RULES AND OPERATING PROCEDURES

South Dakota Special Committee on
Judicial Election Campaign Intervention

Rule 1. Purpose of the Special Commmittee

The Special Committee was created to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The objective of the Special Committee is to alleviate unethical and unfair campaign practices in judicial elections. The Special Committee does not have authority to institute disciplinary actions against a candidate.

Rule 2. Functions of the Special Committee.

The Special Committee shall:

1. Provide judicial candidates with a forum to hear charges of false or unethical campaign practices;
2. Advise whether judicial campaign practices are proper;
3. Render non-binding advisory opinions on questions regarding the South Dakota Code of Judicial Conduct.

Rule 3. Organization.

The Special Committee consists of nine members appointed by the Supreme Court. The Special Committee includes two retired members of the judiciary; three lawyers, with no more than two from one political party; and four citizens who are neither lawyers nor judges, with no more than two from one political party.

The Chair of the Special Committee is appointed by the Supreme Court. The Supreme Court may also designate a Vice-Chair who shall act for the Chair when the Chair is absent or otherwise unable to perform his/her duties.

Rule 4. Notice of Candidacy.

Within ten days after filing their nominating petitions, all candidates, including incumbent judges, shall forward written notice of such candidacy to the Judicial Qualifications Commission. The Judicial Qualifications Commission shall inform the Special Committee of any such candidacies. Upon receipt of such notice, the Special Committee shall forward to such candidates, by certified mail-return receipt requested, the following:

- The Code of Judicial Conduct;
- Supreme Court Rule 05-13;
- Summaries of opinions issued by the Special Committee;
- Summaries of opinions issued by the Supreme Court concerning campaign conduct or practices; and
- An Acknowledgement Form

Each candidate shall promptly return the acknowledgement form to the Special Committee and certify that he/she has read and understands the materials forwarded and agrees to comply with such standards during the course of the campaign.

Failure to comply with this requirement shall authorize the Special Committee to immediately publicize such failure to all candidates in such race, the Judicial Qualifications Commission, the Disciplinary Board of the State Bar Association, and all appropriate media outlets. Appropriate media outlets include the Associated Press, the applicable local county publication(s) where legal notices are designated, or any other media the Special Committee deems appropriate under the circumstances.

Rule 5. Receipt of Inquiries or Complaints.

All inquiries or complaints to the Special Committee concerning campaign conduct should be forwarded to the following address:

Special Committee on Judicial Election Campaign Intervention
c/o Suzanne Kappes
State Court Administrator's Office
500 East Capitol Avenue
Pierre, SD 57501
Phone: 605-773-4874
Fax: 605-773-5627
E-mail: Suzanne.Starr-Kappes@ujs.state.sd.us

All requests for advisory opinions shall be in writing, including e-mail or fax, and should specifically state the question and factual information surrounding the request.

All complaints directed to the Special Committee shall be in writing and signed by the complainant. Complaints submitted via fax or email will be accepted but not acknowledged until the original signed complaint has been received. Unsigned or anonymous complaints will not be accepted. A complaint form has been prepared and is available for use by persons who wish to file complaints with the Special Committee.

When a complaint or request for an advisory opinion requires the Special Committee to review campaign materials, duplicate originals of the campaign materials shall be forwarded with the complaint or request.

Requests for advisory opinions or complaints may be received from the candidate, the candidate's campaign committee, or the public. Additionally, the Special Committee may self-initiate a public statement if two-thirds of the participating members determine clear and convincing evidence of a violation exists.

Rule 6. Preliminary Dismissal of Complaints.

A complaint may be dismissed by the Chair without further review by the Special Committee if the complaint does not fall within the scope of the Special Committee's jurisdiction. The Chair will report any such action to the Special Committee within a reasonable time following the dismissal.

Rule 7. Requests for Advisory Opinions

Candidates are encouraged to seek opinions relating to the conduct of a campaign before such conduct occurs, and may request opinions as to the propriety of any act or conduct or the construction or application of the Code of Judicial Conduct. All written requests for advisory opinions shall be immediately forwarded to the Chair and general counsel. If the Chair determines the question has previously been answered by the Special Committee, staff shall inform the questioner of the resolution of the question and provide a copy of the formal opinion addressing the issue. In all other cases, counsel will prepare a memorandum discussing the request and make a recommendation that will be forwarded to the Special Committee along with the written request.

