

# 2020 EDITION

## JUDICIAL CAMPAIGN ETHICS HANDBOOK

West Virginia Judicial Investigation Commission



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The Honorable Christopher C. Wilkes, Senior Status Judge and Vice Chair  
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## NOTE:

This Handbook covers a judicial candidate's duties and obligations pursuant to Canon 4 of the Code of Judicial Conduct. For more information on a judge's or judicial candidate's duties and obligations, you may contact the Judicial Investigation Commission at (304) 558-0169 or by email at [teresa.tarr@courtswv.gov](mailto:teresa.tarr@courtswv.gov) or [brian.lanham@courtswv.gov](mailto:brian.lanham@courtswv.gov). You may also view the West Virginia Code of Judicial Conduct in its entirety and additional information at the Judicial Investigation Commission Website at <http://www.courtswv.gov/legal-community/judicial-investigation.html>.

For more information on becoming a candidate and managing campaign finances, you should contact the Election Division of the West Virginia Secretary of State's Office at (304) 558-6000 or 1-866-767-8683 or by email at [Elections@wvsos.gov](mailto:Elections@wvsos.gov). You may also obtain a copy of the West Virginia Secretary of State's *2020 Guide for Running for Office in West Virginia* at <https://sos.wv.gov/FormSearch/Elections/Informational/Running%20for%20Office.pdf>.

## I.

### DEFINITIONS<sup>1</sup>

**“Judge”** means anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Master. Justices, Circuit Judges, Family Court Judges and Magistrates are elected by popular vote. The remaining judicial officers are appointed to their positions. For purposes of the Code of Judicial Conduct, judges do not include municipal judges, administrative law judges, hearing examiners or similar office within the executive branch of government.

**“Judicial Candidate”** means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he/she makes a public announcement of candidacy, declares or files as a candidate with the election or appointing authority, or engages in solicitation or acceptance of contributions or support. *See* Rules 4.1, 4.2 and 4.4.

**“Contribution”** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which if obtained by the recipient otherwise, would require a financial expenditure. *See* Rules 4.1 and 4.4.

**“Impartial,” “Impartiality,” and “Impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Rules 4.1 and 4.2.

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<sup>1</sup> All definitions come from the West Virginia Code of Judicial Conduct.

**“Impending Matter”** is a matter that is imminent or expected to occur in the near future. *See* Rule 4.1.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law. *See* Rule 4.2.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. *See* Rule 4.2

**“Knowingly,” “Knowledge,” “Known” and “Knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. *See* Rule 4.1.

**“Law”** encompasses court rules as well as statutes, constitutional provisions and decisional law. *See* Rules 4.1, 4.2, 4.4 and 4.5. Law includes the Code of Judicial Conduct and its Rules.

**“Member of the Candidate’s Family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

**“Pending Matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. *See* Rule 4.1.

**“Personally Solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any means of communication. *See* Rule 4.1.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of the Code of Judicial Conduct, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. *See* Rules 4.1 and 4.2.

**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections and retention elections. *See* Rules 4.2 and 4.4.

## II.

### QUALIFICATIONS

#### A. GENERALLY

Since 2016, all judicial races are **nonpartisan**, and all judges are elected following a single race generally held in May of election years. *See* W. Va. Code §§ 3-5-6A-D.

#### B. JUDICIAL STATE OFFICES

Candidates for judicial state office must file a Certificate of Announcement with the West Virginia Secretary of State’s Office to be on the ballot in West Virginia. Judicial state offices include:

Justice of the Supreme Court of Appeals of West Virginia:

Total No.: 5  
Term: 12 years  
Salary: \$136,000.00  
Filing Fee: \$1,360.00  
Minimum Age: 30  
Residence: WV Citizen for five (5) years prior to election  
Qualifications: Member in good standing of the West Virginia State Bar; Admitted to practice law at least ten (10) years prior to election (W. Va. Const., art. IV, § 4 and art. VIII, § 7).

Circuit Court Judge:

Total No: 75 in 31 Circuit Court Circuits  
Term: 8 years  
Salary: \$126,000.00  
Filing fee: \$1,260.00  
Minimum Age: 30  
Residence: WV Citizen for five (5) years prior to election. Each circuit judge during his/her continuance in office, shall reside in the circuit for which he/she was elected (W. Va. Code § 51-2-8). Judges serving a judicial circuit comprised of four or more counties with two or more judges shall not be residents of the same county (W. Va. Code § 51-2-1(f)).  
Qualifications: Member in good standing of the West Virginia State Bar; Admitted to practice law at least five (5) years prior to election<sup>2</sup> (W. Va. Const., art. IV, § 4 and art. VIII, § 7).

Family Court Judge:

Total No.: 47 in 27 Family Court Circuits  
Term: 8 years  
Salary: \$94,500.00  
Filing Fee: \$945.00  
Minimum age: 30  
Residence: Must be a resident of the State for five (5) years before taking office; and a resident of the family court circuit in which he/she is a judge at the time he/she takes office and during his/her tenure  
Qualifications: Member in good standing of the West Virginia State Bar; Admitted to practice law in this state at least five (5) years prior to election (W. Va. Code § 51-2A-4).

