

Avoiding Ethical Pitfalls in Judicial Campaigns

By Victoria Frigo and Robert Meyers

Are you a new lawyer at the Public Defender's or State Attorney's Office who'd like to support a senior colleague running for a judgeship? Or, are you eager to contribute to the campaign of a fair-minded judge whom you appear before regularly in your civil practice? Based on our experience overseeing ethical campaign practices in Miami-Dade County, Florida, attorneys who actively participate in judicial elections must proceed carefully in order to avoid professional missteps.

Today, a majority of states hold judicial elections despite concerns about ethical improprieties that may undermine the integrity of the bench. Until about a decade ago, the unwritten rule in South Florida was that those wishing to sit on the bench needed to wait for slots to open up through vacancies or the creation of new judgeships. In what appears to be a nationwide trend, however, many experienced county and circuit court judges over the past ten years have received credible opposition for their seats.

Below are a few suggestions for new lawyers who are supporting a judicial candidate this year or who are planning to run for the bench themselves in the near future:

- **Safeguard your job.** Young lawyers should be aware of the high demands on time and money that judicial candidates face. In this pressure-cooker environment, government attorneys must ensure that all of their campaign efforts are conducted off-duty and outside of regular work hours. In the private sector, associates should clarify with their firms about what is allowed regarding political involvement.
- **Help your candidate stay out of trouble.** State election rules are very technical, and sitting judges are further restricted by rules of judicial conduct (for example, in Florida, judicial conduct is governed by Canon 7 of the Code of Judicial Conduct). You'll be more valuable to your candidate if you are familiar with these regulations. In Miami Dade County, candidates for the bench may choose to place yet another layer of ethical restrictions on themselves and their campaign workers by agreeing to abide by the local Fair Campaign Practices Ordinance.
- **Be careful about becoming the campaign treasurer.** Campaign treasurers must familiar with standard accounting procedures and the election laws that impact these procedures. We've observed campaign treasurers who are spouses, trusted friends, and even the candidates themselves admit that they have slipped-up during the intensity of a hectic election. A local county judge, for example, was publicly reprimanded and fined \$25,000 after filing an ambiguous treasurer's report regarding a loan to her campaign. Initially, the judge contended that \$25,000 in expenditures was drawn against a bank line of credit. The court disagreed and found that the judge's mother exceeded the \$500 contribution limit by loaning her daughter the money (*In re Pando*, 903 So. 2d (Fla. 2005)).
- **Direct all questions to one knowledgeable spokesperson for the campaign.** Avoid the hazard of sending out mixed messages from the campaign. Judicial candidates, even if not currently serving on the bench, are not allowed to speak on certain matters, such as forecasting future judicial decisions. A sitting judge in Florida, for example, was fined \$50,000 when she stated that she would make rulings that were "absolutely a reflection of what the community wants" (*In re Kinsey*, 842 So. 2d 77, 89 (Fla. 2003)).
- **Know how to solicit funds lawfully.** In Florida, all judicial candidates are prohibited from personally soliciting campaign contributions. Instead, they must establish a committee of responsible persons to raise funds and garner public support. The Florida Judicial Ethics Advisory Committee recently prohibited a judicial candidate from personally distributing campaign material that included return envelopes for campaign contributions. The Committee stated that the strategy could be seen as coercive and as paying for "cash register justice" (Fla. JEAC Op. 2004-07).
- **Campaign ethically.** Help your team adopt ethical campaign standards. Candidates and their supporters who run ethical campaigns ease the public's concerns about government improprieties and potential conflicts of interest. We have observed zealous campaign workers, for example, self-publish and distribute brochures that reflected badly on their candidate and apparently without the candidates' knowledge.

As a young lawyer, you can prepare now to become part of the judiciary as a future candidate in a contested election or as an appointee through the political process. Volunteering to work for a judicial candidate today will open your eyes to the demands of the election process and give you an opportunity to build your own reputation for fairness and good judgment.

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