

From: Judge Jennifer Brunner
Date: September 11, 2020 at 3:57:12 PM EDT
To: Maggie Ostrowski <MOstrowski@ohiobar.org>
Cc: Andrew DeCarlo, Campaign Manager
Subject: Re: OSBA JECAMC "Clean Campaign" Agreement

Dear Maggie,

Thank you for your letter. I am writing in response to it. After careful consideration and with due respect to the work of OSBA and the committee, I believe Canon 4 of the Code of Judicial Conduct is sufficient in its free speech restraint to protect the integrity of Ohio's elected judiciary.

If I am fortunate enough to be elected to the Ohio Supreme Court by Ohio's voters this fall, I would not cede my responsibilities as a Justice of that court to a private organization. Since the Canon 4 of the Code of Judicial Conduct applies equally to justices, judges and judicial candidates, I believe it incumbent on me to not cede to any private actor what is my responsibility for fair judicial conduct during a judicial campaign. Nor would I wish to undermine the work of the Ohio Supreme Court by signing an agreement that tacitly supposes its rules of self-governance are not good enough to protect the integrity of the judiciary.

My opponent has widely stated that she is a conservative. To voluntarily hinder myself from questioning or commenting on that as it applies to her approach to cases that come before her does no service to voters who, like me, question whether that affects her impartiality in deciding cases.

Accordingly, and with respect, I will not be signing the pledge the committee has asked me to sign. I do not believe that signing the pledge promotes confidence in the integrity of the state's judiciary or sufficiently protects the interests of the Ohioans who vote in choosing the state's Supreme Court justices.

Thank you for your follow up inquiry.

Judge Jennifer Brunner
35 N. Fourth St., Ste. 200
Columbus, OH 43225

Sent via my mobile device

On Sep 9, 2020, at 2:54 PM, Maggie Ostrowski <MOstrowski@ohiobar.org> wrote:

Hello Judge Brunner and Andrew -

Just checking in to make sure you received this.

We generally do a press release announcing who has signed the pledge and want to make sure you are included!

Thank you,

Maggie

From: Maggie Ostrowski
Sent: Thursday, August 27, 2020 6:13 PM
To: Judge Jennifer Brunner
Cc: Andrew DeCarlo, Campaign Manager
Subject: OSBA JECAMC "Clean Campaign" Agreement

Dear Judge Brunner,

Greetings from the OSBA Judicial Election Campaign Advertising Monitoring Committee (JECAMC). We hope all is well with you and your campaign!

Please see the attached letter from JECAMC Chair Paul Hervey requesting that you agree to adhere to the Committee's "Clean Campaign" Agreement (also attached) throughout the 2020 election cycle. We ask that you return the signed Agreement to us by next Friday, September 4, 2020.

Thank you for your consideration and please feel free to reach out to me if you have any questions.

Best wishes,

Maggie Ostrowski

Maggie Ostrowski | Chief Communications Officer / Policy Advisor
mostrowski@ohiobar.org

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August 27, 2020

The Honorable Jennifer Brunner
Jennifer Brunner Committee
35 N. Fourth St., Ste. 200
Columbus, OH 43215-3614

Via Email: jjenniferbrunner@gmail.com

Dear Judge Brunner:

On behalf of the Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee (“the Committee”), I respectfully request your agreement to participate with the Committee as it continues its mission to preserve the integrity of elections to the Supreme Court of Ohio, and in doing so, to enhance the public’s trust and confidence in our judicial system.

The Committee, composed of 11 persons (current roster enclosed) and described in the Statement of Purpose and Regulations and Procedures (also enclosed), devotes its attention to advertising in Supreme Court of Ohio elections and utilizes the standard set forth in paragraph 11 of the Regulations and Procedures as the basis for review of advertisements throughout the course of the judicial campaign season. Recognizing that there are other entities that address alleged violations of election laws and violations of the Code of Judicial Conduct, the Committee to date has not ventured into that territory and does not intend to do so. Thus, our mission is limited.