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<sup>2</sup> “The phrase . . . imposes licensing and experimental requirements for persons elected to the office of circuit judge which may only be satisfied by unqualified admission to the practice of law in this State for the requisite period. ‘Admitted to practice’ means permitted to practice before the official body empowered to regulate the practice of law in this State.” Syl. pt. 2, *State ex rel. Haught v. Donnahoe*, 174 W. Va. 27, 321 S.E.2d 677 (1984). This requirement “advances the State’s compelling interest in securing and maintaining a judiciary well qualified in the law of the jurisdiction.” Syl. pt. 3, *Haught*.

### C. JUDICIAL COUNTY OFFICE

Candidates for judicial county office must file with their respective county clerk. The sole county judicial office is:

#### Magistrate:

Total No.:	158 (a minimum of two (2) in each county)
Term:	4 years
Salary:	\$57,500.00
Filing Fee:	\$575.00
Minimum Age:	21 by the time the individual takes office
Residency:	Must reside in the county in which elected
Qualifications:	High school education or equivalent; no more than one (1) magistrate in immediate family; no past felony conviction; and no misdemeanor conviction involving moral turpitude (W. Va. Code § 50-1-4). In <i>State ex rel. Judicial Investigation Com'n v. Putnam County Board of Ballot Commissioners</i> , 237 W. Va. 99, 785 S.E.2d 805 (2016), the State Supreme Court held that a magistrate candidate was ineligible to hold office because he was convicted of the misdemeanor offense of reporting a false emergency, which is a crime of moral turpitude.

## III

### WEST VIRGINIA CODE OF JUDICIAL CONDUCT

#### A. Generally

1. The West Virginia Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. The Code consists of four Canons, numbered Rules under each Canon, and Comments that follow and explain each Rule. Importantly, **a judge may only be disciplined for violating a Rule**. Since the Rules contain the black letter law, they are “binding and enforceable.”
2. Canon 4 of the Code of Judicial Conduct and the accompanying Rules govern political and campaign activity and **apply to all judges and judicial candidates**. See *In the Matter of Callaghan*, 238 W. Va. 495, 796 S.E.2d 604 (2017) (Supreme Court rejected claim by non-incumbent judicial candidate that Judicial Disciplinary Counsel and Judicial Hearing Board did not have jurisdiction over him for violations of the Code of Judicial Conduct since the West Virginia Rules of Judicial Disciplinary Procedure makes no express reference to “judicial candidates”). If a candidate wins election, he/she becomes subject to a majority of the remaining Canons/Rules of the Code of Judicial Conduct during the period between the election and when he/she actually takes office. Upon taking office, the judge becomes bound by all of the Canons/Rules contained in the Code.
3. A judicial candidate **can be disciplined** for violating any of the Rules contained in Canon 4 of the Code of Judicial Conduct **even if he/she loses the election**. Sanctions include: admonishment; reprimand; censure; suspension without pay for up to one year

for each violation; a fine of up to \$5,000.00 for each violation; and/or where applicable, suspension or annulment of a law license. *See* Rules 2.2 and 4.12 of the West Virginia Rules of Judicial Disciplinary Procedure.<sup>3</sup>

**B. Canon 4**

**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,<sup>\*4</sup> or by Rules 4.2, 4.3, and 4.4, 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;
  3. publicly endorse or oppose a candidate for any public office;
  4. solicit funds for a political organization or a candidate for public office;
  5. make a contribution to a candidate for public office;
  6. personally solicit\* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
  7. use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
  8. require court staff to participate in a campaign for judicial office, or use court resources in a campaign for judicial office;
  9. knowingly,\* or with reckless disregard for the truth, make any false or misleading statement;
  10. 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
  11. 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.

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<sup>3</sup> The West Virginia Rules of Judicial Disciplinary Procedure set forth the complaint, investigation and hearing process for violations of the Code of Judicial Conduct and can be found online at <http://www.courtsv.gov/legal-community/court-rules/judicial-disciplinary/judicial-contents.html>.

<sup>4</sup> The asterisk [\*] symbol means the term is defined in the Definition section set forth above.

- (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).

## COMMENT

### General Conditions

- [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. Although judges and judicial candidates may register to vote as members of a political party, 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 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. 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 candidate publicly endorsing 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 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, and is not prohibited by paragraphs (A)(2) or (A)(3).

### 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)(9) 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)(9), (A)(10), or (A)(11), 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)(10), 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)(10) 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)(11) 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)(11) 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)(11), 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 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.

#### **Rule 4.2 – Political and Campaign Activities of Judicial Candidates in Public Elections**

- (A) A judge or candidate\* subject to 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 fund-raising 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;
  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; and
  5. take corrective action if he or she learns of any misrepresentations made in his or her campaign statements or materials.
- (B) A judge or candidate subject to public election may, except as prohibited by law:
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, websites, or other campaign literature;
  3. attend or purchase tickets for dinners or other events sponsored by a political organization\* or a candidate for public office;
  4. seek, accept, or use endorsements from any person or organization;
  5. communicate—in person or in advertising—membership in, affiliation with, or endorsement by a political party; and
  6. contribute to a political organization.

