

SUPREME COURT OF LOUISIANA

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RESOLUTION

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WHEREAS, Canon 7 of the Code of Judicial Conduct regulates campaign conduct of judges and judicial candidates and requires generally that judges and judicial candidates refrain from inappropriate political activity; and

WHEREAS, judges occupy a unique position in state government, as they must be, both in appearance and in reality, fair and impartial to all who come before them; and

WHEREAS, judges and candidates are not required to abdicate their First Amendment rights when they decide to run for elective judicial office; and

WHEREAS, the Louisiana Legislature, in the Louisiana Election Code, R.S. 18:1463A, stated that “the state has a compelling interest in taking every necessary step to assure that all elections are held in a fair and ethical manner . . .”; and

WHEREAS, the Louisiana Legislature, in the Louisiana Election Code, R.S. 18:1461, prohibits, *inter alia*, certain fraudulent election activities; and

WHEREAS, the Supreme Court of Louisiana similarly has a compelling interest in assuring that judicial elections are held in a fair and ethical manner, free from fraud and knowing falsehoods; and

WHEREAS, the unique role of the judiciary in state government requires that some minimal, reasonable restrictions be placed on judicial candidates’ speech and expression, in light of Louisiana’s compelling interest in preserving judicial integrity, independence and impartiality; and

WHEREAS, Canon 7 of the Code of Judicial Conduct balances these rights in a way which does not unnecessarily restrict speech on the part of judges and candidates, while preserving judicial integrity, independence and impartiality; and

WHEREAS, the Supreme Court of Louisiana is sensitive to juxtaposing the First Amendment rights of judges and judicial candidates with the right of Louisiana citizens to an independent, fair and impartial judiciary; and

WHEREAS, in April, 2000, this Court appointed an *Ad Hoc* Committee to Study the Creation of a Judicial Campaign Oversight Committee; and

WHEREAS, the Committee has recommended the creation of a permanent Judicial Campaign Oversight Committee which would benefit Louisiana citizens by serving as a resource for judges and candidates, assisting in educating judges and candidates about ethical campaign conduct, and helping deter unethical judicial campaign conduct; and

WHEREAS, the Court believes the creation of a permanent Judicial Campaign Oversight Committee will improve the administration of justice in Louisiana; and

WHEREAS, the Supreme Court views many of the *Ad Hoc* Committee's recommendations, as modified through promulgation of this Resolution, to be meritorious;

NOW, THEREFORE, BE IT RESOLVED, that the attached rules establishing the Louisiana Judicial Campaign Oversight Committee, and governing its operations, be and are hereby adopted. The rules are promulgated pursuant to Article V, Sections 1 and 5 of the 1974 Louisiana Constitution, and the inherent power of this Court, and shall be enacted as Rule XXXV of the Rules of this Court. The rules shall become effective on April 15, 2002, and shall remain in full force and effect thereafter until amended or changed through future orders of this Court.

New Orleans, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

FOR THE COURT:

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Pascal F. Calogero, Jr., Chief Justice

## **RULE XXXV. Judicial Campaign Oversight Committee**

**Section 1. Composition; general duties; terms of office.** The Louisiana Judicial Campaign Oversight Committee shall consist of fifteen members appointed by the Court. The Committee shall include sitting or retired judges, lawyers, and other citizens who are neither lawyers nor judges. One of the judge members shall be designated by the Court to chair the work of the Committee. Initial appointments of Committee members shall be for staggered terms. Thereafter, members shall be appointed for four year terms of office. Committee members may be reappointed for one additional term of office.

The Louisiana Judicial Campaign Oversight Committee shall:

- ◆ serve as a resource for judges and judicial candidates;
- ◆ assist in educating judges and judicial candidates about ethical campaign conduct; and
- ◆ help deter unethical judicial campaign conduct.

### Court Commentary

The Oversight Committee is not affiliated with the Judiciary Commission or the Committee on Judicial Ethics. The Committee does have the right, as any citizen would, of filing a complaint with the Judiciary Commission relative to conduct it finds problematic.

**Section 2. Covered elections.** The Committee's oversight jurisdiction extends to supreme court, appellate court, district court, juvenile court, family court, parish court, city and municipal court, and traffic court elections. The Committee shall have no jurisdiction over justice of the peace elections.

