

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 96-8

Issued October 11, 1996

[Withdrawn by Opinion 2003-8 on Dec. 5, 2003]

[Not current-subsequent rule amendments to Canon 7, Ohio Code of Judicial Conduct.]

SYLLABUS: It is proper for a judicial candidate who is a magistrate to use the title “magistrate” in campaign advertisements.

A judicial candidate who is a magistrate of a division of a common pleas court must clearly identify in campaign advertisements the division of the court on which he or she serves. For example, a magistrate of a domestic relations/juvenile division of a common pleas court should use in campaign advertisements “Magistrate of the Domestic Relations/Juvenile Division of the Court of Common Pleas” rather than “Magistrate of the Common Pleas Court.”

It is not proper for a judicial candidate who is a magistrate to wear a judicial robe in a campaign advertisement. Since the practice of wearing judicial robes by magistrates who are campaigning for a higher judicial office may have been occurring in some areas of Ohio for some time, the Board offers this guidance as clarification for future judicial campaigns.

OPINION: We have before us a request concerning the proper campaign conduct of a magistrate seeking election to a judicial seat. What are the guidelines for a magistrate’s campaigning activities with regard to judicial elections? The specific questions are set forth below.

1. Is it proper for a judicial candidate who is a magistrate to use the title “magistrate” in campaign advertisements?
2. Is it proper for a judicial candidate who is a magistrate of a division of a common pleas court to use the title “Magistrate of the Common Pleas Court” in campaign advertisements or should the candidate clearly identify the division of the court on which he or she serves, for example, “Magistrate of the Domestic Relations/Juvenile Division of the Court of Common Pleas”?
3. Is it proper for a judicial candidate who is a magistrate to wear judicial robes in a judicial campaign advertisement?

Question One

Is it proper for a judicial candidate who is a magistrate to use the title “magistrate” in campaign advertisements?

Canon 7(D) of the Ohio Code of Judicial Conduct governs the use of titles by judicial candidates during a campaign. This rule also governs magistrates, in as much as those acting under the title of “magistrate” are performing duties as judicial officers and must be in compliance with the Code of Judicial Conduct. See Compliance Section, Code of Judicial Conduct. Canon 7(D)(1) and (3) are set forth below.

Canon (7D) 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 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, or use the term “re-elect” when the judicial candidate has never been elected at a general or special election to the office for which he or she is a judicial candidate;

- (3) Make a false statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or concerning any position a judicial candidate held for which he or she received a salary or wages.

Canon 7(D)(1) prohibits the use of a title of an office not currently held by a candidate, and by inference permits a candidate to identify an office currently occupied. This inference is supported by Canon 7(D)(3), which prohibits the false use of statements concerning positions held by a judicial candidate, and by inference allows the truthful use of statements concerning positions held.

Also pertinent is Canon 7(B)(2)(f) establishing that a judge or judicial candidate shall not, “[k]nowingly misrepresent his or her identity, qualifications, present position, or other fact or the identity, qualifications, present position, or other fact of an opponent.” Again by inference, a judicial candidate is permitted to truthfully use the title of an office currently held.

In the past, the Board considered a referee's use of the title "referee" in a judicial campaign. In Opinion 92-16, this Board advised that "[a] referee running for judicial office may use the title "referee" or "senior referee" in a campaign advertisement for judicial office." The Board stated that "Canon 7C(1) 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." Ohio SupCt, Bd Comm'rs Griev & Disc, Op. 92-16 (1992). Canon 7C(1), which Opinion 92-16 relies upon, became Canon 7(D)(1) (effective July 1, 1995) and is essentially identical in its prohibition.

Similarly, the Board finds no impropriety in a magistrate's truthful use of the title in judicial campaigns. Thus, as to Question One, this Board advises that it is proper for a judicial candidate who is a magistrate to use the title "magistrate" in campaign advertisements.

Question Two

Is it proper for a judicial candidate who is a magistrate of a division of a common pleas court to use the title "Magistrate of the Common Pleas Court" in campaign advertisements or should the candidate clearly identify the division of the court on which he or she serves, for example, "Magistrate of the Domestic Relations/Juvenile Division of the Court of Common Pleas"?

As in Question One, Canon 7(D)(1) and Canon 7(B)(2)(f) are pertinent. Canon 7(D)(1), prohibits the use of a title of an office not currently held by a candidate, and by inference allows a candidate to identify an office currently occupied. Canon 7(B)(2)(f), establishes that a judicial candidate shall not, "[k]nowingly misrepresent his or her identity, qualifications, present position, or other fact or the identity, qualifications, present position, or other fact of an opponent." By not identifying the division of the court on which he or she serves, a misrepresentation is occurring. A magistrate, who is a judicial candidate for a court of common pleas, should specify the division of the court he or she serves as a magistrate.