#### **COMMENT**

- [1] Paragraph (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), (9), and (11).
- [3] A judge or candidate may be a member of a political party, and that affiliation is and has been a matter of public record in West Virginia. A judge or candidate may be endorsed by or otherwise publicly identified or associated with a political party by a person or entity not affiliated with the judicial campaign. Therefore, a judge or candidate may maintain his or her party affiliation through a judicial election, and he or she may include political party affiliation or similar designation in campaign communications and literature.

### **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)(10).

### **Rule 4.4 – Campaign Committees**

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.\*

#### **COMMENT**

- [1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(5). This Rule recognizes that in many jurisdictions, 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.

- [3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law.

#### **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.

#### **COMMENT**

- [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. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

## IV

### CASE LAW AND ADVISORY OPINIONS<sup>5</sup>

#### A. Political Organization Leader/Officer [Rule 4.1(A)(1)]:

In *In the Matter of Slater*, JIC Complaint No. 165-2011 (WVJIC Dec. 27, 2011), an unsuccessful candidate for magistrate was **admonished**, in part, by the Judicial Investigation Commission for accepting a position as Parliamentarian of the County Democratic Women's Club immediately after publicly announcing her run for judicial office.

In *In the Matter of Eplin*, JIC Complaint No. 179-1996 (WVJIC Nov. 21, 1996), a magistrate candidate was **admonished** by the Judicial Investigation Commission for appearing at a Democratic Executive Committee meeting as a proxy for a Committee member and voting his/her proxy.

In **JIC Advisory Opinion 2017-07**, the Judicial Investigation Commission stated that a magistrate candidate must resign from a branch of the WV Federation of Democratic Women. She must also resign her position as treasurer and her membership in CASA since she would necessarily be involved in fundraising activities. The Commission further advised that the magistrate candidate should also resign as membership chairman of the local county Sportsmen's Club since the position involves the solicitation of funds. However, the candidate could continue her membership in the Greater Federation of Women's Clubs and the Volunteer Income Tax Assistance program.

In a **February 17, 2004 advisory opinion**, the Judicial Investigation Commission stated that a candidate for magistrate would have to resign his/her position as an elected member of the Berkeley County Republican Executive Committee.

In a **June 30, 1992 advisory opinion**, the Judicial Investigation Commission told a circuit judge that it would not be appropriate for a judge or judicial candidate to participate as a delegate to the Democratic or Republican National Convention.

#### B. Public Endorsement or Opposition to Candidates [Rule 4.1(A)(2)]:

In *In the Matter of Hill*, 190 W. Va. 165, 437 S.E.2d 738 (1993), the State Supreme Court **dismissed** ethics charges against a circuit judge who publicly supported another candidate for judicial office due to a technicality in a former version of the Code of Judicial Ethics. Importantly, the Court noted:

[T]he new Code of Judicial Conduct now specifically proscribes the conduct complained of in this case . . . Thus, the technical deficiency in the old Judicial Code of Ethics which was exposed in this matter has obviously been corrected, leaving no doubt that the endorsement of candidates by judges, candidates or otherwise is not permitted.”

Id. at 168-169, 437 S.E.2d 741-742.

In *In the Matter of Campbell*, JIC Complaint No. 72-2016 (WVJIC July 7, 2016), a senior status magistrate was **admonished** by the Judicial Investigation Commission for publicly endorsing a

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<sup>5</sup> The Advisory Opinions from January 1, 2012 forward are listed by “JIC Advisory Opinion No.” The Advisory Opinions listed before January 1, 2012, are done so by date. At times, the Commission released several opinions on the same date.

candidate for Circuit Judge. The magistrate authorized the use of a favorable quote attributed to her to be used in the candidate's campaign brochure. Approximately one month after the brochures were printed, the candidate asked the senior status magistrate to use the same quote and attribution in newspaper advertisements. The senior status magistrate said that she would prefer not to have her quote in the paper because an ethics complaint had been filed against her. When the candidate asked her toward the end of the campaign if she wanted him to cut off the quote at the top of the brochure, the senior status magistrate replied that she did not but that the Judicial Investigation Commission might make him cut it off. The Commission noted that the senior status magistrate "improperly" endorsed the candidate in violation of the Code and that "[k]nowing that her conduct was inappropriate, [the magistrate] failed to take any steps to correct the situation. . . ."

In *In the Matter of Boggs, JIC Complaint No. 213-2004 (WVJIC Dec. 14, 2004)* and *In the Matter of Propst, JIC Complaint No. 214-2004 (WVJIC Dec. 14, 2004)*, two magistrates who were running for reelection were **admonished** by the Judicial Investigation Commission for publicly endorsing each other as candidates for office. They had signs publicly displayed throughout the county that said, "Reelect Boggs and Propst Magistrates." The disclaimer at the bottom of the sign said, "Paid for by the candidate." They both ultimately admitted that they jointly purchased and placed the campaign signs.

