funds for administrative and operational expenses

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Campaign Grievance Procedure

- Grievance filed with Board
- Considered on expedited basis by Secretary
- If facially valid, reviewed by probable cause panel
- Confidential until probable cause is found
- Board hearing if passes probable cause
- Grievant's burden is clear and convincing evidence
- If hearing panel finds violation, considered and decided by 5judge commission



Gov. Jud. R. II, Section 5

Campaign Grievance Potential Penalties

- Disciplinary sanction
- Interim cease and desist order
- · Cease and desist order
- Fine
- Assessment of costs
- Assessment of attorneys fees

Other options for filing grievance: ODC, Elections Commission

CAMPAIGN GRIEVANCE LESSONS

- If in doubt, ask for guidance because the candidate is responsible for all campaign activity
- Be wary of local party and outside consultants with little judicial campaign experience
- Do not use grievance system for political advantage
- Be able to document campaign statements
- Avoid "absolutes"



