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CANON 5

A JUDGE OR CANDIDATE* FOR JUDICIAL OFFICE SHALL REFRAIN FROM POLITICAL ACTIVITY THAT IS INCONSISTENT WITH THE INTEGRITY*, INDEPENDENCE*, AND IMPARTIALITY* OF THE JUDICIARY

RULE 5.01: RESTRICTIONS ON POLITICAL ACTIVITIES OF JUDGES AND CANDIDATES* FOR JUDICIAL OFFICE

Except as permitted by Rule 5.02 (Partisan Public Elections), Rule 5.03 (Non-partisan Public Elections), Rule 5.04 (Retention Elections), and Rule 5.05 (Appointment to Judicial Office), a judge or a candidate* for judicial office shall not directly or indirectly

- (a) act as a leader or hold an office in a political organization*;¹**
- (b) make speeches on behalf of a political organization*;²**
- (c) publicly endorse or oppose a candidate* for any public office;³**
- (d) solicit funds for, pay an assessment to, or make a contribution to a political organization* or a candidate* for public office;⁴**
- (e) purchase tickets for dinners or other events sponsored by a political organization* or a candidate* for public office, unless the tickets are for the judge or candidate's* personal use and the cost of the tickets does not appear to exceed significantly the value of the goods and services to be received by the judge or candidate* at the dinner or other event;**
- (f) publicly identify oneself as a candidate* of a political organization*;**
- (g) seek or use endorsements from a political organization*;**
- (h) personally solicit or personally accept campaign contributions;⁵**
- (i) use or permit the use of campaign contributions for the private benefit of the candidate* or others;⁶**

¹ Canon 5A(1)(a)

² Canon 5A(1)(c)

³ Canon 5A(1)(b)

⁴ Canon 5A(1)(e)

⁵ Canon 5C(2) partial black letter rule

1
2 (j) knowingly* make any false or misleading statement regarding
3 any candidate* for judicial office;⁷
4

5 (k) make any comment that might reasonably be expected to affect
6 the outcome or impair the fairness of a proceeding while it is pending
7 or impending in any court;
8

9 (l) manifest bias or prejudice based upon a person's race, gender
10 religion, national origin, ethnicity, disability, age, sexual orientation,
11 or socioeconomic status; or
12

13 (m) with respect to cases, controversies, or issues that are likely to
14 come before the court, make pledges, promises or commitments that
15 are inconsistent with the impartial* performance of the adjudicative
16 duties of the office.⁸
17

18 COMMENT

19
20 *General Considerations*
21

22 [1] The state has a compelling interest in maintaining the integrity,
23 independence, and impartiality of the judiciary, thus enhancing public confidence
24 in the justice system. In furtherance of this interest, judges and candidates for
25 judicial office should be free from political influence, taking into account the
26 various methods of selecting judges and constitutional provisions governing free
27 speech and expressive association. In order to advance the state's compelling
28 interest, Rule 5.01 imposes restrictions on the political and campaign activities of
29 all sitting judges and all candidates for judicial office. In all events, a candidate
30 for judicial office should maintain the dignity appropriate to judicial office.
31

32 [2] A successful candidate for judicial office may be subject to discipline
33 under this Code for violation of any of the Rules set forth in Canon 5, even if the
34 candidate was not a judge during the period of candidacy. An unsuccessful
35 candidate who was a lawyer may be subject to discipline instead under the [name
36 of jurisdiction] Rules of Professional Conduct, Rule [8.2B]. When a non-judge
37 becomes a candidate for judicial office, Rule 5.01 is immediately applicable to his
38 or her conduct.⁹
39

40 [3] Many of the restrictions imposed by Rule 5.01 apply only with respect to
41 political organizations. Engagement with other organizations might be improper

⁶ Canon 5C(2) partial black letter rule

⁷ Canon 5A(3)(d)(ii)

⁸ Canon 5A(3)(d)(i)

⁹ Reference to content of deleted Canon 5E

1 under a different Rule, however. For example, if an organization frequently
2 litigates in the courts, or has matters pending or impending in the court on which
3 the judge sits, other Rules may be applicable. See Rule 2.11 (Judicial Statements
4 on Pending and Future Cases), Rule 2.12 (Disqualification), and Rule 4.04 (Civic
5 or Charitable Activities).
6