In **JIC Advisory Opinion 2016-12**, a judicial candidate was advised by the Judicial Investigation Commission that he/she cannot campaign with the wife of a county commission candidate because the public may interpret the situation as a judicial candidate publicly endorsing the county commission candidate.

In **JIC Advisory Opinion 2016-06**, the Judicial Investigation Commission advised a magistrate candidate that he/she cannot campaign door to door with a circuit clerk candidate since it would violate the prohibition against a judicial candidate endorsing another candidate for public office.

In **JIC Advisory Opinion 2016-07**, the Judicial Investigation Commission stated that a member of a judge's staff is not permitted to have a bumper sticker on his/her car that says "Hillary [Clinton] for prison" since it would constitute public opposition of a candidate for office.

In a **May 17, 2004 advisory opinion**, the Judicial Investigation Commission held that a judge who is also a musician may not perform as part of a band at a fundraiser for a candidate for prosecuting attorney since "it could be construed as a public endorsement and . . . [the] judge would also be engaging in fund raising."

In a **March 29, 2004 advisory opinion**, the Judicial Investigation Commission stated that a magistrate candidate cannot properly share equipment expense with a candidate for nonjudicial office. The Commission state that the "action could give an appearance that you were supporting the candidate and/or at least indirectly contributing to that candidate's campaign. Further reporting requirements about your campaign expenses could reveal the shared expense relationship and constitute a public disclosure of at least support through the shared expenses."

In a **May 5, 1992 advisory opinion**, the Judicial Investigation Commission advised a circuit judge candidate that he/she could not concurrently serve as co-chair of a state presidential campaign.

In a **September 30, 1991 advisory opinion**, the Judicial Investigation Commission informed a circuit judge candidate that he/she could not publicly support or oppose another candidate for judicial office even if he/she believes the election of the former would “promote the proper administration of justice” while the election of the latter would be “detrimental to the proper administration of justice.”

**C. Contributions to Candidates for Office [Rule 4.1(A)(5)]:**

In *In the Matter of Martin*, JIC Complaint No. 227-1996 (WVJIC Feb. 10, 1997), a magistrate candidate was admonished by the Judicial Investigation Commission for endorsing another judicial candidate for office by making a monetary contribution to that individual’s campaign.

In an **April 14, 2000 advisory opinion**, the Judicial Investigation Commission stated that a campaign committee of a former judge could not contribute all or a portion of the excess balance raised in the judicial campaign to a state candidate for nonjudicial office.

In an **August 28, 1995 advisory opinion**, the Judicial Investigation Commission held that a judge/judicial candidate could not contribute money to a fellow judge’s campaign. The Commission also stated that a judge/judicial candidate cannot contribute money to a political party executive committee and restrict its use to a fellow judge’s campaign. However, the Commission stated that the judge’s spouse or other member of the family could contribute to a fellow judge’s campaign as long as the contribution was made from an individual account belonging to the spouse/family member and not from any joint account.

In a **September 5, 1990 advisory opinion**, the Judicial Investigation Commission found that it was improper for a judicial officer/candidate to contribute to an individual politician’s campaign committee.

**D. Solicitation and/or Personal Acceptance of Campaign Funds [Rule 4.1(A)(6)]:**

In *In the Matter of Tennant*, 205 W. Va. 92, 516 S.E.2d 496 (1999), a magistrate candidate was **admonished** for personally soliciting campaign contributions. The magistrate candidate held a fundraiser. After it was over, he went to a local bar to continue campaigning and ran into two lawyers. The magistrate candidate asked the lawyers why they were not at his fundraiser event though they had been invited to attend the function. Both men indicated that it was because they had been in trial. At hearing, both lawyers testified that the magistrate candidate also asked them why they had not contributed to his campaign. According to one of the lawyers, the magistrate candidate said the going rate for attorney contributions was \$500.00 and that he would receive adverse rulings if the candidate were elected and the lawyer failed to contribute. The same attorney also testified that the magistrate candidate made similar comments to him during another encounter about two months later. The magistrate candidate denied soliciting campaign funds and testified that he was only making “off the cuff” joking comments. In disciplining the magistrate candidate, the State Supreme Court stated:

Assuming, arguendo, that the [magistrate candidate’s] request for a campaign contribution was a joke, the [magistrate candidate’s] attempt either to lessen the significance of the violation or to negate the violation entirely by contending that the solicitation was a joke is disingenuous. For this Court to accept such an argument would essentially undermine the clear, unambiguous language of the [Rule]. Nowhere in the plain language of the [Rule] is there even an inference that a solicitation made in

jest is permissible. . . . Further just because the [magistrate candidate] may have made the comment in jest, does not necessarily mean that the comment was received by the attorneys who heard it in jest. Quite to the contrary, from the testimony of [one of the lawyers] his interpretation of the comment was that the [magistrate candidate] made a serious solicitation of a campaign contribution from him. “[B]ecause lawyers are often the primary funding source for a judicial candidate, . . . [the Rule] attempts to reduce the potential of pressure placed upon lawyers to contribute to a judicial campaign.” . . . Consequently, even if the solicitation was intended jokingly, that does not negate the fact that the receiver of the solicitation may feel pressure to contribute to the campaign.

