

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 97-6**

Issued October 10, 1997

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

**SYLLABUS:** An incumbent judge who anticipates a future judicial candidacy may form a judicial campaign committee prior to the Canon 7(C)(4) time period for soliciting and receiving funds. By forming such committee, the incumbent judge becomes a “judicial candidate” subject to any restrictions placed on “judicial candidates” under Canon 7 of the Ohio Code of Judicial Conduct. The judge’s judicial campaign committee cannot solicit or receive campaign funds outside the time period allowed in Canon 7(C)(4).

Because there is no express prohibition in Canon 7, an incumbent judge’s judicial campaign committee may expend retained campaign funds outside the Canon 7(C)(4) time period for soliciting and receiving campaign funds. The expenditure must not be used to solicit campaign funds. Solicitation or receipt of campaign funds is not permitted outside the Canon 7(C)(4) time period.

An incumbent judge’s judicial campaign committee may mail letters to the legal community outside the time period in Canon 7(C)(4) asking attorneys to serve on the campaign committee, but the letter must not include a solicitation of campaign funds.

**OPINION:** This opinion addresses questions regarding the formation of a judicial campaign committee and the expenditure of campaign funds.

1. Is it proper for an incumbent judge who anticipates a future judicial candidacy to form a judicial campaign committee prior to the start of the time period for soliciting and receiving funds in Canon 7(C)(4)?
2. Is it proper for an incumbent judge’s judicial campaign committee to expend retained campaign funds outside the time period for soliciting and receiving funds in Canon 7(C)(4)?
3. Is it proper for an incumbent judge’s judicial campaign committee to mail letters to the legal community outside the time period in Canon 7(C)(4) asking attorneys to serve on the campaign committee?

## Question One

Is it proper for an incumbent judge who anticipates a future judicial candidacy to form a judicial campaign committee prior to the start of the time period for soliciting and receiving funds in Canon 7(C)(4)?

The formation of a judicial campaign committee is of great importance to a judicial candidate, for it is only through such committee that campaign funds may be solicited and received. A judicial candidate is not permitted to personally perform this function. This is prohibited under Canon 7(C)(2)(a) of the Ohio Code of Judicial Conduct: “A judicial candidate personally shall not solicit or receive campaign funds. A judicial candidate may establish a committee to secure and manage the expenditure of funds for his or her campaign and to obtain statements of support for his or her candidacy.”

The time period during which a judicial campaign committee may solicit or receive campaign funds is set forth in Canon 7(C)(4). The rule is commonly referred to as the “120 day rule.” Under Canon 7(C)(4),

[t]he campaign committee of a judicial candidate may begin soliciting and receiving contributions no earlier than one hundred twenty days before the first Tuesday after the first Monday in May of the year in which the general election is held. If the general election is held in 1996 or any fourth year thereafter, the campaign committee of a judicial candidate may begin soliciting and receiving contributions no earlier than one hundred twenty days before the third Tuesday in March of the year in which the general election is held. The solicitation and receipt of contributions may continue until one hundred twenty days after the general election, unless the candidate is defeated prior to the general election, in which case the solicitation and receipt of contributions may continue until one hundred twenty days after the date of the election at which the defeat occurred. In the case of the death or withdrawal of a judicial candidate, the solicitation and receipt of contributions may continue until such time as the contributions solicited are sufficient to pay the campaign debts and obligations of the judicial candidate incurred on or before the date of death or withdrawal, plus the costs of solicitation incurred after the date of death or withdrawal, but in no event shall the solicitation or receipt of contributions continue beyond one hundred twenty days after the date of death or withdrawal.

There is no rule requiring that a judicial campaign committee be formed within a specific time period. There is a statutory requirement that a candidate have only one campaign committee at any given time. *See* Ohio Rev. Code Ann. § 3517.10(J) (Baldwin Supp. 1997), § 3517.081 (Baldwin 1995).

By forming a judicial campaign committee the judge becomes a “judicial candidate” under Canon 7. As defined in Canon 7(A)(1), “[j]udicial candidate” means a person who has made a public announcement of candidacy for judicial office, declared or filed as a candidate for judicial office with the election authority, or authorized the solicitation or receipt of contributions or support for judicial office, whichever occurred first.” Once a judicial campaign committee is formed there is a subsequent public filing of the designation of the appointment of a treasurer. *See* Ohio Rev. Code Ann. § 3517.10(D)(1) (Baldwin Supp. 1997), § 3517.081 (Baldwin 1995). These activities constitute a “public announcement of candidacy for judicial office” under Canon 7.

In answer to Question One, the Board advises that an incumbent judge who anticipates a future judicial candidacy may form a judicial campaign committee prior to the Canon 7(C)(4) time period for soliciting and receiving funds. By forming such committee, the incumbent judge becomes a “judicial candidate” subject to any restrictions placed on “judicial candidates” under Canon 7 of the Ohio Code of Judicial Conduct.

#### Question Two

Is it proper for an incumbent judge’s judicial campaign committee to expend retained campaign funds outside the time period for soliciting and receiving funds in Canon 7(C)(4)?

The expenditure limits in Canon 7(C)(6) are set in reference to the Canon 7(C)(4) time period. Canon 7(C)(6)(a) states that “[e]xcept as provided in division (C)(6)(b) [expenditure limits during primary election period] of this canon, the total amount of expenditures made in the fund raising period allowed by division (C)(4) of this canon by the campaign committee of a judicial candidate shall not exceed the following: [(i) through (vii) omitted].

The Canon 7(C)(6)(a) reference to “expenditures made in the fund raising period allowed by division (C)(4)” implies that there may be expenditures outside that time period. This interpretation is supported by the language of Canon 7(C)(4) clearly delineating the time period for soliciting and receiving campaign funds without similarly restricting expenditures.

In answer to Question Two, the Board advises that because there is no express prohibition in Canon 7, an incumbent judge’s judicial campaign committee may expend retained campaign funds outside the Canon 7(C)(4) time period for soliciting and receiving campaign funds. The expenditure must not be used to solicit campaign funds. Solicitation or receipt of campaign funds is not permitted outside the Canon 7(C)(4) time period.

Question Three

Is it proper for an incumbent judge's judicial campaign committee to mail letters to the legal community outside the time period in Canon 7(C)(4) asking attorneys to serve on the campaign committee?

Canon 7(C)(4) restricts the time period within which a campaign committee may solicit and receive funds, but does not otherwise restrict the committee. A letter written for the purpose of asking attorneys to serve on a campaign committee would not violate this rule unless the letter contained a solicitation of campaign funds.

In answer to Question Three, the Board advises that an incumbent judge's judicial campaign committee may mail letters to the legal community outside the time period in Canon 7(C)(4) asking attorneys to serve on the campaign committee, but the letter must not include a solicitation of campaign funds.

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