

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

**A RESOURCE KIT  
FOR BAR LEADERS**

*Enter Site Here*



[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## CONTENTS

[Introduction by Alfred P. Carlton, Jr., President, 2002-2003, American Bar Association](#)

### Judicial Independence Communications

[Model editorial on judicial independence](#)

[Model talking points on judicial campaigns](#)

Message Platforms [Role of Judges](#) [Judicial Campaigns](#)

[Public Education Efforts by Bar Associations - The Tennessee Model](#)

[Justice at Stake Campaign](#)

[Judicial Campaign Conduct Committees](#)

[Response to Criticism of the Judiciary - Model Programs](#)

[The Constitution Project](#)

[Ethics Education Programs for Judicial Candidates](#)

[Judicial Election Voter Information Card](#)

[The Brennan Center Court Pester E-lert](#)

[Public Outreach Programs - Models Available from the ABA](#)

[Definitions of Judicial Independence](#)

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated September 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## *A message from Alfred P. Carlton, Jr., President, 2002-2003, American Bar Association*

Election season is upon us and so begins another spectacular clash of candidates and their battalions of special interest and advocacy groups, all competing for the hearts and minds, but most importantly the votes, of an electorate unable to avoid the ensuing barrage of facts and counter-facts, self-promotion and attacks. Promises will be made, favors cashed in. With or without campaign reform, those who seek office in the constituent-centric executive and legislative branches should never expect anything less than good old-fashioned hardball politics. Winning constituencies is done with bare-knuckled campaigning and money. Lots of money.

But sadly, and yet no longer surprisingly, many of our state and local judges; the keepers of an impartial and incorruptible court system; will be swept up in the melee as well. This is entirely inappropriate because the judge's role is wholly different. The politician is beholden to the people, but the judge is beholden to the law. Qualities of a good judge reside not in constituent service, but in intellect, character and sound judgment. A judge is valued for a capacity to discern, not on politics or promises.

These are the principles behind judicial independence and the separation of powers. But as judicial campaign budgets increase, public confidence becomes vulnerable. As civility decreases, suspicion increases. The ever-growing influence of money and narrow interest groups on the judicial selection process is a problem.

I have made judicial independence the hallmark of my term as ABA President. This initiative is based on the bar's historical role supporting judicial independence and my experience as Chair of the ABA Standing Committee on Judicial Independence. I learned from that work that judicial independence is the barometer of the health of our democratic republic and that the real challenges exist in the states. Success depends, as it so often does, on close cooperation and assistance among the ABA, state and local bars.

As leaders of the organized bar, we can help to improve the conduct of judicial elections. We can act as the conscience of the campaigns, the advocates for civility, the watchdogs for violations of the spirit.

This book can help. Please accept it with our offer to help you should the need arise and with the knowledge that you can count on my help.

Alfred P. Carlton, Jr.  
ABA President  
Raleigh, North Carolina

August 2002

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated September 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **Model Guest Editorial on Independence of the Judiciary**

More than two hundred years ago, the Founders of our nation created a form of government that is now the model for the world, especially for those new democracies that have emerged in recent years. These new democracies recognize the genius behind the system of checks and balances we have been blessed with for so long. The inherent advantage that at once separates and commingles the three different functions of creating, enforcing and interpreting laws among the three different branches of government is the key component of our unique and successful system of self government.

A fundamental part of this system, one that foreign leaders recognize as a master-stroke of government design, is the existence of an independent judiciary. Judges are bound to apply the steady hand of the rule of law and therefore are able to act without concern for the day-to-day whims of politics and public opinion, protecting individual liberties while preventing a tyranny of the majority.

For as long as our nation has existed, this separation of powers has worked to protect and defend our freedoms. Indeed, our progress as a society often has been forged by a judiciary free from partisan politics; a judiciary acting on the basis of what is just, not just what is popular; a judiciary able to protect ordinary citizens from politicians, big government, uncaring corporations and from each other.

Now, some self-serving politicians and misinformed citizens seem ready to destroy this delicate balance by attempting to inhibit judges from exercising their constitutional obligation to decide cases fairly and impartially. And why? Not because any of the threatened judges has been accused of wrongdoing or improper conduct sufficient for removal through impeachment or other disciplinary proceeding - but simply because of some highly publicized rulings with which some politicians and interest groups disagree. To place the judiciary under this standard would be to undermine the advantages and benefits to the public good that result from judges' ability to serve as buffers against society's excesses.

Imagine if judges could be removed from the bench simply because some powerful politicians disagree with their decisions? Would the falsely accused have a fair opportunity to vindicate themselves in court? Would the evils of segregation have been challenged? Would ordinary citizens have an impartial forum to seek redress against big business or big government?

The process of removing judges from office intentionally is difficult, precisely to ensure fair and impartial courts that are free to make unpopular decisions. For example, in the entire history of our nation, the House of Representatives has voted to impeach only 13 federal judges; only seven have actually been convicted in a trial before the Senate and removed from office. Wisely, no federal judge has *ever* been removed from office because Congress disagreed with the judge's judicial philosophy or with a particular decision. And in every state, procedures exist to discipline or remove from office judges who act improperly.