**Section 3. Oversight Jurisdiction; authority to issue public statements.** Complaints concerning judicial campaign conduct shall be forwarded in writing. The Committee may only review and investigate any complaint which alleges facts that, if true, would constitute a violation of the following Canons, or partial Canons, of the Louisiana Code of Judicial Conduct:

- (1) The judge or judicial candidate acted as a leader or held any office in a political organization (Canon 7A(1)(a));

- (2) The judge or judicial candidate publicly endorsed or publicly opposed another candidate for public office (Canon 7A(1)(b));
- (3) The judge or judicial candidate made speeches on behalf of a political organization or a candidate for public office (Canon 7A(1)(c));
- (4) The judge or judicial candidate solicited funds for, paid an assessment to, or made a contribution to another candidate (Canon 7A(1)(d));
- (5) The judge or judicial candidate solicited funds for a political organization (Canon 7A(1)(d));
- (6) The judge or judicial candidate made statements that commit the candidate with respect to cases, controversies, or issues that are likely to come before the court (Canon 7B(1)(d)(ii));
- (7) The judge or judicial candidate knowingly misrepresented the identity, qualifications, present position or other fact concerning the candidate or an opponent (Canon 7B(1)(d)(iii));
- (8) The judge or judicial candidate personally solicited or accepted campaign contributions in violation of Canon 7D(1) of the Louisiana Code of Judicial Conduct;
- (9) The judge or judicial candidate authorized or knowingly permitted any person to do for the candidate what the candidate is prohibited from doing concerning the Canons which fall within the Committee's oversight jurisdiction (Canon 7B(1)(c)); or
- (10) The judge or judicial candidate, while a proceeding is pending or impending in any court, made a public comment that might reasonably be expected to affect the outcome of the proceeding or impair its fairness (Canon 7B(1)(d)(iv)).

Any complaint which does not allege facts which, if true, would constitute a violation of these ten provisions shall be dismissed. If the information contained in the complaint alleges facts which, if true, would constitute unethical campaign conduct falling within the Committee's oversight jurisdiction, as defined above, the Committee shall review and investigate the matter and attempt to resolve the complaint informally. During the course of its review, the Committee may solicit a response to the complaint from the respondent candidate.

At the conclusion of its investigation, the Committee may issue a public statement concerning the campaign conduct, including disclosure of the fact that a complaint has been made, provided at least two-thirds of the members determine clear and convincing evidence exists that a violation has occurred, and after the respondent has been given notice and an opportunity to respond.

Committee deliberations regarding judicial campaign conduct are confidential.

The Committee may dismiss any complaint which is frivolous, repetitive, or harassing in nature. No appeal rights shall exist in favor of any complainant when the Committee exercises its discretion to dismiss a complaint.

In furtherance of its role as a resource for judges and judicial candidates, the Committee and its members may offer advice and consultation to judges and candidates concerning any canon of the Code of Judicial Conduct, or concerning judicial campaign conduct in general, at educational seminars or in response to a request or inquiry from a judge or candidate. However, the Committee may not issue a public statement concerning any complaint or campaign conduct which does not fall within its oversight jurisdiction, as defined above.

#### Court Commentary

The Judicial Campaign Oversight Committee has no enforcement power or disciplinary authority. The Committee may, however, issue public statements in accordance with these rules.

The fast moving nature of judicial campaigns militates against conferring authority upon the Oversight Committee to promulgate formal, written advisory opinions.

**Section 4. *Sua Sponte Action.*** The Committee may only review and investigate campaign conduct which falls within its oversight jurisdiction, as defined in Section 3, in the absence of the filing of a campaign conduct complaint, provided two-thirds of the Committee members vote in

favor of conducting such an investigation. The Committee may issue a public statement relative to campaign conduct which is not the subject of a written complaint, provided at least two-thirds of the members determine clear and convincing evidence exists that a violation has occurred, and the respondent candidate has been given notice and an opportunity to respond.

#### Court Commentary

In its role as a resource for candidates, the Committee also would have the authority to "preview" judicial campaign advertisements to be run by a judicial candidate, when asked to do so by that candidate.

Following review and investigation, it is envisioned that the Committee would vote as to whether it should issue a public statement pertaining to conduct it finds to be unethical.

**Section 5. Disclosure of Complaints.** Complaints shall be confidential until such time as the Committee, by a vote of at least two-thirds of its members, has determined clear and convincing evidence exists that a violation has occurred, and the respondent candidate has been given notice of the complaint and an opportunity to respond. Complaint forms and campaign conduct pledges used by the Committee shall include language which notifies complainants and candidates of this restriction.

#### Court Commentary

In order to protect against the possibility that frivolous complaints may be filed for political gain, and in order to protect against the unfair use of non-frivolous complaints that nonetheless do not rise to the level of unethical conduct, complaints are confidential until such time as they may be made public in accordance with Section 5.

**Section 6. Political Involvement in Judicial Elections.** Members of the Judicial Campaign Oversight Committee shall be regulated and constrained in their political activities regarding judicial campaigns by Canon 7 of the Louisiana Code of Judicial Conduct.

**Section 7. Immunity.** Members of the Judicial Campaign Oversight Committee and staff shall be immune from civil suit for any conduct in the course of their official duties.

**Section 8. Rulemaking.** The Committee may promulgate rules pertaining to its operations and procedures, including rules for expeditiously handling complaints which arise during the last two weeks of judicial campaigns.

The Committee may utilize a complaint form to help facilitate the filing of judicial campaign conduct complaints. In addition, the Committee may ask judicial candidates to voluntarily sign a campaign conduct pledge. Campaign conduct pledges shall be matters of public record.

Committee rules, complaint forms and campaign conduct pledges shall become effective and may be utilized following approval by this Court.