The Committee respectfully requests you to subscribe to the Agreement enclosed with this letter by signing it and returning it to Maggie Ostrowski, OSBA Chief Communications Officer, **no later than September 4, 2020**, either via email at mostrowski@ohiobar.org or via mail to 1700 Lake Shore Drive, Columbus, Ohio 43204. Should you have any questions, please feel free to contact Ms. Ostrowski at (614) 487-4425, or me at (330) 437-0026.

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As we have done in previous years, we plan to issue a press release announcing the submission of this Agreement to all 2020 candidates for the Supreme Court of Ohio, indicating therein who has signed the "Clean Campaign Pledge."

We look forward to your participation on this very important matter.

Sincerely,

A handwritten signature in black ink, reading "Paul Hervey". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Paul B. Hervey, Esq.
Chair, OSBA Judicial Election Campaign
Advertising Monitoring Committee

Enclosures

cc: David Pepper, Chair, Ohio Democratic Party

**OHIO STATE BAR ASSOCIATION
JUDICIAL ELECTION CAMPAIGN
ADVERTISING MONITORING COMMITTEE**

STATEMENT OF PURPOSE

Canon 4 of the Ohio Code of Judicial Conduct states broadly that “a judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.” More specifically, Canon 4 sets out certain “campaign conduct” and “campaign guidelines” that proscribe any false statements and certain misrepresentations during the course of judicial campaigns. Such conduct undermines public trust and confidence in the judiciary and is contrary to the ultimate goal of a fair, impartial, open-minded and independent judiciary.

The Judicial Election Campaign Advertising Monitoring Committee Regulations and Procedures and the Agreement Regarding Judicial Election Campaign Advertising, attached hereto, are not designed nor intended to infringe upon the expressional and associational freedom of judicial candidates under the First Amendment. These documents do not have a purpose extending beyond the balance struck in Canon 4 between protected and unprotected speech.

The foremost concern, however, reflects the widely shared view that judicial elections are in some respects different from elections of persons seeking executive or legislative office. Elected judges are not to be viewed as “representatives” in the same sense that nonjudicial officials commonly are so regarded.

Although our voters elect judges, the Ohio Constitution includes several provisions that treat judges as uniquely different from other elected officials: (1) appellate judges' terms are uniquely long (six years, Art. IV, §6); (2) only judges are subject to mandatory age retirement (art. IV, §6(c)); (3) only judges are protected against reduction in pay during a term in office (Art. IV, §6(b)); (4) only judges are subject to both impeachment and special disciplinary process (Art. IV, §17); and (5) only judges cannot run for a nonjudicial office without first resigning (Art IV, §6(b)). Also, judges "must have training and experience" (ORC Ann. §§1907.13, 2301.01, 2501.02 and 2503.01); it is hard to conceive of barring voters from choosing, say, a legislator who lacks "training and experience." Last, our Code of Judicial Conduct bars judges from personally soliciting campaign funds (Rule 4.4(A)), and limits the period in which fund-raising is allowed (Rule 4.4(F)).

Such provisions in our constitution, similar provisions in the constitutions of other states that elect judges, and numerous other statutes and rules in many states, all reflect that a judge's job differs in fundamental ways from the work of other elected officials. Such fundamental differences are the reason that so many states have sought to regulate judicial elections in ways that would be inconceivable for any other elections.

The judicial oath requires judges to administer justice to all in a nonpartisan manner; to be arbiters of conflict, not spokespersons for the varying interests of certain political or geographical constituencies; and to retain an open mind on issues or matters that may come before them. Thus, judicial candidates should aspire to and achieve an appropriate standard of campaign conduct.

**OHIO STATE BAR ASSOCIATION
JUDICIAL ELECTION CAMPAIGN
ADVERTISING MONITORING COMMITTEE**

REGULATIONS AND PROCEDURES

1. There is hereby established the Ohio State Bar Association Judicial Election Campaign Advertising Monitoring Committee, (the “Committee”) consisting of eleven (11) persons. Three (3) of the Committee members shall be nonlawyers. No more than five (5) members of the Committee shall be of the same political party. The members shall serve a term of three (3) years to be appointed by the President of the Ohio State Bar Association with the advice and consent of the Board of Governors and shall be eligible for reappointment. The Committee shall monitor advertising in Supreme Court of Ohio elections.