Rule 8. Complaints.

When the Special Committee receives a complaint or otherwise receives information indicating a violation of the Code of Judicial Conduct they will:

a) Contact the complainant and/or subject of the complaint and gather such information deemed necessary to act on the complaint.
b) Immediately provide the subject of the complaint notice and an opportunity to respond in a manner specified by the Special Committee.
c) Conduct any additional investigation the Special Committee deems necessary.
d) The Special Committee shall act on all complaints within five days after receipt. Such response may be either in person, by fax, US mail, e-mail or telephone as the Special Committee determines appropriate.

All proceedings shall be informal and non-adversarial. If the Special Committee determines the complaint does not warrant intervention it shall dismiss the complaint and notify all parties.

All complaints shall be confidential until the Special Committee, by a two-thirds vote of the participating members, determines by clear and convincing evidence that a violation has occurred.

Rule 9. Special Committee Action.

All action taken by the Special Committee is by a majority of the participating members unless otherwise specifically indicated. A participating member includes those appearing by telephone, video conference, in person, voting by e-mail, or otherwise having previously cast their vote in advance of a Special Committee meeting.

1. *Advisory Opinion*

    a. The Special Committee may determine the question presented is of limited significance and issue an informal opinion responding to the questioner only.
    b. The Special Committee may determine the question presented is of general interest and importance and issue a formal opinion. The formal opinion will be sent to all candidates, the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association in either complete or synopsis form as deemed appropriate, published in the bar newsletter, sent to appropriate media outlets, and filed with the Supreme Court. The formal opinion may be published in complete or synopsis form. Except for the Special Committee's response to the questioner, formal opinions shall be redacted to the extent practicable so as not to identify the questioner.
    c. The Special Committee may determine it is inadvisable to respond to the request for an advisory opinion and may decline in writing to the questioner stating its reasoning.
    d. Both formal and informal opinions shall be advisory only. However, the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association shall consider reliance by a judicial candidate upon the Special Committee's opinion.

2. *Complaints.*

    a. If two-thirds of the participating members determine there is clear and convincing evidence of a violation of the Code of Judicial Conduct, the Special Committee may issue a public statement about the campaign conduct.

Any formal statement by the Special Committee shall be signed by the Chair or Vice-Chair on behalf of the Special Committee.

Rule 10. Meetings.

The Special Committee may schedule meetings at such times and places as it deems convenient and appropriate. Committee members may attend such meetings in person, by telephone, or video conference.

Rule 11. Referral to Judicial Qualifications Commission and Disciplinary Board of the State Bar Association.

The Special Committee has the right, as any citizen would, of referring matters to the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association. An affirmative vote of a majority of the participating Special Committee members shall be required to refer any such matter.

Rule 12. Confidentiality.

A formal opinion issued in response to a request for an advisory opinion shall be redacted to ensure the confidentiality of the questioner to the extent practicable. Complaints shall be confidential until such time as the Special Committee by a vote of at least two-thirds of its participating members has determined clear and convincing evidence exists that a violation has occurred. Special Committee investigatory and deliberation materials shall remain confidential.

Rule 13. Conflicts of Interest.

Special Committee members shall not participate in any matter in which they have either a material pecuniary interest that would be affected by a proposed advisory opinion or committee recommendation, or any other conflict of interest which prevents them from being fair and impartial. In assessing a conflict of interest, members of the Special Committee should refer to the Code of Judicial Conduct for guidance. However, no action of the Special Committee will be invalid where full disclosure of a potential conflict of interest has been made and the Special Committee has decided that the member's participation was not improper.

Rule 14. Final Report.

Upon the conclusion of the election the Special Committee shall distribute to the Judicial Qualifications Commission and the Disciplinary Board of the State Bar Association copies of all complaints and all proceedings relating thereto with a final report from the Special Committee.