*Id.* at 96, 516 S.E.2d at 500 (citations omitted).

In *In the Matter of Karr & McCarty, 182 W. Va. 221, 387 S.E. 2d 126 (1989)* (superseded by Rule), a first-time unsuccessful candidate for Circuit Judge and an incumbent sitting judge were **admonished** by the State Supreme Court for personally accepting campaign contributions. During the 1988 primary election, the unsuccessful judicial candidate accepted campaign contributions from his mother and two friends without benefit of having a campaign committee. Meanwhile, the sitting judge accepted contributions from his mother and some acquaintances without first having set up a campaign committee. By the general election, both men had established the requisite committee. Importantly, the candidates never personally solicited campaign contributions either during the primary or general election.

In *In the Matter of Sheehan, JIC Complaint No. 58-2008* (WVJIC June 10, 2008), the Judicial Investigation Commission admonished a magistrate candidate for personally soliciting campaign contributions.

In a **January 12, 2000** advisory opinion, the Judicial Investigation Commission stated that a judicial candidate’s campaign committee could not hold a fundraiser in the judicial candidate’s home. The Commission stated: “While you state that you would not personally solicit or personally accept campaign contributions at this fundraiser, the fact that funds were being raised in your home, would at a minimum, create an appearance of your personal involvement.”

In a **September 21, 1999 advisory opinion**, a judge planned to run for reelection in 2000. The Judge also taught part-time at a college. Some of his students formed an informal group called the “Student Volunteers for the Committee to Re-elect Judge \_\_\_\_.” The group wanted to hold a car wash fundraiser. The judge wanted to know if he/she could be present at the car wash. The Judicial Investigation Commission said the judge could not attend the car wash since it might be viewed as a solicitation by the candidate.

In a **March 23, 1998 advisory opinion**, the Judicial Investigation Commission stated that an advertisement in which a judicial candidate speaks in the first person describing his/her experiences and career history may not include at the bottom of the advertisement the statement “Contributions May be Made to Treasurer at Above Address.” The Commission found that the statement gives the appearance that the judicial candidate is personally soliciting campaign contributions.

**E. Campaign Contributions for Private Benefit of Judge or Others [Rule 4.1(A)(7)]**

In a **December 2, 2002 advisory opinion**, the Judicial Investigation Commission informed a recently elected family court judge that his/her campaign committee could hold a fundraiser to pay off campaign debts. It didn't matter that the idea for the fundraiser was initiated by lawyers who were not part of the committee or that the debts to be paid were to the judge and his/her parents for loans made to the campaign.

**F. Use of Court Staff or Resources [Rule 4.1(A)(8)]:**

In *In the Matter of Albright*, JIC Complaint No. 70-1996 (WVJIC Sept. 23, 1996), a Supreme Court Justice was admonished by the Judicial Investigation Commission for sending out a campaign letter on facsimile letterhead used by the Justice in his official judicial capacity. The letter contained a disclaimer at the bottom of the page that it was paid for by the Albright for Supreme Court Committee. The Commission found that the conduct violated former Code of Judicial Canon 2B which stated that “[a] judge shall not allow family, social, political or other relationships to influence the judge’s conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”

In *In the Matter of Hull*, JIC Complaint No. 171-1996 (WVJIC Nov. 21, 1996), a magistrate was admonished by the Judicial Investigation Commission for using an office copy machine to make copies for the Democratic Executive Committee announcing a picnic. The announcement was sent out by an individual who was a member of the Democratic Executive Committee to all state and county Democratic candidates. The Commission found that the conduct violated three Canons of the former Code of Judicial Conduct including Canon 2B set forth above.

In **JIC Advisory Opinion 2016-05**, the Judicial Investigation Commission held that a judge running for re-election could use his/her staff in campaign ads as long as their participation was voluntary and occurs after normal work hours. However, the judge and his/her staff cannot state that they are running as a “team” since it must be clear that only the candidate judge is running for office.

In a **March 10, 2000 advisory opinion**, the Judicial Investigation Commission stated that a judicial candidate could not use the State Seal on campaign literature since all official letterhead for judicial officers bears the State Seal and the public might construe that he/she is using the prestige of office.

In a **February 28, 1992 advisory opinion**, the Judicial Investigation Commission said that a circuit judge candidate could not use the State Seal and/or the courthouse address on any campaign literature since it would create the appearance of official stationary. The Commission also stated that it would be improper for a judge/judicial candidate to display a campaign bumper sticker on his/her private automobile if the vehicle were on court premises.