But removing judges from the bench through campaigns of misinformation and innuendo, as has occurred in several states, does a disservice to the judiciary and, ultimately, to all citizens. Better that we should all strive to understand the judicial process as a means of promoting accountability than to undermine the benefits of a fair and impartial judiciary. And, of course, appellate courts, legislatures and executives each play an essential role in analyzing judicial decisions and can make changes as appropriate.

Removal of judges because of policy differences would interject chaos into our court system. Judges, whom we expect to decide cases based on a careful examination of the facts and thoughtful analysis of applicable law, would be subjected instead to the vagaries of shifting political currents. Decisions and opinions that are based on the rule of law and facts of a case resulting from days of hearings, hours of legal research and a great deal of careful scrutiny, would be dissected into sound bites and campaign commercials to be used in an impeachment proceeding or in the next election cycle. Our justice system is based on deliberate contemplation and should not be denigrated to replicate the now discredited "telephone justice" of the totalitarian regime - where judges must consult the Party leaders before rendering a decision.

Each year, the American justice system resolves some 100 million cases - simple, complex, routine, and extraordinary. We cannot lose the forest for the trees - most cases are resolved successfully - fairly and impartially. Allowing a few high profile, unrepresentative cases to guide our understanding of the justice system would be like having the tail wag the dog. American courts - the defenders of our most precious freedoms, the protectors of the individual against big government - are held up as examples for the rest of the world. We should commit ourselves to promoting better understanding and recognition of the American judicial system to ensure that our judges remain fair and impartial.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## TALKING POINTS FOR SPEECH

### JUDICIAL INDEPENDENCE

March, 2002

#### *INTRODUCTION*

[Judicial Independence](#)

[Judicial Campaign Money](#)

[Problem Bigger than Money](#)

[Public Education](#)

[A Call to Action](#)

[Conclusion](#)

*Judicial Independence*

[Back to top](#)

- Citizens want fair and impartial judges.
  - Regardless of the method used to select state judges across America, every effort must be made to maintain the independence of our judiciary.
  - Judicial independence means that judges can decide cases before them without fear or favor, based on the law and the facts of that particular case.

- It means judges have the authority to exercise their constitutional obligation to make hard decisions, unpopular decisions, without concern for retribution, personal or professional.
- Our democracy depends on independent courts where decisions are based on the facts and the rule of law.
- I remind you of this because the independence of state judiciaries across the nation is being threatened like never before in this year's election.
  - Special interests are pouring millions of dollars into targeted judicial campaigns.
  - And a new national survey shows that three out of four Americans perceive that campaign money influences judicial decisions.
- The President-elect of the American Bar Association, A.P. Carlton, is particularly concerned because this perception threatens the public's trust and confidence in our state courts.
  - When he becomes ABA president in August, he intends to convene a blue-ribbon commission to review state judicial selection in the 21<sup>st</sup> century.
    - This comprehensive examination of judicial independence and accountability will include tenure, compensation, ethics and other institutional factors on the path to the bench.
- In states where judicial elections are being held this year, the ABA is asking bar associations to monitor campaigns closely and be prepared to act.
- Regardless of the method of judicial selection used in individual states, all of us should consider this year an opportunity to educate the public on the proper role of the judiciary in our democracy.
- An impartial judiciary is a cornerstone of our democracy, one of the guiding principles that sets us apart from other nations of the world.

*Judicial Campaign Money*      [Back to top](#)

**Enormous spending on state judicial campaigns threaten the independence of our state judiciary and ultimately every citizen's right to a fair hearing in court.**

- There was a 61 percent increase in total money raised by State Supreme Court candidates since

1998, according to a recent study.

- According to "The New Politics of Judicial Elections," the amount of money raised for Supreme Court candidates doubled between 1994 and 2000.
- In Alabama, candidates for the Supreme Court raised 13 million dollars— an average of 1.2 million dollars each.
- Special interests are pouring millions of dollars into judicial campaigns to further their own interests.
  - Usually there is no public disclosure of the amounts or the sources of money.
  - The trend is for special interests to produce and air television commercials, usually "attack" ads, against a candidate they oppose.
  - Furthermore, the survey shows 9 in 10 Americans think these special interests are trying to shape public policy to their own ends.
- As a result of the soaring campaign costs, judges feel pressure to raise money.
  - According to a survey conducted for *Justice at Stake*, nearly half of the judges feel pressure to raise campaign money.
  - And it is even higher for judges of appellate courts.
  - Many of us are aware of the pressure of these escalating costs from first-hand experience – we have either been asked to contribute or we have been asked to help solicit others.
- Is it any wonder that three of every four people believe that campaign contributors can influence judicial decisions?
- And according to a survey of judges, even one judge in four believes contributions influence judicial decisions.

*Problem Bigger than Money*      [Back to top](#)

- Although the skyrocketing costs of judicial campaigns is a major concern, the problem facing courts is not limited to money.

