

Canon 4

JUDGES SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THEIR JUDICIAL OFFICE.

Rule 4.1 Political Conduct in General

(A) A judge or a *judicial candidate* for *public election* to judicial office shall not:

(1) act or hold himself or herself out as a leader or hold any office in a *political organization*;

(2) make speeches for a *political organization* or candidate or publicly endorse another candidate for public office; or

(3) solicit funds for or pay an assessment or make a *contribution* to a *political organization*, or purchase tickets for political party dinners or other functions, except as authorized in Rule 4.1 (B).

(B) Judges and *judicial candidates* holding an office filled either by retention election or by *public election* between competing candidates may attend political gatherings and speak to such gatherings on their own behalf when they are candidates for election or re-election.

Commentary:

A judicial candidate *does not publicly endorse another candidate for public office by having his or her name on the same ballot.*

Rule 4.2 Campaign Conduct

(A) *Judicial candidates:*

(1) shall prohibit officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this

Canon, and shall not allow any other person to do for them what they are prohibited from doing under this Canon;

(2) shall not make statements or promises that commit the candidate with respect to issues likely to come before the court that are inconsistent with the *impartial* performance of the adjudicative duties of judicial office;

(3) shall not use or participate in the publication of a false statement of fact, or make any misleading statement concerning themselves or their candidacies, or concerning any opposing *judicial candidate* or candidacy, with *knowledge* of the statement's falsity or with reckless disregard for the statement's truth or falsity;

(4) shall be responsible for the content of any statement or advertisement published or communicated in any medium by a *campaign committee*, if the *judicial candidate* knew of or recklessly disregarded the content of said statement or advertisement prior to its release; and

(5) except where a statement or advertisement is published or communicated by a third party, shall be responsible for reviewing and approving the content of his or her statements and advertisements, and those of his or her *campaign committee*. Failure to do so will not be a defense to a complaint for violation of this Canon.

(B) *Judicial candidates may personally solicit campaign contributions and publicly stated support. Judicial candidates, including incumbent judges, shall not use or permit the use of campaign contributions for the private benefit of themselves or members of their families.*

Commentary:

[1] This Canon does not prohibit a judge or judicial candidate from publicly stating his or her personal views on disputed issues, see Republican Party v. White, 536 U. S. 765 (122 SCt 2528, 153 LE2d 694) (2002). To ensure that voters understand a judge's duty to uphold the Constitution and laws of Georgia where the law differs from his or her personal belief, however, judges and judicial candidates are encouraged to emphasize in any public statement their duty to uphold the law regardless of their personal views.

[2] Rule 4.2 (A) (2) prohibits judicial candidates from making comments that might impair the fairness of pending proceedings or impending matters. 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.

[3] 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. Rule 4.2 (A) (2) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, judicial 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 Rule 4.2 (A) (2), therefore, judicial 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. Judicial 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 judicial candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11 (A) (5).

[4] The determination of whether a judicial candidate knows of falsity or recklessly disregards the truth or falsity of his or her public communication is an objective one.

[5] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing judicial 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 judicial candidate. In other situations, false or misleading allegations may be made that bear upon a judicial candidate's integrity or fitness for judicial office. As long as the judicial candidate does not violate the Rules of Canon 4, the judicial candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a judicial candidate's opponent, the judicial candidate may disavow the attacks, and request the third party to cease and desist.

[6] Subject to Rules 4.2 (A) (2) and 4.2 (A) (3), 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 proceeding.

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Rules 4.2 (A) (4) and 4.2 (A) (5) obligate judicial candidates and their campaign 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] The use of campaign committees is encouraged, because they may better maintain campaign decorum and reduce campaign activity that may cause requests for recusal, or the appearance of partisanship with respect to issues or the parties that require recusal.

Rule 4.3 Candidacy for Appointive Judicial Office

A judicial candidate seeking 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 other than a partisan *political organization*.

Commentary:

When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, judicial candidates for appointive 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 4.2 (A) (2).

Rule 4.4 Reserved.

Rule 4.5 Candidacy for Non-Judicial Office

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

office, but regardless the judge must comply with all applicable provisions of this Code.

(B) Upon becoming a candidate for a non-judicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with State *law* and with applicable provisions of this Code.

Commentary:

[1] *It is highly unlikely that any judge who engages in active campaigning for a non-judicial elective office could do so without violating a Canon 4 norm of permissible campaign practice. It is also more likely that such a judge will experience strict scrutiny of campaign behavior and will remain subject to professional discipline for any violation of the rules of judicial campaign behavior. Therefore, as suggested by this Rule, “resign to run” presents the better professional practice.*

[2] *In campaigns for non-judicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act when elected to office. Although appropriate in campaigns for non-judicial elective office, this manner of campaigning is inconsistent with the role of judges, who must remain fair and impartial to all who bring disputes before them for resolution.*

[3] *This Rule ensures that judges who become candidates for non-judicial elective office cannot misuse the judicial office to promote that candidacy, and prevents post-campaign retaliation by such judges in the event of their defeat in such an election.*

Rule 4.6 Applicability of the Political Conduct Rules

This Canon generally applies to all incumbent judges and *judicial candidates*. A successful or unsuccessful *judicial candidate*, whether or not an incumbent, is subject to judicial discipline by the *appropriate authority* for improper campaign conduct.

Commentary:

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.

Effective Date of Revised Code and Amendments

The former Code of Judicial Conduct remains in effect as to conduct occurring before the effective date of this version, which is January 1, 2016. Subsequent amendments to this version having later effective dates are so indicated at the location of the amendments.