



ADVISORY COMMITTEE
on
THE CODE OF JUDICIAL CONDUCT

Hon. Frank H. Allen, Jr. Chairman
Hon. Theresa M. Baca
Hon. Thomas A. Donnelly

August 1992

Re: Judicial Advisory Committee Opinion 92-3

You have requested an advisory opinion from our Committee concerning the propriety of candidates for judicial office (1) being pictured in judicial robes and (2) using the title of judge.

21-700 C, Campaign advertising. A judge shall not use or cause to be used any misleading campaign advertisement, whether oral or written. This provision applies to candidates for judicial office who are not current members of the judiciary as well as candidates who are current members of the judiciary. 21-900 C.

The authorities and advisory opinions seem to agree that:

- (1) candidates may be pictured in a robe in they are the incumbents for the position they seek:
- (2) incumbents may use the title Judge in their campaign literature:
- (3) the word re-elect is available only to current incumbents who have been elected to the office, not one who has been serving in an election office by appointment:
- (4) all candidates for judicial office are held to a high standard of accuracy in their campaign advertisements.

Judicial Conduct and Ethics Sec. 11.11 Election and Political Activities, page 337, sums up the current opinions concerning persons appearing in a judicial robe in campaign materials.

"All jurisdictions that have addressed the question agree that an incumbent judge may be pictured in his or her robe in campaign materials, so long as the picture is not misleading. A candidate who was not presently a judge, but who had previously served on the bench, was allowed by the Florida ethics advisory committee to use the picture taken during his previous tenure in campaign materials which clearly explained the source of the picture and the dates when he previously served. Other jurisdictions, however, disagree with this position. A Michigan committee would not permit a former temporary magistrate to use photographs of himself in judicial robes. The advisory committee reasoned that such a picture would misrepresent the candidate as an incumbent. Washington takes the same stance. A candidate there was admonished for publishing a picture of himself in judicial robes when he had merely served as a judge pro tem. Even though text accompanying the photograph explained the candidate's judicial service, the Commission believed that the impression created was to misrepresent the candidate's position."

An article entitled Electing Justice: The Law and Ethics of Judicial Elections Campaigns seems to go even farther and limits the use of robes and the title Judge only to incumbents.

We don't believe this is prevailing opinion nor fair to a judge of a lower court seeking election to a higher court. If a judge has had judicial experience, he should be able to say so if it is made clear as to what court he has served on or is presently serving on and the periods of time he has served on that Court. See the advisory opinions from Florida ^{1&2}, Washington³, Alabama⁴, and Ohio ^{5&6}.

In another inquiry of this committee concerning this question, we were asked to answer specific questions. These answers may be of some help to answer your question:

Is it misleading, and thus unethical, for a judicial candidate to be pictured in campaign material wearing a judicial robe if s/he:

(a) is not and never was a judge?

- (b) was formerly but is not now a judge?
- (c) is a judge in a different court than the one to which election is sought?

ANSWER:

- (a) Yes. Wearing a robe indicates that s/he has judicial experience. This is misleading and therefore in violation of 21-700 C.¹
- (b) A candidate for judge who at one time served as a judge may use a picture of him/herself in judicial robes in campaign brochures if the picture is labeled with the judicial position held and the sates served. Everything must be spelled out so the public is not misled.²
- (c) No. See answer (b). The caption of the picture must indicate the court the judge previously served in and in no way suggest that the judge served in a higher court.³⁻⁴

2. Is it unethically misleading for a non-incumbent candidate to use the word "Judge" as a title if s/he:
- (a) is a former but not a current judge?
 - (b) is a judge of a different court?

ANSWER:

There seems to be no prohibition against a former judge or a judge of a different court that s/he is running for to use the title "judge" if it is made clear that the judge is not a current judge or is a judge of a different court. Full disclosure, so that the public is not misled, is the requirement.

3. What if the candidate is a lower court judge running for higher office? Should s/he be required to identify the court in which s/he is currently serving if the word "judge" is used in campaign literature and advertising? Example: "Judge Smith for District Court" instead of "Mary Smith, Probate Judge, for District Court"?

ANSWER:

A judge who is running for a judicial position in a higher court should not advertise him/herself as a judge without identifying the lower court position that s/he currently holds.⁴

4. Is it ethical for a non-incumbent candidate to use the name of the court for which s/he is running in connection with his/her name without a preposition such as "for" or "to"?
Example: "Joe Jones, District Court"?

ANSWER:

To avoid misunderstanding, the phrase "for judge" should be used after the candidate's name. The "for" must be the same or almost the same size type as the name and "judge".⁵

5. If certain of these uses of judicial symbols are not unethical standing alone, do they become impermissibly misleading when combined with others? Example: non-incumbent, pictured in robe (former judge or current judge of different court), with the caption "Judge Maria Benita, Court of Appeals"?

ANSWER:

Anything that indicates that a candidate is a judge when s/he is not or is a judge of a higher court than s/he is, is misleading and therefore in violation of 21-700 C. To avoid misleading advertisement, here are some suggestions:

"Former District Judge Maria Benita, a candidate for the Court of Appeals."

"Probate Judge Maria Benita for District Court. "

A copy of this Advisory Opinion is being sent to judicial candidates that may have some interest in this particular question.

Very truly yours,

Frank H. Allen, Jr.
Chairman, Judicial Advisory Committee

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1. Judicial Ethics Advisory Opinion, Fla., 84-17, June 25, 1984.
2. Judicial Ethics Advisory Opinion, Fla., 80-10, July 31, 1980.
3. Judicial Ethics Advisory Opinion, Washington, 88-3, March 11, 1988.
4. Judicial Ethics Advisory Opinion, Alabama 88-331, 1988
5. Judicial Ethics Advisory Opinion, Ohio 89-15, issue 2
June 16, 1989.
6. Judicial Ethics Advisory Opinion, Ohio 89-15, issue 1,
June 16, 1989.