A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

RULE 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by Rules 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), and 4.4 (Campaign Committees), a judge or a judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a political organization;*

(2) make speeches on behalf of a political organization or nonjudicial candidate;

(3) publicly endorse or oppose a nonjudicial candidate for any public office, except for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States pursuant to (5) below.

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a nonjudicial candidate for public office;

(5) publicly identify himself or herself as a member or a candidate of a political organization, except

(a) as required to vote, or

(b) for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States.

(6) [Reserved.]

(7) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4, except for members of the judge's family or individuals who have agreed to serve on the campaign committee authorized by Rule 4.4 and subject to the requirements for campaign committees in Rule 4.4(B).

(8) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others except as permitted by law;

(9) use court staff, facilities, or other court resources in a campaign for judicial office except as permitted by law;

(10) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

(11) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(12) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

Comments

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Therefore, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for nonjudicial public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for judicial office. See Rule 4.2(B)(2).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or judicial candidate publicly endorsing nonjudicial candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they are using the prestige of the their judicial office to endorse any family member’s candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, is not prohibited by paragraphs (A)(2) or (A)(3) and is allowed by Paragraphs (A)(2) and (A)(5). Because Washington uses a caucus system for selection of delegates to the nominating conventions of the major political parties for the office of President of the United States, precluding judges and judicial candidates from participating in these caucuses would eliminate their ability to participate in the selection process for Presidential nominations. Accordingly, Paragraph (A)(3) and (5) allows judges and judicial candidates to participate in precinct caucuses, limited to selection of delegates to a nominating convention for the office of President of the United States. This narrowly tailored exception from the general rule is provided for because of the unique system used in Washington for nomination of Presidential candidates. If a judge or a judicial candidate participates in a precinct caucus, such person must limit participation to selection of delegates for various candidates.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(10) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(10), (A)(11), or (A)(12), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(11), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(11) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(12) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(12) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(12), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do respond to questionnaires should post the questionnaire and their substantive answers so they are accessible to the general public. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

PERSONAL SOLICITATION OF CAMPAIGN FUNDS

[16] Judicial candidates should be particularly cautious in regard to personal solicitation of campaign funds. This can be perceived as being coercive and an abuse of judicial office. Accordingly, a general prohibition on personal solicitation is retained with a narrowly tailored exception contained in Paragraph (A)(7) for members of the judge's family and those who have agreed to serve on the judge's campaign committee. These types of individuals generally have a close personal relationship to the judicial candidate and therefore the concerns of coercion or abuse of judicial office are greatly diminished. Judicial candidates should not use this limited exception as a basis for attempting to skirt the general prohibition against solicitation of campaign contributions.

RULE 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate* in a nonpartisan, public election* shall:

(1) Act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fundraising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for elective judicial office may:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, web sites, or other campaign literature;

(3) seek, accept, or use endorsements from any person or organization.

Comments

[1] Paragraphs (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.

[2] Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A) paragraphs (4), (10), and (12).

[3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations on behalf of their own candidacy or that of another judicial candidate.

[4] In endorsing or opposing another candidate for judicial office, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[5] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively.

RULE 4.3. Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

Comment

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(12).

RULE 4.4. Campaign Committees

(A) A judicial candidate* subject to public election* may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.*

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions* as are reasonable, in any event not to exceed, in the aggregate amount allowed as provided for by law;

(2) not to solicit contributions for a candidate's current campaign more than 120 days before the date when filing for that office is first permitted and may accept contributions after the election only as permitted by law; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Public Disclosure Commission all reports as required by law.

Comments

[1] Judicial candidates are generally prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(7). This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

RULE 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Comments

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial 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 potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents postcampaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

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