- When we talk about the judiciary, a great many people think about the U.S. Supreme Court or other federal courts.
- But the real threat to the judicial independence is in our state courts. Cases in state courts outnumber those in federal courts by a margin of 300 to 1.
- Here's are some examples of the problems state courts face:
  - 90 percent of the voters – and 87 percent of the judges – are concerned because voters do not have enough information on judicial candidates and they believe judges are selected for reasons other than their qualifications.
  - In many jurisdictions, compensation is an issue. There is a disparity issue-in private practice, average salaries of big-firm partners in urban areas increased dramatically while judicial salaries little if at all. In some areas, beginning lawyers make more than experienced judges.
  - Selection methods deter qualified applicants. Some lawyers simply believe the process is too political.
  - In some areas, citizens think judges are not being held accountable. We in the bar might think the criticism is unwarranted, but sometimes people think nothing is done to dismiss judges from the bench.
    - The public opinion poll I referred to, a national poll conducted for *Justice at Stake*, has some numbers that are disturbing.
    - Most people – 62 percent – believe there are two systems of justice, one for the rich and powerful, and one for everyone else.  
<
    - 90 percent of African-Americans believe there is a 2-tier system of justice.
    - And 87 percent of judges think this 2-tier perception is of concern.
    - The qualifications of individual judges are another issue. 90 percent of the voters and 87 percent of the judges are concerned because voters do not have enough information on judicial candidates, and therefore they believe judges are selected for reasons other than their qualifications.

## **WE MUST EDUCATE THE PUBLIC ABOUT HOW JUDICIAL CAMPAIGNS ARE DIFFERENT**

- Judicial campaigns are different from other campaigns for public office.
  - Judicial candidates are prohibited from committing themselves in advance on matters likely to come before their courts.
  - To do otherwise would create at least the appearance of partiality and threaten the rule of law.
- Judges are different than other public officials.
  - Unlike others, judges have no constituencies.
  - As we know, they make decisions based on the rule of law, not popular opinion.
  - Or at least they are supposed to. Some of you may have read "*The Summons*," yet another bestseller by John Grisham. In his new book, one of the characters, a judge says "A judge who counts votes before the trial should burn his robe and run for the county line."
    - We should remind our friends and neighbors about these differences. We can speak to civic organizations and students and help educate on the judiciary.
    - This distinction between judicial campaigns and other political campaigns is an important one. The U.S. Supreme Court is hearing a Minnesota case – *The Minnesota Republican Party v. Kelly* – which might establish new guidelines on how states can regulate judicial campaigns.
      - The American Bar Association filed an amicus brief on behalf of the respondents.
        - At issue is Minnesota's "announce clause" which has the same scope as the corresponding provision in the 1990 ABA Model Code of Judicial Conduct.
        - The ABA Code's prohibition is narrowly tailored to achieve three compelling state interests
          - Maintaining judicial independence and impartiality
          - Preserving public confidence in the judiciary

- Guaranteeing due process to litigants.

As early as 1924 the ABA's Model Code cautioned that a candidate "should not announce in advance his conclusions of law on disputed issues to secure class support."

- Permitting judicial candidates to commit or appear to commit themselves in advance on matters likely to come before their courts would create at least the appearance of partiality in the decision making process. The ultimate result would be to undermine the public's trust in the judiciary's independence and threaten the rule of law.

*(For states with judicial elections)*

*A Call to Action*      [Back to top](#)

**What can we do? OUR BAR ASSOCIATION CAN MONITOR JUDICIAL CAMPAIGNS TO ENSURE THAT CAMPAIGNS ARE CONDUCTED IN SUCH A WAY TO HELP KEEP COURTS FAIR AND IMPARTIAL.**

- The American Bar Association has provided us with a "Top 10" list for possible action steps. Here are ideas for us to consider:
  - Establish a program to defend the judiciary from unwarranted or misleading public criticism. Tennessee has a model program on how to promote public awareness for the importance of an impartial judiciary.
  - Distribute a "judicial campaign" card for voters, a card in the style of a bookmark with concise information.
  - Create a judicial campaign oversight committee.
  - Create education programs for judicial candidates on the Canons of Judicial Conduct.
  - Develop outreach programs on the importance of judicial independence. Model programs are available from the ABA.

- Participate in Judges Network, an Internet-based information site on outreach programs. [www.abanet.org/jd/judgesnetwork](http://www.abanet.org/jd/judgesnetwork)
- Partner with civic organizations to sponsor forums on justice system issues. A copy of "*. . . And Justice for All: Ensuring Public Trust and Confidence in the Justice System*" explains how to organize such a forum. Copies are available from the ABA.
- Establish a Citizens Conference. Details available based on a model program in Oregon.
- Promote a system of public awareness for the importance of an impartial judiciary. Tennessee serves as a model program.
- Work with "The Constitution Project" on its "The Higher Ground Standards of Conduct for Judicial Candidates. Copies are available.
- Subscribe to the "Court Pester E-lert," a service of the Brennan Center that delivers news clips regularly on judicial issues.

