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Opinion #06-01

March 22, 2006

Is it permissible for a sitting judge to appear in campaign materials wearing a judicial robe?

Affirmative.

Is it permissible for a candidate for judicial election to appear in a courtroom in campaign materials?

Affirmative.

Note: Opinion #98-07 previously prohibited wearing judicial robes to promote an incumbent judge's candidacy based on SDCL Ch. 12-9. The entire appendix to Chapter 12-9 was struck down by the South Dakota Supreme Court on December 1, 2005. The Committee cautions any candidate for judicial office that campaign material should not be false, deceptive or misleading.

References: Shaman, Judicial Conduct and Ethics, (3rd ed. 2004), Discipline of Miller, 759 A2d 455, 463 (Penn 2000); Saefke v. Vande Walle, 279 NW2d 415, 417 (ND 1979).

Opinion #06-02

March 22, 2006

Whether a sitting judge may endorse a judicial candidate.

Affirmative.

Note: Canon 5 indicates that a judge or candidate subject to a public election may "publicly endorse or publicly oppose other candidates for the same judicial office in a public election in which the judge or judicial candidate is running." The Canons should be interpreted to promote a judge or candidate's right to freedom of speech and association. Endorsing or soliciting others for endorsements fall within the judge or candidate's free speech rights.

References: Canon 5(C)(1)(b)(iii), Preamble to the Canons

Whether the following phrases may be used on campaign advertisements: "Ask any lawyer. Ask your lawyer. Ask law enforcement. Ask the Clerk of Court. Ask a Court Services Officer."

First three statements are acceptable. The last two are not recommended.

Note: The last two statements are problematic, as the Clerk of Courts and Court Service Officers are UJS employees, and UJS employees are prohibited from participating in judicial campaign activities as conditions of their employment.

References: Canon 5(C)(2), Canon 5(C)(1)(b)(iii), Canon 1, Canon 3(C)(2)

Opinion #06-03

March 28, 2006

Whether a magistrate judge may wear a judicial robe in campaign material for a circuit judge position

Affirmative.

Note: A magistrate judge candidate for a circuit court position may appear in their judicial robes so long as that depiction clearly and unequivocally identifies the candidate as a magistrate judge and not a circuit judge. The Committee recommends that the magistrate should take adequate steps to ensure that they are accurately identified as a magistrate judge when appearing in judicial robes.

References: Opinion 06-01, Canon 5A(3)(d)(ii), Application of the Code of Judicial Conduct, Section A, OH Adv. Op. 2003-8, State of Nevada Commission on Judicial Discipline Decision 02-03, New Mexico Judicial Ethics Handbook, 12-831

Opinion #06-04

May 19, 2006

Whether a proposed campaign advertisement could be considered false, deceptive or misleading.

No, in this specific example.

Note: Opinion was on a proposed advertisement with a gavel and the name “Elect Circuit Court Judge”. The Committee did not find the advertisement to be false, deceptive or misleading, but suggested adding the word “for” before “Circuit Court Judge.”

References: Canon 5A(3)(d)(ii).

Whether use of the statement “not accepting campaign contributions from anyone” may be used on campaign advertisements.

Affirmative if it is actually true.

Note: Such a statement is acceptable as long as no campaign contributions are accepted from anyone. It is acceptable for candidates to self-finance their own campaign, per Canon 5C(2). The Code of Judicial Conduct is not to be construed to limit a judge or candidate’s right to freedom of speech.

Reference: Canon 5C(2), Preamble, Code of Judicial Conduct

Opinion #06-05

May 19, 2006

Whether a candidate may respond to a written questionnaire.

Affirmative, but with caution.

Note: Candidates should be mindful of Canon 5(A)(3)(d)(i) requiring a candidate to not “make pledges promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” A candidate’s response might constitute pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. If elected, such candidates shall be recused from cases where a candidate’s responses constitution pledges, promises or commitments. Canon 3E(3) requires any candidate who answers a questionnaire to file a copy of the responses with the Clerk of the Supreme Court within ten days of the questionnaire’s submission.

References: North Dakota Family Alliance v. Badar, 361 FSupp2d 1021 (D.N.D. 2005), Canon 5a(3)(d)(i), Canon 5A(3)(d)(ii), Commentary to Canon 5A(3)(d), Canon 3E(1)(e)

Opinion #06-06

May 19, 2006

Whether an incumbent circuit court judge not involved in a contested election may endorse a judicial candidate.

Affirmative.

