

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 10-02  
(Revised December 2, 2010 )

## **Using Judicial Titles and Robes in Election Campaigns**

### **Issues**

1. During a campaign for elected judicial office, incumbents and judicial candidates often want to use the title “judge” or appear in campaign photographs or advertisements wearing judicial robes.
  - a. May an incumbent judge running for election to the office currently held use the judicial title and appear in photographs or advertisements wearing robes?  
**Answer:** Yes.
  - b. May a judge running for election to a different judicial office or a full-time pro tem judge running for election to the bench use the title “judge” and appear in photographs or advertisements wearing robes?  
**Answer:** No, but see discussion.
  - c. May a candidate who formerly served as a judge use the judicial title and appear in photographs or advertisements wearing robes?  
**Answer:** No.
2. May judicial candidates use photographs showing themselves in robes or on the bench that were previously taken by newspapers or television stations?  
**Answer:** Yes, with qualifications.
3. May a judicial candidate use photographs taken while standing in front of or sitting at the bench?  
**Answer:** No.

### **Facts**

For many years, the Judicial Ethics Advisory Committee has informally advised incumbent judges and judicial candidates regarding the standards governing the use of judicial titles and judicial robes during campaigns for judicial office. Although the 2009 Code of Judicial Conduct contains more explicit guidance on campaign conduct than previous versions, many judges and candidates remained uncertain about the use of titles and robes during the 2010 general election, and the number of inquiries on these subjects increased significantly. To help reduce uncertainty in future elections, the committee decided to issue a formal opinion on the use of judicial titles and the wearing of robes in campaign photographs.

## Discussion

### Issue 1

Rule 4.3 of the 2009 Code of Judicial Conduct prohibits a candidate for judicial office from making false or misleading statements regarding his or her current position. The rule contains specific guidelines for using the term “judge” and provides that a candidate may not “use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office.” Rule 4.3(C). To emphasize this fundamental principle, Comment 2 to Rule 4 states: “A sitting judge, who is a judicial candidate for an office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she uses the title ‘judge’ without identifying the court on which the judge currently serves.” Candidates are also warned in Rule 4.3(F) to avoid misrepresenting “the identity, qualifications, present position, or any other fact about the judicial candidate . . . .”

The use of a judicial title without any specification of the office currently held gives the impression that the candidate is the incumbent which, if false, can easily mislead the public in violation of Rule 4.3. To avoid this problem, using the title “judge” in campaign material is restricted to the following situations:

(1) An incumbent may use the title “judge,” because it correctly identifies the candidate’s current office.

(2) A sitting judge running for election to another judicial position or a full-time pro tem judge running for election may use the title “judge” in campaign material only if the information provided clearly informs the public of the candidate’s current position. Under Rule 4.3, a candidate may not use a judicial title in a way that could mislead the electorate. A candidate may not use the title of “judge” on campaign signs, posters, cards or similar material where there is insufficient space to explain the candidate’s current status.

(3) A former judge may not use the title “judge” except in the limited way set forth in Rule 4.3(D), which involves placement of the words “elect,” “vote,” or “for” in relation to a candidate’s name and the use of prominent lettering.

The committee believes that use of a photograph or other depiction of a non-incumbent candidate wearing a judicial robe is prohibited under paragraphs (A) and (F) of Rule 4.3 just as the use of the title “judge” is prohibited under paragraph (D), because the public is likely to conclude the candidate is the incumbent.

The purpose of Rule 4.3 is to avoid both false and misleading information in a judicial campaign. A sitting judge running for election to a different judicial office, who chooses to use the title judge or wear judicial robes in photographs taken for campaign material or advertisements, must ensure that the material clearly informs the public of the candidate’s current status and judicial office. The identification of the candidate’s current office must coincide with and be given the same emphasis as the title “judge” or the depiction of the candidate in judicial robes. It would be misleading, for example, to display the title “judge” or show a photograph of the candidate in robes on the front of a campaign brochure or on a campaign sign, without revealing the candidate’s temporary or previous status as a judicial officer, because there is too great a likelihood that voters will only notice the information on the cover or the sign.

