

ADVISORY OPINION

Code of Judicial Conduct Canon 4

#1 - 14

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

Each year the Commission receives questions from judges and judicial candidates regarding conduct around judicial campaigns – both their own conduct and that of their opponent(s). This opinion states the Commission’s position on some of the more common questions received during election season:

- 1) Which words or phrases should be avoided in campaign slogans?
- 2) Are judges permitted to use photos of the courtroom in campaign materials?
- 3) Are judges permitted to wear their black robes for campaign photos or events?

ANALYSIS

A. Potentially misleading words in campaign slogans

Slogans and logos are often the most visible – and memorable – aspects of a judicial campaign. It is therefore important that these materials convey a truthful and accurate message. In fact, Rule 4.1(A)(11) of the Code of Judicial Conduct prohibits judicial candidates from knowingly, or with reckless disregard for the truth, making any false or misleading statement during campaigns.

To assist judicial candidates in avoiding the creation of misleading impressions, many states have issued advisory opinions cautioning candidates from using the title “judge” in campaign literature when the candidate is running for a different judicial office than that which he or she currently holds, such as serving as a senior or special judge, or when the candidate has never previously served as a judge. *See, e.g. Florida Advisory Opinion 2008-10* (retired judge may not use the title “judge” in campaign literature, but can use “former judge” or “retired judge”); *New York Advisory Opinion 97-72* (former elected town justice may not use “Vote for Judge (name)” in campaign literature); *Alabama Advisory Opinion 98-718* (judge who wishes to use title

“judge” in campaign must identify current judicial position or otherwise indicate that she is not the incumbent.)

Campaign slogans, logos, and other materials of non-incumbent candidates must not suggest that the candidate is the incumbent. The New York Advisory Committee on Judicial Ethics has stated that “[if] the candidate is not presently holding any judicial office, it would be a misrepresentation and misleading to the public to imply that the candidate is currently serving as a judge. That claim is inconsistent with maintaining the integrity of the judiciary during a campaign for judicial office.” *New York Advisory Opinion 97-72* (1997). These principles also apply to judicial candidates who have never previously served in judicial office. Such candidates should be careful to include words like “elect” or “for” to ensure their slogans do not imply incumbency. *See South Dakota Advisory Opinion 06-4* (non-judge’s campaign advertisement using slogan of “Elect [name] Circuit Court Judge” should insert “for” before “circuit court judge”).

The verb “re-elect” can also be problematic if it is used in conjunction with a judicial campaign for a different office than that which the candidate currently holds. *See, e.g. New York Advisory Opinion 94-50* (candidate for judgeship may not use the term “re-elect” when seeking an office other than one presently occupied). Again, any words or phrases which may falsely imply that the candidate is an incumbent should not be used. “When the use of a word in a campaign is likely to lead others to draw an inaccurate conclusion, or would likely result in confusion, that word is to be avoided.” *Florida Advisory Opinion 2008-10*.

B. Use of court resources during campaigns

Rule 4.1 of the Code of Judicial Conduct lists a number of campaign activities from which judicial candidates are prohibited, including the personal solicitation or acceptance of campaign contributions, the public endorsement or opposition of a candidate for judicial office, and – perhaps the most common mistake – the use of court resources for campaign purposes. Rule 4.1(A)(10) provides that “judges and judicial candidates shall not use court staff, facilities, or other court resources in a campaign for judicial office or for any practical purpose.” The most obvious applications of this rule involve using court email addresses to send out campaign material, requesting that staff stuff envelopes or prepare campaign mailings on court time (staff may *voluntarily* participate in a judicial candidate’s campaign if done during non-work time and off court premises), or hosting campaign committee meetings in chambers.

However, this prohibition also addresses the use of court facilities in campaign photos. A judge should not use the prestige of judicial office to promote his or her candidacy, nor should he or she use the courthouse for political purposes. Judicial candidates also should be mindful of Rule

2.17 of the Code, which prohibits broadcasting, recording, or taking photographs in the courtroom during court sessions.

The use of campaign photos featuring a judge wearing his or her black robes is subject to the same analysis as campaign slogans with regard to the potential to mislead voters. In general, incumbent judges who are running for re-election may wear their judicial robes in campaign advertisements without fear of misleading the public. However, non-incumbent judges should ensure the campaign material clearly conveys the role the judge currently holds, and judicial candidates who are not currently judges should avoid being pictured in judicial robes as it creates the misleading impression that the candidate already is a judge. *See In re McGlothlen*, WA Jud. Disp. Op. 82-155-F-4 (1983) (candidate who served as judge *pro tem* violated Code of Judicial Conduct by publishing and distributing within his campaign materials a photograph of himself in a judicial robe).

CONCLUSION

When preparing campaign materials, judges and judicial candidates always must be mindful of their duties to protect the integrity, independence, and impartiality of the judiciary. Inherent in this concept is the duty to avoid using the prestige of judicial office to promote one's candidacy and the duty to be truthful in all communications with potential voters. Judicial candidates and their campaign committees should evaluate all campaign materials carefully to ensure these materials do not contain content which may mislead or confuse the public.