Note: Formal Opinion 06-02 indicates that a judge or candidate may publicly endorse or oppose other candidates for the same judicial office in a public election in which the judge or candidate is running. “Public election” is defined as “primary and general elections; it includes partisan elections, non-partisan elections and retention elections,” as defined by the Code of Judicial Conduct. Even if someone is not involved in a contested race, it is the Committee’s opinion that that individual remains a candidate “subject to public election” and may therefore endorse circuit court candidates for judicial office.

References: Formal Opinion 06-02, Canon 5C(1)b(iii)

Opinion #06-07

May 22, 2006

Whether judicial candidates are required to comply with SDCL 12-25-4.1

Affirmative.

Note: Canon 5C(2) specifically requires that candidates for judicial election comply with SDCL 12-25-4.1. Prior to the enactment of Supreme Court Rule 05-13, there was no requirement for disclaimers in judicial campaign advertisements because SDCL 12-25-6.1 specifically exempted judicial candidates.

References: Canon 5C(2)

Opinion #06-08

May 26, 2006

Whether a flyer distributed without the requisite disclaimer and prior to the filing of a nominating petition that was a neither paid for or authorized by that candidate constitutes a violation of the Code of Judicial Conduct.

Negative.

Note: Supreme Court Rule 05-13 specifically incorporates the requirements of SDCL 12-25-4.1, which requires that all printed campaign advertisements include a disclaimer with the name and address of the person authorizing and paying for such advertisement. The flyer was not paid for or authorized by the candidate. At the time it was distributed, the candidate was still collecting signatures for the nominating petition. The complaint in question occurred prior to the filing of the petition. Therefore, it does not appear the requirements of SDCL 12-25-4.1 were triggered.

References: Supreme Court Rule 05-13, Formal Opinion 06-07

Opinion #06-09

July 17, 2006

Whether it is permissible to use the phrase “VOTE TO RETAIN CIRCUIT COURT JUDGE [redacted]” in campaign advertisements.

Affirmative.

Note: The question was on whether the word “retain” was problematic and could cause undue confusion to the voters or be misleading because Supreme Court Justices are “retained” under their merit selection system. The Committee found that, given the individual’s position as an incumbent circuit court judge, the word “retain” provides an accurate and informative statement to the voters. The advertisements clearly indicate the position is for a circuit court judge. The judge had not been previously elected; thus- the use of the word “reelect” could be misleading.

Reference: Canon 5A(3)(d)(ii)

Opinion #06-10

August 16, 2006

Whether an attorney is prohibited from writing a letter to the editor in support of your candidacy for circuit court judge and,

Negative.

Note: Candidates are permitted to solicit and accept publicly stated support from individuals and organizations, including attorneys.

[i]f not, is the disclaimer provided in SDCL 12-25-4.1 required in this situation.

Negative.

Note: It is the committee's opinion that a letter to the editor would not fall within the provisions of SDCL 12-25-4.1 because it is not printed campaign literature or a paid print advertisement. Rather, it is attributed to a citizen and offered as their perspective on an issue or candidate.

References: Canon 5C(2), SDCL 12-25-4.1

Opinion #06-11

October 10, 2006

Whether Candidate [redacted]'s actions related to participation with a political party violate the Code of Judicial Conduct.

Negative.

Background: Candidate appeared at a Republican Party booth at the fair and stated that the opponent had previously contributed to certain candidates in political contests, attended Republican Party picnics, and the Republican party made the candidate's material available to the public. The complaint alleged a violation of SDCL 12-9-2.

Note: The Code of Judicial Conduct has been relaxed with regards to the limits of political participation (see the Preamble, Canon 2 Commentary, Canon 5C(1) and Canon 5C(2)). As a result, a candidate may purchase tickets for political gatherings, attend political gatherings, identify themselves as a member of a political party, contribute to a political organization and speak to political gatherings on their own behalf.

References: SDCL 12-9-2, SD Const. Art. V, § 7. SDCL 12-9-2, Preamble, Canon 2, Canon 5C(1), Canon 5C(2), Eighth Circuit Court of Appeals on remand from the US Supreme Court in Republican Party of Minnesota v. White, 416 F3d 739 (8th Cir 2005)Rule 05-13

Opinion #14-01

January 7, 2013

Whether a legislator in his fourth term as State Representative can campaign for a judicial position and continue as a state legislator.

Affirmative

Note: A successful candidate would be precluded from serving as a judicial officer and a member of the legislature simultaneously.

References: SD Const. Art. 3, § 3, and SD Const. Art. 26, § 19., and Canon 5 of the Code of Judicial Conduct (for permissible campaign conduct)

Opinion #14-02

January 28, 2014

Whether a candidate's immediate family member can contribute more than \$1,000 to their judicial election.