**G. False or Misleading Campaign Statements by Candidate or 3<sup>rd</sup> Parties [Rule 4.1(A)(9)]:**

In *In the Matter of Callaghan*, 238 W. Va. 495, 796 S.E.2d 604 (2017), a newly elected circuit judge was **suspended for two years without pay and reprimanded as an attorney** for making false statements about the incumbent in a campaign flyer approved by the successful candidate. The flyer, which was mailed to voters five days before the 2016 judicial election, had a photo-shopped photograph of President Obama and the incumbent along with the caption “Barack Obama & Gary Johnson Party at the White House . . . .” President Obama is depicted holding what appears to be an

alcoholic beverage and party streamers form the background of the photographs. The opposite side of the flyer concludes “While Nicholas County loses hundreds of jobs.” The opposite side also contained a mockup of a layoff notice which stated:

While Nicholas County lost hundreds of jobs to Barack Obama’s coal policies, Judge Gary Johnson *accepted an invitation from Obama* to come to the White House to support Obama’s legislative agenda. That same month, news outlets reported a 76% drop in coal mining employment. Can we trust Judge Johnson to defend Nicholas County against job-killer Barack Obama?

*Id.* at 504, 796 S.E.2d 613.

It was undisputed that Judge Johnson was not invited by President Obama to attend a conference in Washington, D.C., did not meet or has ever met President Obama, and did not attend a “party” or any social function, much less one involving alcohol while at the conference. It also appears that while conference meetings were held at buildings within the White House compound, Judge Johnson did not actually go to the White House. Instead, the newly elected judge argued that the campaign flyer was a “parody” of a well-publicized event or “mere rhetorical hyperbole” and therefore protected by the First Amendment right to free speech. The State Supreme Court disagreed. In disciplining the newly elected judge, the Court stated that the “campaign flyer was not objectively or substantially true, and thus the rule of the Code of [Judicial] Conduct and the rule of professional conduct regarding false statements did not violate the First Amendment as applied to [the newly elected judge]” Syl. 5, *Callaghan*.

In *In the Matter of Codispoti*, 190 W. Va. 369, 438 S.E. 2d 549 (1993), a magistrate was **publicly censured** for his involvement in a circuit judge candidate’s misleading campaign advertisement involving her opponent. The magistrate was married to the candidate. The magistrate facilitated the publishing of newspaper advertisements “that misrepresented who paid for them.” The advertisements said that the murder victim’s granddaughter had paid for the advertisement. *Id.* However, the granddaughter denied paying for the ad, and the evidence adduced at hearing indicated that it was likely the magistrate’s sister and brother-in-law who had paid for them. *Id.* The Court noted:

In the present case, [the] Magistrate was directly, actively and heavily involved in his wife’s campaign for circuit judge. The record presents clear and convincing evidence that the magistrate sought information about his wife’s opponent, directly contacted a murder victim’s granddaughter seeking disparaging information [about his wife’s opponent], and facilitated the publishing of advertisements that misrepresented who paid for them, whose opinion was presented and who signed them. Although the record does not show who was directly responsible for publishing advertisements, [the] Magistrate’s involvement in the advertisements is plain.

*Id.* at 373, 438 S.E.2d at 553.

In **JIC Advisory Opinion 2018-22**, the Judicial Investigation Commission stated that a judicial candidate may seek, accept and use campaign endorsements from a political action committee (“PAC”) or third parties. The Commission also stated that the Code of Judicial Conduct does not preclude PACs or third-parties from running campaign ads for or against a judicial candidate. The Commission found that the Code does not limit the content of advertisements PAC/third-party ads. However, the duty is

on the judge or judicial candidate to disavow any ads or comments made by a PAC or a third-party that are false or misleading, fail to accurately reflect the duties and role of a judge, or indicate that a judge is not neutral and detached but would be biased in favor of or against an individual, group or legal issue. The judge should request the PAC or third-party to immediately cease and desist from making such statements. The Commission found that “to refrain from taking such action would give the public the impression that the judge or judicial candidate endorses the improper statements in violation of the Code of Judicial Conduct.

In **JIC Advisory Opinion 2019-15**, the Judicial Investigation Commission clarified JIC Advisory Opinion 2018-22 with respect to false or misleading statements. The Commission stated that the obligation to disavow is not triggered until the following criteria are met: (a) the statement must involve a fact and not an opinion; (b) the fact must be substantive and significant; (c) the misstatement must actually be false or a material misrepresentation; and the judicial candidate has knowledge of the third-party or PAC’s factual statement and its falsity. Once the obligation to disavow is initiated, the Commission finds that the situation is resolved through the timely issuance of a press release to all area news media and a prompt letter to the third-party or PAC notifying it to immediately stop running the false statement in question.

In **JIC Advisory Opinion 2019-18**, the Judicial Investigation Commission told a magistrate candidate that he/she would violate Rule 4.1(A)(9) of the Code of Judicial Conduct if he/she stated in his/her campaign advertisement that he was a former “assistant prosecutor” in this State when he/she had never passed the West Virginia Bar Examination and had never been licensed to practice law. The Commission found that the statement constituted a material misrepresentation since the magistrate candidate had never been licensed to practice law and therefore could not have served as an assistant prosecutor. The Commission also found that it could leave the public with the mistaken impression that the magistrate candidate is currently licensed in West Virginia when in fact, he/she has never passed the bar.

In a **December 21, 2007 advisory opinion**, the Judicial Investigation Commission advised that an incumbent judge, when running for a different judicial office, should not use the term “Judge” in campaign materials without clearly indicating that he/she is a judge of a court different from the one that is subject of the political campaign.