7 ***Participation in Political, Fund-Raising, and Campaign Activities of Political***
8 ***Organizations* and Candidates****
9

10 [4] Public confidence in the independence and impartiality of the judiciary is
11 eroded if judges or candidates for judicial office are perceived to be subject to
12 political influence. Accordingly, sitting judges as well as all candidates for
13 judicial office are prohibited by Rule 5.01A from assuming a leadership role in a
14 political organization. A judge or a candidate may register to vote as a member of
15 a political party.
16

17 [5] Rules 5.01B and 5.01C prohibit judges and candidates for judicial office
18 from making speeches on behalf of political organizations or publicly endorsing
19 or opposing candidates for public office. These provisions do not prohibit
20 candidates from campaigning on their own behalf, however, or from endorsing or
21 opposing candidates for a position on the same court for which they are running.
22 See Rules 5.02D and E, Rules 5.03B and D, and Rules 5.04B and D.
23

24 [6] Rule 5.01C does not prohibit judges or candidates for judicial office from
25 privately expressing their views on candidates for any public office.¹⁰
26

27 [7] Sitting judges and candidates for judicial office retain the right to
28 participate in the political process as voters, in both primary and general elections.
29 Participation in a caucus-type election procedure does not constitute public
30 support for or endorsement of a political organization or candidate, and therefore
31 is not prohibited by Rules 5.01B or 5.01C.¹¹
32

33 [8] Political organizations and candidates running for public office often use
34 ticketed events as a method of fund-raising. Judges and candidates for judicial
35 office may generally attend dinners and other public events sponsored by political
36 organizations or candidates running for public office, but are prohibited by Rule
37 5.01E from purchasing tickets to such events to the extent that the purchase
38 includes a fund-raising aspect.
39

40 ***Soliciting or Accepting Campaign Contributions and Other Public Support***
41

42 [9] Candidates for judicial office are prohibited from identifying themselves
43 as candidates of a particular political organization and from seeking or using

¹⁰ Canon 5A Commentary

¹¹ Canon 5A Commentary

1 political organization endorsements, except when running in a partisan public
2 election; see Rules 5.02A and 5.02B.

3
4 [10] Although candidates for judicial office are prohibited from personally
5 soliciting or personally accepting campaign contributions for their own
6 campaigns, see Rule 5.01H, candidates running in partisan, non-partisan or
7 retention elections are permitted to form campaign committees for the purpose of
8 soliciting and accepting contributions, subject to the regulations contained in Rule
9 5.06 and [insert applicable provisions of law].

10
11 [11] Candidates for judicial office are permitted to solicit public support and to
12 seek or use endorsements from individuals or organizations other than political
13 organizations. See Rule 5.01G.

14
15 ***Statements and Comments Made During a Campaign for Judicial Office***

16
17 [12] Candidates for judicial office are sometimes the subject of unfair or unjust
18 allegations made by an opposing candidate, a third party, or the media. For
19 example, false or misleading statements might be made regarding the identity,
20 present position, experience, qualifications, or judicial rulings of a candidate. In
21 other situations, false or unjust allegations may be made that bear upon a
22 candidate's integrity or fitness for judicial office. To mitigate the effects of these
23 attacks, and to avoid escalation of the situation, a candidate for judicial office is
24 permitted to make a measured and dignified public response, but only if the
25 response itself does not violate Rule 5.01J.

26
27 [13] Although candidates for judicial office are permitted to respond directly to
28 unfair or unjust allegations made against them during a campaign, it is often
29 preferable for someone else, such as a bar association or a bar association
30 committee, to utilize established mechanisms to make the response.

31
32 ***Pledges, Promises or Commitments Inconsistent with Impartial Performance of***
33 ***the Adjudicative Duties of Judicial Office***

34
35 [14] A judge's obligation to avoid prejudgment is well established. Under the
36 First Amendment and in light of the voters' right to have information about an
37 elective candidate's views, judicial ethics rules may not prohibit judicial
38 candidates from announcing their views on disputed legal and political issues.
39 Rule 5.01M, which applies the relevant prohibitions of Rule 2.11 to all candidates
40 for judicial office, does not proscribe a candidate's public expression of personal
41 views on disputed issues. To ensure that voters understand a judge's duty to
42 uphold the Constitution and laws of [name of state jurisdiction] where the law
43 differs from the candidate's personal belief, however, candidates are encouraged
44 to emphasize their duty to uphold the law regardless of their personal views.

