

FORMAL OPINION 99-1

This opinion has not been updated in light of the new Pa. Code of Judicial Conduct effective July 1, 2014

Judicial Ethics Committee of the
Pennsylvania Conference of State Trial Judges

Campaign Advertising

Canon 7B (1)(a)
Canon 7B (1)(c)
campaign conduct and political activity

The Code of Judicial Conduct provides that a candidate for judicial office, including an incumbent judge, should maintain the dignity appropriate to judicial office (Canon 7). Campaign advertising must, therefore, be dignified and appropriate to judicial office. The electorate is best served by advertising which accurately showcases the candidate's credentials. The ads should not pander to the electorate. The candidate must take particular care that the ad does not in any way suggest that he or she will favor any particular group of litigants or make decisions on any basis other than the facts and the law.

A campaign ad may compare a candidate's credentials to those of other candidates for the same office. However, Canon 7 provides that a candidate should not misrepresent his qualifications or any other fact. A candidate must be scrupulously careful that what the ads say about the candidate's opponents is accurate. Once again, the ads must be dignified. Vituperative personal attacks against one's opponents are per se undignified.

The Ethics Committee will not approve or disapprove any particular campaign ad. Moreover, if a candidate seeks and obtains advice from the Committee regarding campaign advertising, the candidate may not claim that the Committee's advice constitutes an endorsement or approval of a particular campaign ad.

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- Canon 7 does not specifically proscribe "negative advertising." While in some limited circumstances negative advertising may be appropriate, given the nature of political ads, the Committee strongly discourages negative ads. Given the time limits of television and radio ads (10

and 30 second spots), it is very difficult to say something negative about one's opponent which is not misleading.¹

- An ad should not paint an attorney with the reputation of his or her clients.
- An ad which either directly or by innuendo refers to the ethnic background of one's opponent is improper.
- To suggest that one's opponent favors one gender over another simply because he or she is of the opposite gender of the candidate being promoted by an ad would be a totally baseless falsification. If, on the other hand, a candidate acted in a manner which truly indicated gender bias, that fact would be fair comment.
- An ad can be accurate, but it can also be misleading. An ad which is factually accurate, but is intended to mislead the electorate by giving a false impression about one's opponent violates Canon 7. Once again, the electorate is best served by ads which showcase a candidate's credentials and seek the support of the electorate on the basis of those credentials.

In summary, Canon 7 provides that:

A candidate . . . should maintain the dignity appropriate to judicial office . . . [and] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact . . .

The principal parameters of campaign advertising are accuracy and dignity.

At the end of the Code of Judicial Conduct is a section entitled "Reliance on Advisory Opinions" which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The "rule of reliance" applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge's particular set of facts and to which the "rule of reliance" will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

FOOTNOTE

1. One could, for instance, say of a sitting judge, "Judge X freed three accused murderers." Though such a statement might be accurate, it might also be misrepresentation by innuendo. If, for instance, Judge X freed the accused murderers because either the judge or the jury acquitted the accused, then the effect of the ad would be to vilify someone for doing what was totally proper. The clear implication of the ad is that the judge treated murderers leniently, which is misleading.