2. The Chair shall be appointed by the President of the Ohio State Bar Association. The Committee shall have the authority to elect a Vice Chair, Secretary, and other Committee officers as it may deem necessary. The officers will have the duties and powers normally incident to such offices plus such others as decided by the Committee.

3. No member of the committee shall, during the period of his or her membership on the committee, make any contribution to, or actively participate in any way in promoting the election campaign of any candidate for the Supreme Court of Ohio or promote the effort of any person to be appointed to fill a judicial vacancy to that court. A member of the committee may attend events or activities sponsored by political parties, such as judicial salutes where candidates for all levels of judicial office are invited, or events where all candidates of the political party are invited. A member of the committee shall not attend an event sponsored solely on behalf of candidates for the Supreme Court of Ohio.

4. Only the Chair or his/her designee may communicate with the media or issue statements on behalf of the Committee. Deliberations, discussions and records of the Committee shall be confidential, and the individual remarks of Committee members shall not be divulged to anyone other than to other Committee members.

5. The presence of a quorum of six (6) members is required in order for the Committee to act officially. No public announcement shall be authorized except by a vote of at least six (6) members of the Committee present or by conference call at the meeting of the Committee, or by electronic means as determined by the Chair of the Committee. Proxies shall not be allowed for any purpose.

6. The Purpose and Objectives, Regulations and Procedures, and other written materials related to the Committee will be presented and explained to the chair/president, or his or her designee, of each major political party. They will also be explained to each candidate for election to the Supreme Court of Ohio and he/she will be asked to execute an agreement to the Guidelines set forth herein expressing his/her willingness to follow them in the campaign.

7. Meetings of the Committee shall be held as needed during the election cycle for Supreme Court of Ohio elections, and may be held in person or via electronic means. For purposes of these regulations,

election cycle is the period of time defined in Canon 4 for purposes of soliciting and receiving contributions for a judicial campaign.

8. Meetings may be called by the Chair or any three (3) members of the Committee.

9. Notice of Committee meetings may be made by any form of written, oral or electronic communication; however, failure to notify a Committee member in any manner shall not invalidate an action of the Committee.

10. Meetings of the Committee shall be at the offices of the Ohio State Bar Association or at such other place, including by conference call or other electronic means, as determined by the Chair of the Committee.

11. The Committee will consider matters pertaining to judicial advertising of which it becomes aware, by written communication via regular mail or electronic mail, from any source based upon the following standard: campaign advertising that impugns the integrity of the judicial system, the integrity of a candidate for the Supreme Court, or erodes public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner. Judicial advertising shall be considered any statements and campaign materials pertaining to a candidate issued by a candidate for the Supreme Court of Ohio, independent campaign committee, or other organization, including but not limited to newspaper, periodical, radio or television advertising, website, social media or other electronic communication, news releases, brochures, fliers, sample ballots, yard signs, or other printed material, and recordings or verifiable transcripts of such recordings of public speeches, intended to influence the outcome of a judicial election for the Supreme Court of Ohio.

12. If the Committee decides that reasonable cause exists to investigate a complaint concerning an advertisement sponsored by a candidate's committee, it will notify the candidate's committee that is the subject of the complaint and the committee of the candidate's opponent. If the complaint is with regard to an advertisement sponsored by an independent campaign committee or other organization, the Committee will notify the candidate or candidates who are the subject of such advertisement as well as the independent committee or organization itself. Action on the complaint will be within the sole discretion of the Committee. The Committee may ask the candidate to withdraw any particular ad or statement or the committee may take such other action as it deems appropriate including but not limited to news conferences, news releases, OpEd columns, letters to the editor, videos, social media comments, and other public statements.