1 [15] Some speech restrictions are indispensable to maintaining the integrity,
2 impartiality, and independence of the judiciary. The state has a compelling
3 interest in enforcing these restrictions. Thus, under this Rule it remains improper
4 for a judicial candidate to make pledges, promises or commitments regarding
5 pending or impending cases, specific classes of cases, specific litigants or classes
6 of litigants, or specific propositions of law, that would reasonably lead to the
7 conclusion that the candidate has prejudged a decision or ruling in cases that
8 would fall within the scope of the pledge, promise or commitment. To fall within
9 the proscription of this Rule the statement by the candidate must pertain to
10 matters likely to come before the court on which the candidate would serve, if
11 elected. Statements by a candidate that would have this effect are inconsistent
12 with the obligation of all judges to perform impartially the adjudicative duties of
13 office.

14
15 [16] Candidates for judicial office often receive questionnaires or requests for
16 interviews from the media and from issue advocacy or other community
17 organizations, seeking to learn their views on disputed or controversial legal or
18 political issues. Rule 5.01M does not generally prohibit candidates from
19 responding to this kind of inquiry, but candidates should proceed with caution if
20 they choose to respond. Depending on the wording of the questions and the
21 format provided for answering, a candidate's responses might constitute pledges,
22 promises or commitments to perform the adjudicative duties of office other than
23 in an impartial way. In order to avoid violating Rule 5.01M, therefore, candidates
24 who choose to respond should make clear their commitment to keeping an open
25 mind while on the bench, regardless of their own personal views.

26
27 [17] Rule 5.01M does not prohibit a candidate for judicial office from making
28 public statements concerning improvements to the legal system or to the
29 administration of justice.¹²

30
31 ***Indirect Participation in Political and Campaign Activity***

32
33 [18] A candidate for judicial office should encourage members of the
34 candidate's family to adhere to the same standards of political conduct in support
35 of the candidate as apply to the candidate; should discourage employees and other
36 court personnel from doing on the candidate's behalf what the candidate is
37 prohibited from doing under the Rules of this Canon; and should not authorize or
38 knowingly permit any other person to do for the candidate what the candidate is
39 prohibited from doing under the Rules of this Canon. However, members of a
40 candidate's duly-created campaign committee are permitted to engage in
41 solicitation and other fund-raising activities that would not be permitted to the
42 candidate himself or herself.

43

¹² Canon 5A Commentary

1 **RULE 5.02: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES FOR JUDICIAL**
2 **OFFICE* IN PARTISAN PUBLIC ELECTIONS**

3 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
4 **judicial office in a partisan public election may:**

5
6 (a) **publicly identify themselves as candidates* of a political**
7 **organization*;¹³**

8
9 (b) **seek or use endorsements from any individual or organization,**
10 **including a political organization*;**

11
12 (c) **establish a campaign committee pursuant to the provisions of**
13 **Rule 5.06;**

14
15 (d) **communicate with the public by speaking on their own behalf,**
16 **or through any media, including, but not limited to, advertisements,**
17 **websites, or campaign literature;**

18
19 (e) **publicly endorse or publicly oppose other candidates* for a**
20 **position on the same court for which they are running.¹⁴**

21
22 **COMMENT**

23
24 [1] In partisan public elections for judicial office, candidates may be
25 nominated by, affiliated with, or otherwise publicly identified or associated with a
26 particular political organization. Typically, this association is maintained
27 throughout the period of the public campaign, and includes use of political party
28 or similar designations on campaign literature and on the ballot.

29
30 [2] Rule 5.02 permits partisan public election candidates, including sitting
31 judges who have become candidates, to engage in some political activities that
32 would otherwise be prohibited by Rule 5.01. Nevertheless, candidates must be
33 mindful of the prohibition of Rule 5.01M relating to the making of promises,
34 pledges, and commitments.

35
36 [3] For purposes of Rule 5.02E, candidates are considered to be running for a
37 position on the same court if they are competing for a single judgeship or if
38 several judgeships on the same court are to be filled as a result of the election.

