

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 98-03
(April 17, 1998)

**Limitations on the Campaign
Conduct of Pro Tem Judges**

Issues

1. May a candidate for judicial office who serves as a part-time, pro tem judge, use the title “judge” in campaign literature without explaining the limited nature of a pro tem position?

Answer: No.

2. May a candidate seeking election to a vacant judicial position also seek appointment to a pro tem position and still run for judicial office? If so, would there be any restrictions on the candidate’s campaign if he or she receives the appointment and continues to run for elected judicial office?

Answer: Yes, as to both questions.

Facts

A candidate for judicial office practices law and serves as a pro tem juvenile judge on a part-time basis. This year, he is seeking election to fill a vacancy on the superior court. When he appears in public, he is introduced as a judge, and his campaign flyer repeatedly describes him as a judge. There is no indication that he is a part-time judge, and anyone reading the flyer could have the impression that the candidate is running for re-election to office.

Prominently displayed at the top of the campaign flyer are the words: “Vote Judge _____ for _____ county superior court.” Throughout the flyer the candidate refers to himself as “judge,” but never points out that he is only a part-time, pro tem judge. Although the flyer also refers to his private practice, one could easily be misled into believing that the candidate is currently a full-time judge running for re-election to office.

After describing the candidate’s background, courtroom experience, and personal background, the campaign flyer concludes with the following statement: “Vote for a proven judge; vote for Judge _____.”

The county in which the candidate is running for office is in the process of creating another division in the superior court funded with supreme court funds earmarked for a pro tem criminal judge. Candidates seeking election to the vacant judicial position may also seek appointment to the new pro tem position.

Discussion

The answers to the issues presented here are found in Canon 5 of the Code of Judicial Conduct which requires a judge or judicial candidate to refrain from inappropriate political activities. When read together, the pertinent parts of Canon 5B(1)(d)(iii) state that “A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit selection system or retention election . . . shall not . . . knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent”

Issue 1

After reviewing the candidate’s campaign flyer, it is the opinion of this committee that the flyer clearly misrepresents the “qualifications, present position or other fact concerning the candidate” because the candidate does not point out his part-time, pro tem status. Rather, he holds himself out as a sitting “judge” of the superior court. Although there would appear to be no prohibition against the candidate setting forth his part-time, pro tem status in his list of qualifications, he should not simply use the title “judge” in his campaign literature without explanation since this is misleading to voters. In this instance, the candidate’s campaign literature should clearly explain that he is currently in private practice and that he sits as a part-time, pro tem judge, and cannot imply that he is currently a “judge” seeking re-election or election to a new division.

We also believe that a candidate who is a pro tem judge should not be introduced simply as a “judge” at political events or other gatherings. Again, the use of the honorific title implies that the candidate is a full-time or incumbent judge seeking reelection. This is not fair to other candidates seeking the position and may create the wrong impression in the minds of voters.

Other jurisdictions have been faced with similar issues. In Louisiana, for instance, the judicial ethics committee determined that attorneys running for judicial office may not use the title “judge” in their campaign materials in any manner that would imply that they are incumbent judges, or have been elected to or held the office of judge, when they have never actually been elected to judicial office. Louisiana, Op. 84 (July 2, 1990). Similarly, the New York Bar Committee on Professional Ethics concluded that candidates for judicial office who are not judges may not refer to themselves as judges during the campaign, even though they are members of a judges’ association, because to do so would be misleading. New York, Op. 391 (May 21, 1975).

In Ohio, even judges who are running for judicial positions in a higher court should not advertise themselves as judges without identifying the lower court position that they currently hold. Although this was not viewed as a technical violation of the canons, to advertise as a judge seeking office without specifying the particular office that the candidate holds is misleading and violates the spirit of the canons. Ohio, Op. 89-15 (June 16, 1989). We concur with the Ohio board’s conclusion that a judicial candidate’s advertisement should be drafted with the primary purpose of informing the public and should avoid confusing or misleading statements.

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Issue 2

The Code of Judicial Conduct does not prevent a pro tem judge from seeking a permanent superior court position, nor does the code contain any restrictions that would prohibit a candidate from simultaneously seeking appointment to a new pro tem position. If the candidate succeeds in obtaining appointment to the new pro tem position, the candidate may continue his or her political campaign for election to a permanent superior court position since a judge is not required to resign from office in order to run for a judicial position. Canon 5A(4). It is the view of this committee that Canon 5A(4) applies to both incumbent judges and pro tem judges. We note, however, that while running for judicial office, a part-time pro tem judge is subject to all of the restrictions on political and campaign conduct contained in Canon 5. *See* Canon 5C.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 5A (4), 5B(1)(d)(iii) and 5C (1993).

Other References

Louisiana Supreme Court Committee on Judicial Ethics, Opinion 84 (July 2, 1990).

New York State Bar Committee on Professional Ethics, Opinion No. 391 (May 21, 1975).

Ohio Board of Commissioners on Grievances and Discipline, Opinion 89-15 (June 16, 1989).