

Special Committee-Proceedings and Authority

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 nine (9) members appointed by the Supreme Court. The Special Committee shall include two (2) retired justices or retired judges, three (3) lawyers, with no more than two (2) from one (1) political party, and four (4) other citizens who are neither lawyers nor judges with no more than two (2) from one political party. One of the judge or lawyer members shall be designated by the Supreme Court to chair the work of the Special Committee. Unless otherwise provided, any action taken by the Special Committee shall require a majority vote of the participating members. 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 after filing their nominating petitions 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: the Code of Judicial Conduct; this Rule; 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 Special Committee and therein certify that he/she has read and understands the materials forwarded and agrees to comply with such standards during the course of the campaign. A failure to comply with this section shall authorize the Special Committee to immediately publicize such failure to all candidates in such race, the Commission, the Disciplinary Board of the State Bar of South Dakota ("the Board") 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 question of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be circulated to all candidates and published in complete or synopsis form as deemed appropriate by the Special Committee. If two-thirds of the participating members of the Special Committee determine that there is clear and convincing evidence of a violation it may issue a public statement relative to campaign conduct that is not the subject of a written complaint. The Special Committee may decline to issue an opinion when a majority of the participating 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. 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 the Special 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) provide the candidate with notice and an opportunity to respond in a manner specified by the Special Committee;

(3) conduct such additional investigation as the Special Committee may deem necessary;

(4) in the instance the allegations of the complaint do not warrant intervention, the Special Committee shall dismiss the complaint and so notify the complaining party and candidates in such race;

(d) 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. Complaint forms and campaign conduct acknowledgement forms used by the Special Committee shall include language which notifies complainants and candidates of this restriction. The Special Committee may issue a public statement concerning the campaign conduct.

(e) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all complaints within five (5) days of receipt, either in person; by facsimile, by U.S. mail, by electronic mail; or by telephone.

(f) 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.

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

(h) The Special Committee may promulgate rules pertaining to its operation and procedures as it deems appropriate.

2 Applicability of Code of Judicial Conduct and Guidelines

These guidelines shall apply to all candidates for judicial office, be they incumbent judges or not and to the campaign/solicitation committees of all candidates.

Every person who files a petition to have their name placed on the ballot as a candidate for judicial office and any judicial candidate's election committee chairperson, shall by May 15th of the year in which the petition was filed complete a two-hour course on

campaign practices, finance, and ethics sponsored and approved by the Judicial Qualifications Commission. Within thirty days of completing the course, the candidate shall certify to the Commission that he or she has completed the course and understands fully the requirements of South Dakota law and the Code of Judicial Conduct concerning campaign practices for a judicial office. A circuit court candidate who has no opposition is exempt from the application of this rule.

1. Immunity

The members of the Special Committee and Commission, their counsel, and all staff persons assisting them shall have absolute immunity from civil liability for all acts undertaken in the course of their official duties pursuant to these rules. Complaints submitted to the Commission or the Special Committee, shall be absolutely privileged, except as specifically authorized by the Commission's rules. No civil action shall be instituted predicated on a violation of the Commission rules.