

# ***The Supreme Court of Ohio***

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105  
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

## **OPINION 92-16**

Issued August 14, 1992

*[Withdrawn by Board on Oct. 6, 2006 due to Supreme Court of Ohio suspending operation and enforcement of Canon 7(D)(2), eff. Jan. 28, 2006; Canon 7(C)(1) was superseded by Canon 7(D)(2) eff. Jul. 1, 1995]*

**SYLLABUS:** A referee running for judicial office may use the title "referee" or "senior referee" in a campaign advertisement for judicial office. The advertisement should identify the court in which the referee serves as well as identify the court in which he or she is seeking to serve as judge. It would not be proper for a campaign advertisement to state "Elect Senior Referee X to the Court of Common Pleas," but would be proper to state "Elect Senior Referee X of the Municipal Court to Judge of the Court of Common Pleas."

**OPINION:** The question presented is whether it is proper for a referee running for judicial office to use the title "referee" or "senior referee" in campaign literature or signs. The requester specifically asks if it would be proper for campaign literature or campaign signs to read "Elect Senior Referee X to the Court of Common Pleas."

Canon 7C(l) of the Code of Judicial Conduct governs the use of titles by incumbent judges and judicial candidates during a judicial campaign. The rule also governs referees since referees as officers of the judicial system performing judicial functions must comply with the Code of Judicial Conduct. See Compliance Section of the Code of Judicial Conduct.

**Canon 7C. Campaign Guidelines.** No incumbent judge or candidate for judicial office during the course of any campaign for nomination or election to judicial office, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise, shall purposely do any of the following:

- (1) Use the title of an office not currently held by a candidate in a manner that implies that the candidate does currently hold that office, or use the term "re-elect" when the candidate has never been elected at a primary, general, or special election to the office for which he or she is a candidate.

Canon 7C(l) by prohibiting the use of a title of an office not currently held by a candidate, by inference permits the use of a title of an office currently held. This inference is supported in the Commentary following 7C(l), regarding the proper use of the title "judge" by an incumbent judge who is a candidate for election to a different judicial office.

### **Commentary**

Whenever an incumbent judge is a candidate for the same or different judicial office, the title "judge" may be used preceding the candidate's name in campaign materials and advertising. An incumbent judge who is a candidate for election to a different judicial office may use the title "judge," provided that its use does not imply that he or she currently holds the office for which he or she is a candidate. Any reference in a candidate's campaign materials to his or her opponent, who is the incumbent in the office being sought, shall include the opponent's title.

Whenever a candidate for a judicial office is not currently a judge, the title "judge" may appear only after or below the candidate's name in campaign materials and advertising. In such instances, words such as "elect" or "vote" must appear in prominent size lettering between the candidate's name and the title "judge."

A campaign advertisement that identifies the court in which the referee serves along with identifying the court in which the referee seeks to serve as judge avoids the misleading implication that the referee holds an office in the court for which he or she is a candidate. Thus, this Board's opinion is that a referee who currently holds such office may use the title "referee" or "senior referee" in a campaign advertisement for judicial office. However, the advertisement should identify the court in which the referee serves as well as identify the court in which he or she is seeking to serve as judge. Accordingly, it would not be proper for a campaign advertisement to read "Elect Senior Referee X to the Court of Common Pleas," but would be proper to state "Elect Senior Referee X of the Municipal Court to Judge of the Court of Common Pleas."

This advice is consistent with the Board's previous advice in Opinion 89-15 in which the Board encouraged judges to clarify their titles and positions when advertising their candidacy. See Ohio SupCt Bd of Comm'rs on Grievances and Discipline, Op. 89-15 (1989). That opinion was issued prior to the 1990 amendments to Canon 7. The 1990 amendments left the text of Canon 7C(l) unaltered but added the Commentary thereto. The Board now reaffirms the advice in Opinion 89-15 that “[i]n judicial campaigns, use of the title 'judge' without indicating the candidate sits in a court different from the one that is the subject of the campaign is misleading and therefore should be avoided.” Id.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**