*Conclusion*      [Back to top](#)

- The trend in judicial campaigns is alarming: The negativity that has dominated the campaigns for the legislative and executive offices is emerging in judicial campaigns.
- We must be on guard against the perception of impropriety in the judiciary as more money is spent on judicial campaigns.
- The reform effort is gaining momentum in state legislatures. The group I mentioned earlier, *Justice at Stake*, consists of 34 partners, including the American Bar Association and the League of Women Voters.
- The ABA at its February meeting did reaffirm its support for merit selection of judges. However, for states that continue to elect judges, the ABA recommended public financing of judicial campaigns. Public financing bills have been introduced in a number of state legislatures across the country as part of this effort to improve state judicial selection.
- In more and more states, misleading and partisan attacks on judges' decisions are bringing politics into the courtroom. This must be resisted.
- Unfortunately, most people believe there are two systems of justice, one for the rich and powerful and one for everyone else. We must strive to improve our courts.
- Judges are different than other public officials. Unlike others, judges have no constituencies. They make decisions based on the rule of law, not popular opinion, and they must remain fair and impartial. And we must work hard to help maintain judicial independence.

What can we do? In states that elect judges, we can:

- Educate voters during the campaign while at the same time minimizing the influence of money in judicial campaigns.
- Discourage certain kinds of campaign conduct such as "attack ads" which unfairly criticize judges and undermine the public's confidence in the judiciary.
- Encourage special interests, political parties and even some candidates to reduce their inflammatory rhetoric in judicial campaigns regardless of their free speech rights because such rhetoric threatens public confidence in the judiciary.
- Take action on any of the "Top 10" suggestions I mentioned in order to ensure that campaigns are conducted in such a way to help keep courts fair and impartial.
- Explain to our friends and neighbors the differences between judicial campaigns and other political campaigns.
- Explain the proper role of judges in our society and remind citizens they have a right to a fair and impartial judiciary.
- Never lose sight of the foundation upon which American society is built – the rule of law.
  
- The price of remaining silent is too steep a price to pay – it could amount to the loss of confidence in our judiciary.

Thank you.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

## MESSAGE PLATFORM

### BAR LEADERS

Special interests are pouring enormous amounts of money into judicial campaigns by producing and airing negative television commercials that threaten to undermine public confidence in judges. Bar associations monitor campaigns to ensure that campaigns are conducted in a way to help keep courts fair and impartial.

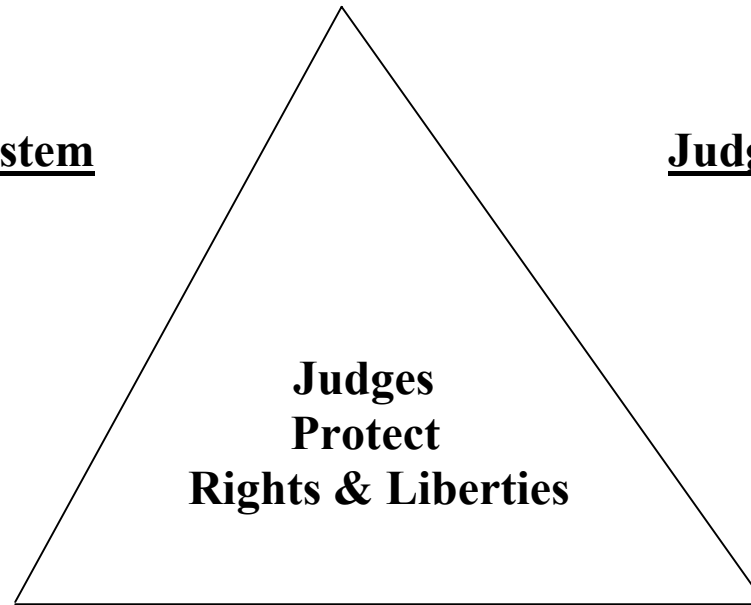
Judicial campaigns should be conducted in such a way as to educate voters while at the same time minimizing the influence of campaign money.

Judicial campaigns are different. Judges do not represent constituencies like legislators and executive branch officials do. Judges are beholden to the law.

The U.S. Supreme Court has agreed to hear a Minnesota case in which the First Amendment rights of an individual judicial candidate are weighed against the right of a litigant to be heard by an impartial judge. However the Supreme Court balances free speech and the right to an impartial judiciary, responsible citizenship, consistent with the exercise of free expression, should be the rule, not the exception.

## **Protect Judicial System**

- \*provide stability in society
- \*change law, not judge
- \*ethics/discipline for judicial misconduct



## **Judges have to be Different**

- \* No constituency
- \* Impartial
- \* Decide cases brought to them

## **Ensure Public Trust & Confidence**

- No special interests
- No high priced elections
- Better public awareness

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **Public Education Efforts by Bar Associations**

### **The Tennessee Model**

In 1998, the Tennessee Bar Association, with support from the American Bar Association Standing Committee on Judicial Independence, developed a model program for promoting public awareness of the importance of an impartial judiciary. The model is designed to involve state and local organizations and to assist them in adapting and implementing public awareness activities in their own jurisdictions. Under the model, state bars are encouraged to develop relationships with organizations such as the League of Women Voters, Rotary, Kiwanis, local Chambers of Commerce, the Farm Bureau, and other civic and professional groups to reach the widest possible audience.