39
40 **5.03: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES* FOR JUDICIAL**
41 **OFFICE IN NON-PARTISAN PUBLIC ELECTIONS**

42

¹³ Canon 5C(1)(a)(ii)

¹⁴ Canon 5C(1)(b)(iv)

1 **Notwithstanding any restrictions set forth in Rule 5.01, candidates***
2 **for judicial office in a non-partisan public election may:**

3
4 **(a) seek or use endorsements from any individual or organization,**
5 **other than a political organization*;**

6
7 **(b) establish a campaign committee pursuant to the provisions of**
8 **Rule 5.06;**

9
10 **(c) communicate with the public by speaking on their own behalf,**
11 **or through any media, including, but not limited to, advertisements,**
12 **websites, or campaign literature;**

13
14 **(d) publicly endorse or publicly oppose other candidates* for a**
15 **position on the same court for which they are running.**

16
17 **COMMENT**

18
19 [1] In non-partisan public elections for judicial office, candidates may not
20 accept nominations by a particular political organization. Most of the restrictions
21 on political activities set forth in Rule 5.01 continue to apply to candidates for
22 judicial office running in non-partisan elections.

23
24 [2] Rule 5.03A would operate to prohibit a non-partisan candidate from filling
25 out a questionnaire if he or she knows or has reason to know that the purpose of
26 the questionnaire is for a political organization to decide whom to endorse in a
27 non-partisan judicial election.

28
29 [3] Although candidates in non-partisan public elections for judicial office are
30 prohibited from running on a ticket or slate associated with a political
31 organization, individual candidates may group themselves into slates or other
32 alliances in order to conduct their campaigns more effectively. For purposes of
33 Rule 5.03D, candidates who have grouped themselves together in this fashion are
34 considered to be running for a position on the same court if they are competing
35 for a single judgeship, or if several judgeships on the same court are to be filled as
36 a result of the election.

37
38 **5.04: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES* FOR JUDICIAL**
39 **OFFICE IN RETENTION ELECTIONS**

40
41 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
42 **judicial office in a retention election may:**

43
44 **(a) seek or use endorsements from any individual or organization,**
45 **other than a political organization*;**

1
2 (b) establish a campaign committee pursuant to the provisions of
3 Rule 5.06;

4
5 (c) communicate with the public by speaking on their own behalf,
6 or through any media, including, but not limited to, advertisements,
7 websites, or campaign literature;

8
9 (d) publicly endorse or publicly oppose other candidates* for a
10 position on the same court for which they are running.

11
12 **COMMENT**

13
14 [1] Candidates for judicial office who are subject to retention election are
15 sometimes publicly supported or opposed by individuals or organizations,
16 including political organizations. Retention election candidates are not permitted
17 to seek endorsements from political organizations, however, or to use such
18 endorsements to further their campaigns.

19
20 [2] Candidates running in retention elections are by definition sitting as judges
21 during the period of their candidacies. Moreover, opposition to a candidate for
22 retention sometimes focuses on particular decisions that the candidate has made
23 as a judge, or even on cases that are pending before the judge during the campaign
24 period. In the course of their campaigns, therefore, retention election candidates
25 should be especially mindful of their obligations not to make comments that
26 might affect the outcome or impair the fairness of a proceeding and not to make
27 pledges, promises or commitments that are inconsistent with the impartial
28 performance of the adjudicative duties of the office. See Rules 5.01K and 5.01M.

29
30 **RULE 5.05: PERMITTED ACTIVITIES OF CANDIDATES* FOR APPOINTIVE**
31 **JUDICIAL OFFICE**

32
33 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
34 **appointment to judicial office may**

35
36 (a) communicate with the appointing or confirming authority,
37 including any selection, screening, or nominating commission or
38 similar agency;¹⁵

39
40 (b) seek or use endorsements for the appointment from any
41 individual or organization other than a political organization*.¹⁶
42

¹⁵ Canon 5B(2)(a)(i)

¹⁶ Canon 5B(2)(a)(ii)

1 **COMMENT**

2
3 [1] Candidates for appointive judicial office have no need to raise or spend
4 campaign funds. Accordingly, they are not only prohibited from personally
5 soliciting or personally accepting such funds, (see Rule 5.01H), but they are also
6 prohibited from establishing campaign committees for this purpose.

7
8 [2] When seeking support or endorsement from others, or when
9 communicating directly with an appointing or confirming authority, candidates
10 for appointive judicial office must not make any pledges, promises or
11 commitments that are inconsistent with the impartial performance of the
12 adjudicative duties of the office. See Rule 5.01, Comments [15] and [16].