Use of judicial titles or judicial robes by non-incumbent candidates is more problematic if the advertising media affords too little space for full disclosure of the candidate's current office. For example, signs, posters, or campaign trinkets, such as pens or buttons, contain hardly any space in which to explain judicial status. A sign or poster which urges voters to "elect Judge \_\_\_\_\_," or which displays a photograph of the candidate in robes would lead casual viewers to believe the candidate is the incumbent, even if the current office held is also stated. The risk of misrepresenting a candidate's present position is also present in television and radio advertisements. Television ads that depict the candidate in judicial robes or radio announcements that repeatedly refer to the candidate as "Judge \_\_\_\_\_," create a strong impression that the candidate is the incumbent. These initial imprints are not easily corrected by words or graphics stating the candidate currently holds a different judicial office. Due to the risk of misleading the public and violating Rule 4.3, the committee advises a non-incumbent not to use the title "judge" or judicial robes in ads or campaign materials that do not allow for full and clear disclosure of the candidate's current status or which draw greater attention to the title or to the robes than to the disclosure.

This opinion is consistent with Advisory Opinion 98-03, in which this committee concluded that a part-time, pro tem judge's use of the term "judge" in campaign literature misrepresented the candidate's "qualifications, present position or other fact concerning the candidate." Opinion 98-03 was based on the 1993 Code of Judicial Conduct, but the reasoning is equally applicable to Rule 4.3 of the new code. It would make no difference in our present analysis if the pro tem judge serves full time or is seeking election to the court where he or she currently serves, because serving as a pro tem judge is not the same as holding the judicial office sought in the election.

## **Issue 2**

An incumbent judge, a judge running for election to a different judicial position, and a former judge, may all use photographs showing themselves in robes, even if taken in the courtroom, if the photographs were taken by a newspaper or the media as a part of a news program and not staged for campaign purposes. A candidate who wants to use photographs or video clips should obtain permission from the source in compliance with copyright law and make sure the photographs do not mislead voters about the candidate's current position. The source and context of the photograph must be clearly disclosed to avoid the impression that the candidate used court facilities for campaign purposes, and it should be made clear that the photographs were not taken in connection with the candidate's campaign.

If the candidate is not the incumbent, then he or she must also take appropriate measures to ensure that the photographs do not mislead the public as to the candidate's current position. The campaign material must make clear that the photograph refers either to past judicial service, in the case of a former judge, or to service in a different court, in the case of a sitting judge running for election to a different judicial position. The concerns expressed above regarding misleading the electorate are equally applicable to this issue.

If a photograph depicts other individuals with the candidate, then care must be taken to avoid giving the impression that the other persons support or endorse the candidate. This is especially true where the other individuals are themselves judges or are likely to be recognized by the public. The candidate is responsible for making sure a photograph does not imply any sort of endorsement by the other persons depicted. Fla. JEAC, Op. 2008-11.

### **Issue 3**

A judicial candidate may not use a picture taken while standing in front of or sitting at the bench during an election campaign except as noted above in connection with pictures taken by the press. Rule 4.1(A)(8) prohibits a judge or judicial candidate from using “court staff, facilities, or other court resources in a campaign for judicial office.” The bench and courtroom are court facilities and may not be used for campaign purposes. This prohibition does not apply to pictures taken in locations to which the general public has access, such as the front of the courthouse. *See*, N.Y. Op. 05-101.

### **Conclusion**

The campaign standards contained in the Code of Judicial Conduct are designed to encourage public confidence in the independence and impartiality of the judiciary and to ensure judicial neutrality in elections. To this end, incumbents and judicial candidates should follow all of the applicable provisions of the code and avoid any conduct that might bring the reputation of the judiciary into disrepute or that might mislead voters. Candidates who are not incumbents need to be especially careful not to give the impression that they already hold the offices for which they are running.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canon 4, Rules 4.1(A)(8), 4.3, 4.3(C)(D) and(F), and Rule 4.3, Comment 2 (2009).

### **Advisory Opinions**

Arizona Judicial Ethics Advisory Committee, Opinion 98-03.

Florida Judicial Ethics Advisory Committee, Opinion 2008-11.

New York Advisory Committee on Judicial Ethics, Opinion 05-101.