Public education efforts on judicial independence and judicial selection issues face a number of challenges, including limited public knowledge of courts and judges and limited resources to reach a broad public audience. Fortunately, experience has shown that the public is receptive to messages concerning the impartiality of the judiciary and that bar associations and judges are effective messengers, especially when partnering with non-legal membership organizations. The Tennessee Bar Association utilized low-cost radio public service announcements, a toll-free number, and a web page to disseminate information on judicial evaluations and judicial independence issues generally. The web resources proved to be the most popular, with visits to the web site far exceeding expectations. Examples of materials produced by the Tennessee Bar Association are attached.

The ABA Standing Committee on Judicial Independence can provide resources and technical assistance in planning and implementing a public awareness or response to criticism of judges program. For more information, please contact the committee staff at (312) 988-5705.

Additional Resources:

For more information and resources from the Tennessee Bar Association, visit [www.tba.org](http://www.tba.org) .

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## Justice at Stake Campaign

The Justice at Stake Campaign is a nonpartisan national partnership working to keep our courts fair and impartial. The Campaign provides strategic coordination for more than thirty organizations dedicated to protecting the independence of America's courts. Justice at Stake supports public education campaigns and brings unique organizational, communications, message development, and survey and research resources to the work of its partners at the national, state and local levels.

The Justice at Stake Campaign is available to assist in the planning of state-based public education and justice system improvement initiatives. The Campaign is currently working closely with organizations in several states, including North Carolina, Ohio, and Wisconsin. Campaign staff members and participating organizations are available to provide strategic consultation to bar associations, civic groups, and others interested in ensuring access to fair and impartial courts.

For more information, please visit [www.justiceatstake.org](http://www.justiceatstake.org)

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## Judicial Campaign Conduct Committees

In response to growing concerns about the negative tone of judicial campaigns, judicial campaign conduct committees have been established in several states, counties, and localities in recent years. These committees seek to improve the conduct of judicial campaigns by promoting compliance with the spirit and letter of the state canons of judicial ethics that govern campaign speech and conduct. Conduct, or oversight, committees serve three primary functions: educating candidates at the beginning of the campaign about relevant judicial canons and campaign finance regulations; reviewing campaign materials in advance and answering candidates' questions about campaign communications or tactics; and, as a last resort, publicly disclosing any instances of misconduct or referring complaints to the official judicial discipline entity. Many conduct committees include significant public involvement in the form of lay members and partnerships with non-legal and civic organizations.

The American Bar Association House of Delegates adopted a policy in August 2002 calling on state, local and territorial bar associations to establish campaign conduct committees to promote honesty and integrity in judicial campaigns and to further the public's knowledge about and trust and confidence in the justice system. Download the [ABA policy on judicial campaign conduct committees](#).

Several concerned organizations and individuals have come together to form the [National Ad Hoc Advisory Committee on Judicial Campaign Conduct](#). The Ad Hoc Committee offers background information on campaign conduct committees and technical assistance to those jurisdictions interested in forming a committee. Members of the Ad Hoc Committee include experts on judicial campaign conduct, leaders of campaign conduct committees, and representatives of the ABA Standing Committee on Judicial Independence, the Constitution Project, the Justice at Stake Campaign, and the National Center for State Courts.

Two basic types of campaign conduct committees exist: official and unofficial.

**Official committees** are those established by state supreme courts, judicial disciplinary agencies, or state bar associations in which membership is mandatory for lawyers.

**Unofficial committees** are generally established by local bar associations or state bar associations in which attorney membership is voluntary.

- Please [click here](#) for a list of judicial campaign conduct committees.
- Please [click here](#) for a list of additional resources.

This information was compiled jointly by the ABA Standing Committee on Judicial Independence and The Constitution Project. For more information on judicial campaign conduct committees generally, please contact:

**Seth Andersen**, American Bar Association Standing Committee on Judicial Independence, [anderses@staff.abanet.org](mailto:anderses@staff.abanet.org).

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## Judicial Campaign Oversight Committees

In response to growing concerns about the negative tone of judicial campaigns, several states have seen the establishment of judicial campaign oversight committees in recent years. These committees seek to improve the conduct of judicial campaigns by promoting compliance with the spirit and letter of the state canons of judicial ethics that govern campaign speech and conduct. Oversight, or conduct, committees serve three primary functions: educating candidates at the beginning of the campaign about relevant judicial canons and campaign finance regulations; reviewing campaign materials in advance and answering candidates' questions about campaign communications or tactics; and, as a last resort, publicly disclosing any instances of misconduct or referring complaints to the official judicial discipline entity. Committees are usually established by bar associations, and some of them include significant public involvement in the form of lay members and partnerships with non-legal and civic organizations.