13
14 **RULE 5.06: CAMPAIGN COMMITTEES**

15
16 **(a) Candidates* for judicial office subject to public elections* may**
17 **establish campaign committees to conduct campaigns for the**
18 **candidate*, subject to the regulations contained in this Rule. The**
19 **candidate* is responsible for ensuring that the committee complies**
20 **with these regulations and with other applicable law.¹⁷**

21
22 **(b) Campaign committees may solicit and accept reasonable**
23 **campaign contributions, not to exceed, in the aggregate*, [\$ ___]**
24 **from any individual or [\$ ___] from any entity or organization. Such**
25 **committees may also manage the campaign, including the expenditure**
26 **of funds.¹⁸**

27
28 **(c) A campaign committee shall not solicit or accept contributions**
29 **for a candidate's* current campaign more than [one year] prior to a**
30 **scheduled election, nor more than [90] days after the last election in**
31 **which the candidate* participated.¹⁹**

32
33 **(d) In addition to complying with all applicable statutory**
34 **requirements for disclosure of campaign contributions, a campaign**
35 **committee established by a candidate* for judicial office shall file with**
36 **[name of appropriate regulatory authority] a report stating the name,**
37 **address, occupation and employer of each person who has made**
38 **campaign contributions to the committee in an aggregate* value**
39 **exceeding [\$ __]. The report must be filed within [___] days following**
40 **an election, or within such other period as is required by law.²⁰**

41

¹⁷ Canon 5C(2)

¹⁸ Canon 5C(3)

¹⁹ Canon 5C(2)

²⁰ Canon 5C(4)

1 **COMMENT**

2
3 [1] Candidates for judicial office are prohibited from personally raising
4 campaign funds. See Rule 5.01H. Nonetheless, Rule 5.06 recognizes that in many
5 jurisdictions candidates for judicial office must raise campaign funds to support
6 their candidacies, and therefore permits candidates, other than candidates for
7 appointive judicial office, to establish campaign committees to solicit and accept
8 reasonable financial contributions.

9
10 [2] Campaign committees established by candidates for judicial office not
11 only solicit and accept campaign contributions, but manage the expenditure of
12 campaign funds and generally conduct the campaign. Candidates, however, are
13 ultimately responsible for the actions of their campaign committees, including
14 compliance with this Code and with the requirements of election law and other
15 applicable law.

16
17 [3] At the start of a campaign, candidates must instruct their campaign
18 committees to solicit or accept only such contributions as are reasonable in
19 amount, appropriate under the circumstances, and in conformity with governing
20 law. Although lawyers and others who might appear before a successful candidate
21 for judicial office are permitted to make campaign contributions, candidates
22 should instruct their campaign committees to be especially cautious with respect
23 to such contributions, lest they create grounds for disqualification. Compare Rule
24 2.12.

25
26 **RULE 5.07: ACTIVITY OF JUDGES WHO BECOME CANDIDATES* FOR NON-**
27 **JUDICIAL OFFICE**

28
29 (a) **Upon becoming a candidate* for a non-judicial elective office,**
30 **a judge shall resign from judicial office, except that the judge may**
31 **continue to hold judicial office while being a candidate* for election**
32 **to, or serving as a delegate in, a state constitutional convention if the**
33 **judge is otherwise permitted by law to do so.²¹**

34
35 (b) **Upon becoming a candidate* for a non-judicial appointive**
36 **office, a judge is not required to resign from judicial office and is**
37 **permitted to engage in the activities permitted for candidates* for**
38 **appointive judicial office by Rule 5.05.**

39
40 **COMMENT**

41
42 [1] In most, if not all, campaigns for non-judicial elective public office,
43 candidates make pledges, promises or commitments as to positions they would

²¹ Canon 5A(2)

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take and ways they would act if elected to office. Although appropriate in non-judicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The combination of the potential for abuse of the judicial office on one hand, and the political promises that the judge would be compelled to make in the course of campaigning for non-judicial elective office on the other, dictates that a judge who wishes to run for such office must resign upon becoming a candidate. A judge who wishes to become a candidate for a non-judicial appointive, rather than elective office, where no election campaign will be conducted, need not resign from judicial office in order to be considered for appointment.