AGREEMENT REGARDING JUDICIAL ELECTION CAMPAIGN ADVERTISING

I agree to conduct my campaign advertising in accordance with the provisions of this Agreement:

WHEREAS, Canon 4 of the Code of Judicial Conduct states broadly that, “a judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary,” and

WHEREAS, more specifically, Canon 4 sets out certain “campaign conduct” and certain “campaign guidelines” which proscribe any false statements and certain misrepresentations during the course of judicial campaigns; and

WHEREAS, the need for a mechanism to dissuade persons from inappropriate advertising is accentuated by the growing trend toward “misleading advertising” in judicial campaigns; and

WHEREAS, the Ohio State Bar Association Judicial Election Advertising Monitoring Committee (the “Committee”) is charged with reviewing judicial advertising, as defined in the Regulations and Procedures for the Committee, in all elections for seats on the Supreme Court of Ohio; and

WHEREAS, the Agreement promulgated by the Committee is not designed nor intended to infringe upon the freedom of expression and/or association of judicial candidates under the First Amendment, United States Constitution; and

WHEREAS, there is no purpose or intention to go beyond the balance struck in Canon 4 between protected and unprotected speech; and

WHEREAS, the foremost concern reflects a widely shared view that judicial elections are in important respects different from elections where a person seeks an executive or legislative office; and

WHEREAS, elected judges cannot be viewed as “representatives” in the same sense as nonjudicial officials are commonly regarded; and

WHEREAS, the judicial oath requires judges to administer justice to all in a nonpartisan manner; to retain an open mind on issues or matters that may come before them; and to be arbiters of conflicts -- not spokespersons for the varying interests of certain political, geographical, or other constituencies; and

WHEREAS, candidates for judicial office should agree not to use and to disavow any advertisements that impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court, or erode public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.

WHEREAS, judicial candidates should aspire to an appropriate standard of conduct.

NOW, THEREFORE:

1. I agree to familiarize myself with, and to conduct my campaign in accordance with, all applicable state laws, including Canon 4 of the Ohio Code of Judicial Conduct.

2. I agree to be personally responsible for the content of all statements and campaign materials relating to my judicial campaign issued by me or my campaign committee, including newspaper, radio or television advertising, website, social media or other electronic communication, news releases, brochures, fliers, sample ballots, yard signs or other printed material.
3. I agree that Canon 4 of the Ohio Code of Judicial Conduct contains minimal rules relating to campaign conduct which prohibit the making or distribution of false statements.
4. I acknowledge that Canon 2 of the Ohio Code of Judicial Conduct precludes an incumbent judge from commenting on pending cases.
5. I agree, based upon my personal examination of judicial advertisements, to publicly disavow advertisements that impugn the integrity of the judicial system, the integrity of a candidate for the Supreme Court, or erode public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.
6. I agree to submit copies of this fully executed agreement to my state political party representatives and to my campaign committee.

My primary contact person is _____,
address: _____,
phone: _____, fax: _____,
e-mail: _____.

My back-up contact is _____,
address: _____,
phone: _____, fax: _____,
e-mail: _____.

I may be reached at
address: _____,
phone: _____, fax: _____,
e-mail: _____.

I have read the foregoing Agreement and I agree to abide by the terms set forth therein. I have also requested those persons managing my campaign to familiarize themselves with this Agreement and to assist in its implementation.

Dated: _____

Candidate's Signature

Please print name: _____

Revised 06/18

**Judicial Election Advertising Monitoring Committee
2020 Roster**

Paul Hervey, Esq. - Chair
Canton, OH

Lee Belardo, Esq.
Avon, OH

Nancy P. Hollister
Marietta, OH

Mary Jo Hudson, Esq.
Columbus, OH

Maria E. Keckan
Cleveland, OH

Eugenio Mollo, Jr. Esq.
Toledo, OH

Dennis Murray, Jr. Esq.
Sandusky, OH

Kyle Silvers, Esq.
Toledo, OH

Robert Spada
Cleveland, OH

Maxine S. Thomas, Esq.
Dayton, OH

Steve Tillson, Esq.
Galion, OH