As of December 2001, judicial campaign oversight committees have been established or experimented with in ten states. Three basic models of committees exist: official, quasi-official, and unofficial. Official committees, established by mandatory state bars or state judicial disciplinary bodies, are found in Florida, Georgia, and Nevada. Quasi-official committees, which closely resemble official bodies but have no actual enforcement power, have been established in Alabama and South Dakota (and in Michigan during the 1998 campaign season only). Unofficial committees can be formed by voluntary state bars or local bar associations in cooperation with other private organizations. Unofficial committees have more latitude in their operations and public statements, as they are not subject to some of the concerns, especially those involving the First Amendment, felt by mandatory state bars. Unofficial committees are found at the local level in California, New York and Ohio (and in North Carolina during the 1990 campaign season only). The New York Administrative Board of the Courts in 2001 endorsed the establishment of committees across the state by local bar associations. In March 2002, the Louisiana Supreme Court adopted a new rule creating a judicial campaign oversight committee. Generally speaking, campaign oversight committees can operate on small budgets, as members serve voluntarily and press releases and other public statements are utilized instead of paid

advertising. More substantial costs can be incurred if additional features, such as a telephone hotline for judicial candidates' questions, are incorporated.

#### Additional Resources:

Report to the Supreme Court of Louisiana from the Ad Hoc Committee to Study the Creation of a Judicial Campaign Oversight Committee. See: <http://www.lasc.org/lajao/judcampaign.pdf>.

Thomas K. Byerley, "Judicial Campaign Ethics Experiment," 78 Michigan Bar Journal 318 (March 1999).

John Caher, "Bench, Bar Seek Judicial Election Reform," New York Law Journal, Oct. 16, 2001, p. 1.

Richard A. Dove, "Judicial Campaign Conduct: Rules, Education, and Enforcement," 34 Loyola of Los Angeles Law Review 1447 (2001).

Barbara Reed and Roy Schotland, "Judicial Campaign Conduct Committees," paper presented at the Symposium on Judicial Campaign Conduct and the First Amendment, Chicago, November

9-10, 2001 (forthcoming in Indiana Law Review, early 2002).

*For general information on judicial campaign oversight committees, please contact Barbara Reed, Counsel and Policy Director at The Constitution Project (202-299-9544, or [reed@constitutionproject.org](mailto:reed@constitutionproject.org)).*

For more information on campaign oversight committees in New York, please contact:

Steven C. Krane, President of the New York State Bar Association, at 212-969-3435.

For additional information on the formation of campaign oversight committees in New York, contact Michael A. Klein, Chair of the statewide oversight committee planning effort and President of the Onondaga County Bar Association, at 315-471-2667.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Compiled January 2002.*

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## JUDICIAL CAMPAIGN CONDUCT COMMITTEES

As of May 2002, the following states, counties, and localities have active judicial campaign oversight committees, or committees under formation.

### STATEWIDE — OFFICIAL

**Georgia**  
**Louisiana**  
**Mississippi**  
**Nevada**  
**South Dakota**

### UNOFFICIAL STATEWIDE COMMITTEES

**New York (in formation)**  
**Ohio**

### COUNTY/LOCAL AND OTHER UNOFFICIAL COMMITTEES

#### **1. California:**

Santa Clara County  
San Mateo County

#### **2. Florida:**

Broward County  
Escambia-Santa Rosa Counties  
Miami-Dade County  
Orange County

Palm Beach County  
Volusia County

### **3. Illinois:**

Cook County: Comprises the Illinois Judges Association; 12 bar groups, including the Illinois State Bar Association and the Chicago Bar Association; and the American Judicature Society.

### **4. New York:**

Erie County  
Herkimer County\*  
Jefferson County\*  
Lewis County\*  
Monroe County  
New York County  
Oneida County\*  
Onondaga County\*  
Oswego County\*

\*Fifth Judicial District: The Fifth Judicial District comprises Herkimer, Jefferson, Lewis, Oneida, Onondaga, and Oswego Counties. Because some New York courts in a given judicial district have jurisdiction overlapping county lines, the Fifth Judicial District has created a "super-committee" composed of one representative from each county's own oversight committee. In cases involving a candidate whose race overlaps county lines, each county delegate has a role in determining the outcome, but no one county is accorded more weight than another.

### **5. Ohio:**

Cuyahoga County  
Franklin County: Also known as the "Bishop's Committee."  
Mahoning County

### **6. Washington:**

King County

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **Response to Criticism of the Judiciary Model Programs**

Bar associations often find themselves called upon or compelled to defend the judiciary from unwarranted or misleading public criticism. The ABA Judicial Division Lawyers Conference and Standing Committee on Judicial Independence have developed a model program on response to unwarranted criticism of judges. This program includes a brochure and videotape designed to assist bar associations in establishing "rapid response teams" that can issue effective public statements when the judiciary has been subject to unfair or misleading criticism. A recent national survey of state and local bars indicated that more than half of them have successfully implemented a response to criticism program based on the ABA model. The ABA is in the process of updating the model program; your suggestions for improvements are most welcome.

Ohio provides one recent example of a successful state bar response to attacks on the integrity of the judiciary. During the 2000 campaign for two seats on the Ohio Supreme Court, the state saw a dramatic increase in negative advertising. In response to a series of advertisements suggesting that "justice is for sale" in Ohio, State Bar President Reginald Jackson held a news conference to discuss the damage that can be done to the public's perception of an impartial judiciary by negative advertising in judicial campaigns. Jackson highlighted the vulnerability of the judiciary to such criticism and called on the bar and the public to protect the impartiality of the judiciary by rejecting politically motivated attempts to influence judicial elections and judicial decisions.