#### **H. Pending/Impending Case Statements and Pledges or Promises [Rules 4.1(A)(10) and 11]:**

In *In the Matter of Tighe*, **JIC Complaint No. 225-1996 (WVJIC Feb. 10, 1997)**, the Judicial Investigation Commission **admonished** a magistrate candidate for stating in a campaign advertisement that he would require mandatory incarceration for violent crimes and drug dealers and mandatory incarceration and treatment for hard drug addicts.

In **JIC Advisory Opinion 2012-20**, the Judicial Investigation Commission said that mere participation in a candidate’s debate is not a *per se* violation of Canon 4 of the Code of Judicial Conduct. Potential violations depend on what a judicial candidate can and cannot say during a campaign. Judicial candidates should follow the rules of Canon 4 when speaking publicly at events such as debates. Candidates should have the moderator read the relevant provisions of Canon 4 to the audience so that it will know the limitations imposed on all who participate.

In a **March 24, 2008 advisory opinion**, the Judicial Investigation Commission analyzed *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) concerning campaign statements as it relates to our Code of Judicial Conduct. The Commission said that pursuant to the United States Supreme Court case candidates for judicial office cannot be prohibited from “announcing their views on disputed legal or political issues.” However, the Commission noted that the State Supreme Court has not changed any of the existing rules of the Code of Judicial Conduct. As a result, the Commission will continue to enforce the rules set out in Canon 4 which require judicial candidates to (a) maintain the dignity appropriate to the office; (b) not make pledges and promises of conduct in office concerning issues or cases; and (c) not make statements which commit, or appear to commit, the candidate with respect to cases likely to come before the court.

#### **I. Independence, Integrity and Impartiality [Rule 4.2(A)(1)]:**

In *In the Matter of Kohout, Supreme Court No. 15-1190 (W. Va. Oct. 9, 2016)*, a circuit judge candidate was charged by the Judicial Investigation Commission with personally soliciting campaign contributions on his personal Facebook page, improperly setting up his campaign bank account to personally accept campaign contributions, and engaging in conduct unbecoming a judicial candidate. With respect to the latter, Respondent publicly posted comments in which he: (1) described government receptionists as “dumbass coloured women;” (2) stated that there were “[t]oo many women taking men’s jobs trying to be men when they oughta be home taking care of the kids;” (3) characterized people of Middle Eastern descent as “Ahab,” “Arab,” “camel bangers” and “ragheads;” and (4) said that “many black men beat their women” and “so many run off” leaving “single white women and their white parents to raise the babies and that “white women who date black men are trash and ruined.” Subsequent to the filing of the formal statement of charges, the candidate withdrew his candidacy for judicial office. The parties entered into stipulations whereby the candidate admitted his misconduct. The Court then **censured** the former candidate for violations of the Code of Judicial Conduct and **permanently enjoined him from seeking judicial office by election or appointment in West Virginia.**

In *In the Matter of Grubb, 187 W. Va. 228, 417 S.E.2d 919 (1992)*, a circuit judge was **suspended without pay** pending the outcome of a federal indictment charging him with numerous felony counts arising out the 1988 election. The judge was accused of meeting with a citizen in his judicial chambers in the courthouse and proposing that the citizen give a \$10,000.00 campaign contribution to a 1988 sheriff’s candidate in return for the candidate creating a job for him after he was elected. The judge was also accused of encouraging the sheriff’s candidate, who had won and taken office, to provide false testimony to the grand jury about the alleged bribe and the subsequent hiring of the citizen. The judge was also charged with giving false statements to special agents regarding the exchange of money between the citizen and the sheriff’s candidate.

In **JIC Advisory Opinion 2012-18**, a non-incumbent candidate for judicial office may be in violation of the Code of Judicial Conduct when his/her actions result in a domestic violence order being issued. The Commission further advised that judicial officers are required to take appropriate action, which may involve the filing of a judicial ethics complaint, when they receive information indicating a substantial likelihood that another judge/judicial candidate has violated the Code.

**J. Compliance with Applicable Election Laws [Rule 4.2(A)(2)]**

In *In the Matter of Mendez*, 192 W. Va. 57, 450 S.E.2d 646 (1994), the State Supreme Court **publicly censured** a magistrate and **fined him \$1,000.00** after he pleaded guilty to the felony offense of receiving an illegal cash campaign contribution in the amount of \$5,000.00 during the 1988 election in violation of W. Va. Code 3-8-5d and resigned his judicial position.

In *In the Matter of Vandelinde*, 179 W. Va. 183, 366 S.E.2d 631 (1988), the State Supreme Court **publicly reprimanded** a magistrate for giving excessive contributions totaling \$5,500.00 to the “United Democrats of Lincoln County, West Virginia” in violation of a state code provision limiting such contributions at the time to \$1,000.00. In mitigation of the discipline, the Court found that the magistrate had made the contributions in good faith after having been incorrectly informed that there were no limitations on the donations by the county’s chief election officer.