Negative

Note: Canon 5C(2) does not provide that the contribution limit does not apply to family. The Commentary to the Canon directs the campaign committee to follow the requirements in SDCL 12-72-22, SDCL 12-27-24 thru-28, and SDCL 12-27-15.

References: Canon 5C(2), SDCL 12-72-22, SDCL 12-27-24 thru -28, SDCL 12-27-15

Whether a candidate can contribute more than \$1,000 to their judicial election.

Affirmative.

Note: The Canon refers throughout to the "judicial candidate." When it restricts contributions, it is applied to an individual or organization.

Opinion #14-03

May 21, 2014

Whether an incumbent, who has no opposition, must comply with the campaign finance reporting requirements.

Negative.

Note: SDCL 12-27-22 says “[a] legislative or county candidate campaign committee without opposition in a primary election” is not required to file a campaign finance disclosure statement. SDCL 12-27-1(7) defines “county” as “any elected office at a county in the state.”

References: SDCL 12-27-22, SDCL 12-27-1(7)

Opinion #14-04

May 28, 2014

Whether a judicial candidate’s campaign committee may organize an athletic event to solicit funds for the judicial campaign.

Affirmative.

References: Canon 5B(2)

Whether a judicial candidate may appear/participate in an athletic event organized by their campaign committee.

Negative.

Note: Canon 5 of the Code of Judicial Conduct prohibits the candidate from knowing the identity of the campaign’s contributors. Appearing at the athletic event would disclose the identity of the campaign contributors.

References: Canon 5(C)(2)(b)(v)

Whether it is acceptable that a campaign committee print and distribute t-shirts encouraging votes for a particular candidate.

Acceptable under specific circumstances.

Note: The Committee does not find the list authorizing “newspaper, television, and other media advertisements” in Canon 5(C)(1)(b) to be exhaustive. Shirts are acceptable as long as donations were not received in exchange for the shirts. This includes the distribution of t-shirts to persons who participated in an event where the registration fee was considered a donation to the campaign because the use of the t-shirt would reveal the identity of campaign contributors.

References: Canon 5(C)(1)(b)

Whether a campaign committee can provide an opportunity for users to contribute to the campaign on the candidate’s webpage.

Appropriate under certain circumstances.

Note: The Canons of Judicial Conduct require solicitation of contributions to be completed through the campaign committee; thus, a candidate should avoid even the appearance of personal solicitation. While the candidate may not have access to the administrative functions of the webpage, there may still be an appearance of personal solicitation. The person desiring to contribute should be directed to a separate link on another webpage to complete the transaction. Caution should be used in ensuring that the individuals are not “invited” to the separate page to contribute, as it may be viewed as personal solicitation.

Whether the fundraising committee or an individual supporter can sponsor a “meet and greet the candidate,” where the candidate is present and donations are accepted by a member of their campaign committee.

Extreme caution advised.

Note: Canon 5 prohibits the candidate from knowing the identity of the campaign contributors. The candidate is allowed to speak at gatherings on his or her own behalf, but extreme caution would have to be used to ensure that the candidate does not become aware of the identity of those who contribute or refuse to contribute.

References: Canon 5

Opinion #14-05

July 7, 2014

Whether an unopposed incumbent may contribute campaign funds to another judicial candidate’s election.

Affirmative.

Note: The fact that circuit court judges may be unopposed does not erode the fact they are holding a public office. Thus, the Canon allows a judge (not a just a judicial candidate) to contribute “at any time.”

References: Canon 5C, Advisory Opinion No. 06-02

Opinion #14-06

July 30, 2014

Whether a judicial candidate may advertise at a movie theatre, and, if so, there are restrictions.

Affirmative.

Note: The Commentary notes that the conduct of a judicial campaign should comport with the dignity and integrity required of that office. Proper discretion should be used when choosing the movie theater in which the advertisement took place, i.e. adult movie theater. Depending on the movie, the judicial candidate may want to forgo advertising because of the content or rating of the movie.

References: Canon 5C(1)(b)(i), Commentary to Canon IA

Formal Opinion #14-07

On the matter concerning campaign contribution limitations in a judicial election, Canon 5(C)(2) provides that “[a] judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are reasonable, in any event to exceed one-thousand dollars (\$1000) in the election per year individual or organization.” This \$1,000 cap on campaign contributions during the election year specifically applies to contributions from both individuals and organizations.

Reference: Canon 5(C)(2)