### Additional Resources:

Visit [www.abanet.org/jd/model.html](http://www.abanet.org/jd/model.html) for more information on the ABA model response to criticism program.

Visit [www.ohioabar.org](http://www.ohioabar.org) for more information on the Ohio State Bar Association's response to negative advertising in judicial elections.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **The Constitution Project The Higher Ground Standards of Conduct for Judicial Candidates**

The Constitution Project, a bipartisan group dedicated to finding solutions to difficult legal and governance issues through a combination of scholarship and public education, created the Higher Ground Standards of Conduct for Judicial Candidates. The Higher Ground Standards were promoted for use in judicial campaigns in Alabama, Illinois, Michigan, Ohio, and Texas in 2000. In the aftermath of these contests, the Constitution Project has created Surveying the Higher Ground: The 2000 Judicial Elections in Five States. This survey provides a scorecard of campaign conduct, candidates who were targeted and why, responses to attacks, election outcomes, and the impact of the Standards on candidate behavior and campaign practices. The survey also includes video clips of inappropriate campaign commercials, news clips covering the campaigns, and links to the applicable canons of conduct for each state. To access the survey, please visit [www.constitutionproject.org/ci/survey/states.htm](http://www.constitutionproject.org/ci/survey/states.htm).

For general information on The Constitution Project and their judicial independence programs, please visit [www.constitutionproject.org](http://www.constitutionproject.org) .

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## Ethics Education Programs for Judicial Candidates

A number of states, including Florida, Ohio, and Washington, have established mandatory education programs for judicial candidates on the Canons of Judicial Conduct relating to judicial campaigns. The Supreme Courts of Florida and Ohio established programs in order to familiarize candidates and their campaign chairpersons and treasurers with all applicable ethics rules and campaign finance reporting regulations. In Washington, the Judicial Ethics Advisory Council and Washington State Bar Association sponsor regular forums on judicial campaign issues. Bar associations can play an important role in educating judicial candidates, especially those attorneys running for judicial office who may be subject to bar discipline in cases of campaign misconduct.

The United States Supreme Court on December 3, 2001 accepted review of Minnesota Republican Party v. Kelly, an Eighth Circuit decision dealing with Minnesota's ability to restrict judicial candidate statements through Canon 7 of its Code of Judicial Conduct. The Supreme Court has been asked to decide whether prohibiting a judicial candidate from "announc[ing] his or her views on disputed legal or political issues" is an unconstitutional impingement on freedom of speech as guaranteed by the First and 14<sup>th</sup> Amendments. (See 247 F.3d 854 for the Eighth Circuit decision. See 70 U.S.L.W. 3372 for information on the Supreme Court's grant of review.)

### Additional Resources:

An Aid to Understanding Canon 7: Guidelines to Assist Judicial Candidates in Campaign and Political Activities. Prepared by the Judicial Ethics Advisory Committee. (Tallahassee, Florida: Office of the State Courts Administrator, July 2000). Found at: [www.flcourts.org/sct/sctdocs/ethics/canon7.pdf](http://www.flcourts.org/sct/sctdocs/ethics/canon7.pdf).

Florida College of Advanced Judicial Studies, 2001 Course Catalog. Found at: <http://www.flcourts.org/>

[osca/judges/ajs/](#).

For information on the Ohio judicial candidate seminars, please contact the Ohio Judicial College at 614-752-8677.

For information on judicial candidate forums in Washington State, please contact the state bar at 206-443-WSBA.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **Judicial Election Voter Information Card**

The ABA has designed a bookmark to help voters in judicial elections. This bookmark provides information on why judicial elections are different; what to look for in a judicial candidate; what to expect from a judicial candidate; and where to go for information about candidates. The text of the bookmark is based on the ABA Judicial Selection Standards, adopted by the House of Delegates in July 2000.

The bookmark is suitable for customization by state; local and territorial bar associations to include the bar's contact information, web address, and other information applicable to a particular jurisdiction.

The purpose of the card is to encourage voters to think critically when voting for judicial candidates and to recognize that voting for judges is different than voting for other elected officials.

### **Judging your Judges - Informing your Vote**

**Please feel free to print and distribute this informative bookmark. For large quantities, we suggest contacting your local Print Specialists.**

[View the Voter Information Card\(.PDF\)](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

**The Brennan Center Court Pester E-lert** is a service of the Brennan Center for Justice at NYU Law School. The E-lert summarizes news stories and editorials related to the independence of judges and the courts, including material attacking, defending, and concerning the judiciary. It covers issues related to federal and state judiciaries. When available, the E-lert includes direct links to the full text of articles found on the World Wide Web. The Brennan Center web site also features a searchable database of all archived news summaries, found at: <http://www.brennancenter.org/programs/pester/pages/>

To subscribe to this free, twice-weekly news service, simply send an email to [Sarah Samis](#) at the Brennan Center.

The Brennan Center has also published a comprehensive annotated bibliography on judicial independence issues. To search the bibliography, please visit: <http://www.brennancenter.org/programs/biblio/>.