In Opinion 89-15, this Board advised that a candidate for a judicial office, who is a judge in another court, may not use the title "judge" without indicating that he or she is a judge in a different court, as the title alone would be misleading. *See* Ohio SupCt, Bd Comm'rs Griev & Disc, Op. 89-15 (1989). More recently in Opinion 92-16, this Board advised that a referee running for a judicial office "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." The Board stated "[i]t 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.'" Ohio SupCt, Bd Comm'rs Griev & Disc, Op. 92-16 (1992). Both opinions relied on Canon 7C(1), which became Canon 7(D)(1) (effective July 1, 1995).

In a campaign grievance brought under Rule II, Section 5 of the Supreme Court Rules for the Government of the Judiciary of Ohio, a commission of five judges determined that a judicial candidate who was a county court judge running for probate court violated Canons 7(B)(2)(f), 7(D)(1) and 7(E)(1) of the Ohio Code of Judicial Conduct. The judicial candidate approved a billboard and yard sign that did not specify that the candidate was a judge of a county court, as opposed to the probate court for which he was seeking election. *See In re Judicial Campaign Complaint Against Martin W. Emrich*, 78 Ohio Misc. 2d Ohio Comm. of Judges 32 (1996).

A magistrate seeking election to a judicial seat is bound by the same standards applied to a lower court judge running for a higher bench. In conclusion, as to Question Two, this Board advises that a judicial candidate who is a magistrate of a division of a common pleas court must clearly identify in campaign advertisements the division of the court on which he or she serves. For example, a magistrate of a domestic relations/juvenile division of a common pleas court should use in campaign advertisements “Magistrate of the Domestic Relations/Juvenile Division of the Court of Common Pleas” rather than “Magistrate of the Court of Common Pleas.”

Question Three

Is it proper for a judicial candidate who is a magistrate to wear judicial robes in a judicial campaign advertisement?

As stated previously, Canon 7(B)(2)(f) of the Ohio Code of Judicial Conduct establishes that a judicial candidate may not “[k]nowingly misrepresent his or her identity, qualifications, present position, or other fact or the identity, qualifications, present position, or other fact of an opponent.” Is the wearing of a robe by a magistrate in a judicial campaign a misrepresentation under Canon 7(B)(2)(f)?

The Board did not find any advisory opinions advising upon a magistrate wearing a robe in a judicial campaign. However, several states have advised on the wearing of a robe by a judge and a private attorney in judicial campaigns. A New York ethics committee advised that an incumbent judge may be shown wearing his judicial robes in campaign material regardless of whether the judge normally wears the robe because it depicts the fact that he is a judge and is entitled to wear a robe. *See New York State Bar Ass’n, Op. 581 (1987)*. That opinion modified two earlier opinions: Opinion 289 that prohibited a judge from wearing a robe in a judicial campaign; and Opinion 558 that permitted a judge to wear the robe if the judge normally wore the robe in the course of judicial duties. *See New York State Bar Ass’n, Ops. 581 (1987), 558 (1984), 289 (1973)*. A Michigan committee advised that a lawyer in private practice running for a judicial office may not use a picture of himself in a judicial robe for campaign advertising purposes even though he once served as a temporary magistrate. The picture misrepresents the lawyer’s identity and qualifications as being an incumbent judge. *See State Bar of Michigan, Op. CI-1007 (1984)*.

Canon 7(B)(2)(f) of the Ohio Code of Judicial Conduct explicitly establishes that a judicial candidate should not “[k]nowingly misrepresent his or her identity, qualifications, present position, or other fact.” By allowing a magistrate, who is a judicial candidate, to wear a judicial robe in campaign advertisements a viewer may be led to a false impression that the candidate is an experienced incumbent judge. Such a campaign advertisement in which a magistrate appears in a judicial robe misrepresents not only the present position of the magistrate, but also the qualifications of the candidate for the office of judge.

In conclusion, as to Question Three, this Board advises that it is not proper for a judicial candidate who is a magistrate to wear a judicial robe in a campaign advertisement. Since the practice of wearing judicial robes by magistrates who are campaigning for a higher judicial office may have been occurring in some areas of Ohio for some time, the Board offers this guidance as clarification for future judicial campaigns.

Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, non-binding 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.