

REVISED
(05/29/98)
JUDICIAL ETHICS COMMITTEE
ADVISORY OPINION NO. 98-3

The Committee has been asked to render an opinion for a judicial candidate concerning whether or not it is permissible under Rule 10, Tennessee Rules of the Supreme Court, to advertise as follows:

Experienced, Fair, Committed
Candidate's Name
Circuit Court Judge, Part II

and (2) whether or not it is permissible under Rule 10, Tennessee Rules of the Supreme Court, for a judicial candidate's disclaimer on an advertisement to read as follows:

"Paid advertisement. Paid for by (candidate's name)."

I.

The Committee concludes that it would be impermissible to advertise as follows:

Experienced, Fair, Committed
Candidate's Name
Circuit Court Judge, Part II

Cannon 5 of the Code of Judicial Conduct deals with the political activity of a judicial candidate.

Cannon 5A(3) states that a candidate for judicial office:

"shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary..."

Cannon 5A(3)(d)(i) states that a candidate for judicial office shall not:

"make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office."

Cannon 5A(3)(d)(iii) states that a judicial candidate shall not:

"knowingly misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or an opponent."

The advertisement itself maintains the dignity and integrity of the judiciary and is not a violation of Cannon 5A(3). The use of the words experienced and committed should not be deemed as pledges or promises and, at most, are within general comment. Therefore, Cannon 5A(3)(d)(i) is not violated. Assuming the accuracy of an experienced and committed candidate, there would not be a prohibition of these words in an advertisement under Cannon 5A(3)(d)(iii).

However, judicial candidates should be held to a high standard of accuracy in their campaign statements and advertising. Statements and advertising should not mislead or misrepresent the candidate's identity or position. It is the committee's opinion that an advertisement with the candidate's name and, underneath, Circuit Judge, Part II, could mislead the public into believing that the candidate is already the Circuit Court Judge, Part II and, therefore, such wording would be in

violation of Cannon 5A(3)(d)(iii). It would not be a violation of Cannon 5A(3)(d)(iii) if the advertisement read as follows:

**Experienced, Fair, Committed
Elect Candidate's Name
Circuit Judge, Part II; or**

**Experienced, Fair, Committed
Candidate's Name
FOR
Circuit Court Judge, Part II; or**

**Experienced, Fair Committed
Candidate's Name
Candidate for Circuit Court Judge, Part II**

II.

The Committee concludes that it would be impermissible for a judicial candidate's advertisement disclaimer to read "Paid for by (candidate's name)" if a campaign committee has been formed and campaign monies are raised and expended by said committee. Cannon 5C(2)(a) states that a judicial candidate:

("...may establish committees of responsible persons to conduct campaigns for the candidate ...through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. Such committees are to solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign...".)

Clearly, committees of responsible persons are to be established to raise and expend campaign funds for judicial candidates. All campaign monies should be solicited by the committee, deposited in campaign accounts established by the committee, and any campaign expenditures should be paid out of said funds. To do otherwise is

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a violation of Canon 5C(2)(a). Under such circumstances, a judicial candidate's political disclaimer statement should read:

"Paid for by (name, treasurer) Committee to Elect, or Friends to Elect, or Citizens to Elect (judicial candidate's name)."

or

"Paid for by (name, agent) Committee to Elect, or Friends to Elect, or Citizens to Elect (judicial candidate's name)."

However, under the Judicial Code, campaign committees are not mandatory and a candidate need not form a committee and maintain a separate bank account if he or she will not accept contributions and will only expend personal funds on a campaign.

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In such cases, it would be permissible for the political disclaimer to read as follows:

"Paid for by (judicial candidate's name)."

For the Committee _____
Brenda J. Waggoner, Judge

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Please note that Tennessee Code Annotated §2-19-120 deals with Tennessee's political advertisement disclaimers. The Attorney General of Tennessee has opined that Tennessee Code Annotated §2-19-120 is unconstitutional because the statute is broader than necessary to protect the State's interest in preventing the dissemination of fraudulent or libelous statements (Opinion No. 95-090-1995 Tenn. AG). The Attorney General's opinion is based upon the U.S. Supreme Court case holding an Ohio statute similar to Tennessee's to be unconstitutional in that it violates the Free Speech Clause of the First Amendment (115 S.Ct. 1511 (1995)). The statute is not presently being enforced in Tennessee. Therefore, there has been no discussion of Cannon (2) of the Code of Judicial Conduct which deals with the avoidance of impropriety (violation of election laws) and the appearance of impropriety.

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The Tennessee Code of Judicial Conduct is identical to the Model Code of Judicial Conduct on this issue. Please see Shaman, Lubet, and Alfini's Judicial Conduct and Ethics p. 388 (2nd ed. 1995).

C O N C U R :

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