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## **PUBLIC OUTREACH PROGRAMS MODELS AVAILABLE FROM THE ABA**

The ABA has developed a number of model programs and resources to aid bar associations, civic groups, educators, and others interested in educating the public on the role of judges and courts in our system of government. The ABA Justice Center is coordinating several public outreach programs that focus on judicial independence and the justice system. Model programs and resources include:

### **National Issues Forum Programs**

In cooperation with the Kettering Foundation, the ABA has published a National Issues Forum discussion guide, "...And Justice for All: Ensuring Public Trust and Confidence in the Justice System." This special issue book was prepared for use by professional, civic and educational groups interested in addressing the issue of how we can improve the justice system. National Issues Forums (NIF) is a nonpartisan, nationwide network of locally sponsored forums for the consideration of public policy issues. The forums are sponsored by thousands of civic, service, and religious organizations, as well as libraries, high schools, and colleges across the nation.

Bar associations can establish partnerships with NIF moderators to sponsor local forums on justice system issues. For more information, please visit the ABA Coalition for Justice [National Issues Forum](#).

To order a copy of "...And Justice for All," call the ABA Service Center at 800-285-2221, and request Product Code #PC1590004.

### **Citizens Conferences**

Citizens conferences can serve as an effective impetus for improvements to the justice system and judicial selection systems. Over the past 30 years, state and local citizens conferences have led to

important reforms and improvements, including the establishment of unified court system and merit selection systems. Most recently, Portland, Oregon held a day-long citizens conference that attracted an overflow audience representing a broad cross-section of the public interested in justice system issues. A set of suggestions for planning and conducting a citizens conference compiled by Judge Ellen Rosenblum of Portland, who helped coordinate the Oregon citizens conference, is attached.

For more information on citizens conferences, contact [Paula Nessel](#) of the ABA Coalition for Justice.

### **Additional Resources:**

Hon. Richard J. Fruin, with John Fallahay and Jeremy Persin. Judicial Outreach on a Shoestring: A Working Manual. (Chicago: Judicial Division, American Bar Association, 1999.)

"Loitering Around the 21<sup>st</sup> Century – Our Courts and the Significance of Judicial Independence." Video program produced by The Missouri Bar featuring Thomas Jefferson and Benjamin Franklin traveling to the 21<sup>st</sup> Century to explore the role of courts and assess the significance of judicial independence. To order copies, contact The Missouri Bar at 573-635-4128.

"Broken Scales: Justice Under the Influence." Video program produced by the American Board of Trial Advocates, Hawaii Chapter, showing one man's journey through a nightmare world where one of the cornerstones of our democracy – judicial independence – has crumbled. Hawaii Supreme Court Chief Justice Ronald Moon also discusses the importance of an impartial judiciary with a group of students. To purchase a copy of the video, contact the Friends of the Judiciary History Center at 808-539-4999 or at [jhc@aloha.net](mailto:jhc@aloha.net).

[Road Maps](#) Series. The American Bar Association Office of Justice Initiatives publishes a series of "how-to" manuals designed to help bench, bar, and community organizations - as well as local policymakers - implement recommendations for change and reform in the justice system. To order one or more [Road Maps](#), call the ABA Service Center at 800-285-2221 and request the Product Code indicated after each of the following topics:

Access to Justice (PC #3460006)

Alternative Dispute Resolution (PC #3460008)

The American Jury (PC #3460005)

Community Involvement (PC #3460002)

Funding the Justice System (PC #3460003)

Independence of the Judiciary (PC #3460004)

Judicial Selection (PC #3460001)

Racial and Ethnic Bias in the Justice System (PC #3460009)

Unified Family Courts (PC #3460010)

*This resource kit contains materials from a variety of sources. Consequently, unless specifically stated, materials do not necessarily represent official policy of the ABA.*

*Updated May 2002.*

[Contact the ABA](#)

# Ensuring Judicial Independence

in the 21<sup>st</sup> Century

## ADDITIONAL RESOURCES

Report to the Supreme Court of Louisiana from the Ad Hoc Committee to Study the Creation of a Judicial Campaign Oversight Committee. See: <http://www.lasc.org/lajao/judcampaign.pdf>.

Thomas K. Byerley, "Judicial Campaign Ethics Experiment," 78 Michigan Bar Journal 318 (March 1999).

John Caher, "Bench, Bar Seek Judicial Election Reform," New York Law Journal, Oct. 16, 2001, p. 1.

Richard A. Dove, "Judicial Campaign Conduct: Rules, Education, and Enforcement," 34 Loyola of Los Angeles Law Review 1447 (2001).

Louisiana Supreme Court Rule 35. Judicial Campaign Oversight Committee. See: [www.lasc.org/rules/html/XXXV.htm](http://www.lasc.org/rules/html/XXXV.htm).

Mississippi Code of Judicial Conduct, Section 5F. See: [www.mssc.state.ms.us/rules/](http://www.mssc.state.ms.us/rules/)

Barbara Reed and Roy Schotland, "Judicial Campaign Conduct Committees," 35 Indiana Law Review, (forthcoming 2002).

South Dakota Rules of Procedure of the Judicial Qualifications Commission, Rule IV (Appendix to SDCL 16-1A). See: <http://legis.state.sd.us/sessions/2000/sesslaws/>.