

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF A
NEW RULE TO BE DESIGNATED AS RULE IV
OF THE RULES OF PROCEDURE OF THE
JUDICIAL QUALIFICATIONS COMMISSION
(APPENDIX TO SDCL 16-1A)

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A hearing having been held on February 20, 1998, at Pierre, South Dakota, relating to the adoption of a new rule to be designated as Rule 30 of the Rules of Procedure of the Judicial Qualifications Commission (Appendix to SDCL 16-1A), and the Court having considered the proposed new rule, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that the following new rule, to be added to the Appendix to SDCL 16-1A, be and it is hereby adopted to read in its entirety as follows:

IV. JUDICIAL ELECTIONS

1. Special Committee - Proceedings and Authority.

In every year in which a circuit court judicial election is held in this State and at such other times as the Commission may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The membership of such committee shall consist of five (5) members. Two (2) members shall be appointed by the

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Chair of the Commission and shall be former members of the Commission. Two (2) members shall be appointed by the Chairperson of the Disciplinary Board of the State Bar of South Dakota ("the Board") and shall be former members of the Board. The fifth member shall be appointed by the Chief Justice and shall be a retired circuit court judge or a retired Supreme Court Justice. Any action taken by the Special Committee shall require a majority vote. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(a) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this State (whichever is earliest), all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address, to the Commission. Upon receipt of such notice, the Special Committee shall cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; this Rule 30; summaries of any previous opinions issued by the Special Committee, or the Supreme Court of South Dakota, which relate in any way to campaign conduct and practices; and a form acknowledgment which each candidate shall promptly return to the Commission and therein certify that he/she has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Rule authorizing the Commission to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates are encouraged to seek an opinion from the Special Committee before such conduct occurs.

(b) Opinions as to the propriety of any act or conduct and the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its

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own motion under such circumstances as it finds appropriate. The Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and shall be a matter of public record except for the names of the persons involved, which shall be excised.

- (1) Both formal and informal opinions shall be advisory only; however, the Commission, the Board and the Supreme Court shall consider reliance by a judicial candidate upon the Special Committee opinion.

(c) Upon receipt of a complaint or otherwise receiving information facially indicating a violation by a judicial candidate of any provision of Canon 5 of the South Dakota Judicial Code of Conduct during the course of a campaign for judicial office, the secretary or chair of the Commission shall immediately forward a copy of the same by facsimile, if available, and U.S. mail to the Special Committee members and said Committee shall:

- (1) seek, from the complainant and/or the subject of the complaint, such further information on the allegations of the complaint as it deems necessary;
- (2) conduct such additional investigation as the Committee may deem necessary;
- (3) determine whether the allegations of the complaint warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization believed to be engaging in unethical and/or unfair campaign practices; and if not, to dismiss the complaint and so notify the complaining party;
- (4) if a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:
 - (i) to immediately release to all appropriate media outlets, as well as the complaining party and the person and/or organization complained against,

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a public statement setting out the violations believed to exist and the failure by the candidate and/or organization to honor the cease-and-desist request; and/or

- (ii) to refer the matter to the full Commission or the Board for such action as may be appropriate under the applicable rules.

(d) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all complaints within ten (10) days of receipt, either in person; by facsimile, by U.S. mail; or by telephone.

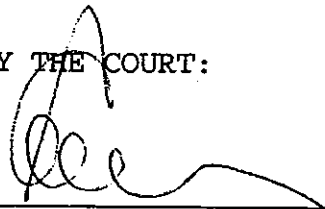
(e) Except as hereinabove specifically authorized, the proceedings of the Special Committee shall remain confidential as provided in Commission Rule III 1., and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the full Commission or the Board under applicable rules.

(f) The Committee shall after conclusion of the election distribute to the Commission and the Board copies of all complaints and all proceedings relating thereto.


IT IS FURTHER ORDERED that this rule shall become effective April 1, 1998.

DATED at Pierre, South Dakota, this 5th day of March, 1998.

BY THE COURT:


Robert A. Miller, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Clerk