

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 2004-4

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[Withdrawn-by Board on Oct. 6, 2006 due to Supreme Court of Ohio suspending the operation and enforcement of Canon 7(D)(2), eff. Jan. 28, 2006]

SYLLABUS: A magistrate who is running for election as judge and using the term or title “magistrate” in judicial campaign materials must identify the court and the division of the court on which he or she serves. On each campaign sign or billboard words of similar import to “Magistrate X of Y Court Z Division for Judge” are appropriate. In other campaign material, so long as the magistrate clearly indicates the court and division on which the magistrate serves it is not necessary to repeat the name of the court and division with every use of the term or title “magistrate.”

OPINION: This opinion addresses a magistrate’s use of the term or title “magistrate” in his or her judicial campaign advertising.

Is it proper for a magistrate who is a judicial candidate to identify himself or herself as a “magistrate” in campaign materials without identifying the court on which he or she serves?

This Opinion looks anew at the issue of a magistrate’s use of the term or title “magistrate” in judicial campaign materials. Two previous opinions of the Board, Opinion 96-8 and Opinion 92-16, addressed the use of the title referee or magistrate in judicial campaign material. The Board withdrew Opinion 96-8 in Opinion 2003-8 because of a change in the Board’s advice regarding magistrates wearing robes in judicial campaign advertising. Opinion 92-16 is marked “Not Current” due to subsequent amendments to Canon 7. New guidance on the issue is due.

Pertinent provisions of the Ohio Code of Judicial Conduct are set forth.

Canon 7(B)(2) A judge or judicial candidate shall not do any of the following:

(f) Knowingly misrepresent his or her identity, qualifications, present position, or other fact or the identity, qualifications, present position, or other fact of an opponent.

Canon 7(D) Campaign Standards. During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, an advertisement on radio or television or in a newspaper or periodical, a public speech, press

Op. 2004-4

release, or otherwise, shall not knowingly or with reckless disregard do any of the following:

1. Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate does currently hold that office;
2. Use the term “judge” when a judge is a candidate for another judicial office and does not indicate the court on which the judge currently serves;

A magistrate, who is a judicial candidate and who uses “magistrate” as a term or title in campaign material, must identify the court served. Identification of the court on which a magistrate serves is necessary in campaign material to comply with Canon 7(B)(2)(f) (prohibiting knowingly misrepresenting present position) and Canon 7(D)(1) (prohibiting using the title of an office not held in a manner that implies that the candidate holds that office). Use of the term or title magistrate in campaign material without identifying the court on which the magistrate serves misleads the public as to the magistrate’s qualifications and present position. Without identification of the court, the public may assume right or wrong that the judicial candidate serves as magistrate in the court to which he or she seeks election.

Canon 7(D)(2) supports the Board’s application of Canon 7(B)(2)(f) and Canon 7(D)(1). Canon 7(D)(2) expressly requires that a judge who is a judicial candidate not use the term “judge” when seeking another judicial office without indicating the court on which the judge currently serves. It is the Board’s view that the Canon 7(D)(2) standard for use of the term “judge” should apply equally to a magistrate’s use of the term “magistrate.”

A magistrate’s judicial campaign material should clearly identify the court and the division of the court on which he or she serves, but a reasonable reading and application of the rules prevails. On each campaign sign or billboard words of similar import to “Magistrate X of Y Court Z Division for Judge” are required. In other campaign material, so long as the magistrate clearly indicates the court and division on which the magistrate serves it is not necessary to repeat the name of the court and division with every use of the term or title “magistrate.” When once stated clearly, it serves no purpose to state repetitiously “Magistrate X of the Y Court Division Z” with each use of the term or title “magistrate” in campaign material.

Use of the term or title “court magistrate” as opposed to the term or title “magistrate” is redundant. Thus, its use, particularly as a title, is not encouraged. However, if used, the above advice applies.

Thus, the Board advises as follows. A magistrate who is running for election as judge and using the term or title “magistrate” in judicial campaign materials must identify the court and the division of the court on which he or she serves. On each campaign sign or billboard words of similar import to “Magistrate X of Y Court Z Division for Judge” are

Op. 2004-4

appropriate. In other campaign material, so long as the magistrate clearly indicates the court and division on which the magistrate serves it is not necessary to repeat the name of the court and division with every use of the term or title “magistrate.”

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