In an **October 24, 2002 advisory opinion**, the Judicial Investigation Commission was asked by a judicial candidate what to do when he/she missed the deadline for naming his/her campaign treasurer. The candidate attempted to submit the name to the county clerk two days after the deadline but he/she rejected it. According to statute if a candidate misses the deadline, he/she must act as his/her own treasurer. However, judicial candidates cannot act as their own treasurer because they cannot accept campaign contributions. The Commission advised the judicial candidate to seek a legal remedy to determine the issue of whether the county clerk should accept the “Treasurer of a Candidate’s Committee form. . . .”

In an **April 14, 2000 advisory opinion**, the Judicial Investigation Commission stated that a retired judge is not bound by Canon 4 [political activity of judges/judicial candidates] of the Code of Judicial Conduct. However, a retired judge who is admitted to senior status must comply with the provisions of Canon 4.

**K. Campaign Committees [Rules 4.2(B)(1) and Rule 4.4]:**

In *In the Matter of Robb*, JIC Complaint No. 101-96 (WVJIC Sept. 23, 1996), an unsuccessful candidate for State Supreme Court was **admonished** by the Judicial Investigation Commission for failing to appoint a campaign committee to solicit financial contributions on his behalf and for personally accepting campaign contributions during the time when he had no committee.

In *In the Matter of Suder*, 183 W. Va. 680, 398 S.E.2d 162 (1990), a magistrate was **admonished** for receiving campaign contributions without establishing a committee of responsible persons to secure and manage the expenditure of campaign funds even though he attempted to comply with advice given by the county clerk, which was to appoint a treasurer who signed financial statements.

In **JIC Advisory Opinion 2019-02**, the Judicial Investigation Commission told a 2020 Supreme Court candidate that an elected Circuit Clerk, who was a good friend of the candidate, could serve as his/her campaign treasurer since the Circuit Clerk will not be running in that election. The Commission stated:

Unlike the situation in JIC Advisory Opinion 2018-02, the Circuit Clerk is not running in the 2020 campaign. Therefore, there is no chance the public could misconstrue that you are endorsing him for Circuit Clerk since he will not be running for any office at that time.

In **JIC Advisory Opinion 2018-02**, the Judicial Investigation Commission stated that a candidate for the House of Delegates could not concurrently serve as a campaign treasurer for a judicial candidate. The Commission stated that judges and judicial candidates “have an obligation not to be or perceived to be involved in other peoples’ elections. The public might conceivably believe that the judge or judicial candidate is endorsing the particular House of Delegate candidate’s/treasurer’s philosophy concerning given statutes or proposed laws. Therefore, the nonjudicial candidate cannot serve as treasurer for a judicial candidate’s campaign.

In **JIC Advisory Opinion 2016-11**, the Judicial Investigation Commission held that a judicial candidate’s campaign committee may solicit contributions and give out door prizes at a fundraiser provided that the donations fall within the legal range for contributions and each door prize/donation is properly accounted for and reported.

In **JIC Advisory Opinion 2016-09**, the Judicial Investigation Commission stated that a probation officer cannot contribute to a judge’s campaign committee in light of the direct supervision that a judge has over probation officers and they serve at the will and pleasure of the judge.

In **JIC Advisory Opinion 2016-08**, the Judicial Investigation Commission told a circuit judge candidate that he/she could not allow a group of friends to pay for a “meet and greet” event since he chose to finance his campaign on his own and not have a campaign committee or treasurer.

In **JIC Advisory Opinion 2016-04**, the Judicial Investigation Commission stated that the campaign committee for a circuit judge candidate could hold a dinner/dance fundraiser. The candidate could attend and “meet and greet” individuals as long as he/she is not involved in soliciting money and does not attempt to learn who actually made contributions to his/her campaign.

In **JIC Advisory Opinion 2016-02**, the Judicial Investigation Commission stated that a circuit judge candidate could have the preacher spouse of a probation officer serve as the candidate’s spokesperson in a television campaign ad. The Commission declined to answer as premature whether the use of the probation officer’s spouse would result in any ethical issues if the candidate was elected and became the probation officer’s supervisor.

In **JIC Advisory Opinion 2012-17**, the Judicial Investigation Commission held that a judicial candidate cannot personally solicit campaign contributions in connection with a planned golf outing fundraiser. However, he/she may establish a campaign committee to solicit and accept reasonable campaign contributions. The judicial candidate may attend the golf fundraiser if the sale of tickets and/or entry fees are handled without the candidate’s knowledge or input. A campaign committee can allow an individual sponsor for each of the 18 holes but the candidate would then be unable to attend the outing since it would be likely that the candidate would learn the identity of the sponsors. The Commission also advised that the candidate must also comply with statutory requirements pertaining to campaign finances.

In **JIC Advisory Opinion 2012-12**, the Judicial Investigation Commission stated that a magistrate’s campaign committee can donate money to a civic or charitable organization. If the magistrate does not have a campaign committee, he/she may donate money as an individual, but not as a candidate. A campaign committee can donate a basket to the civic or charitable organization to be used as a door

prize and it may contain campaign material. However, the basket may not be raffled off because to do so would constitute the solicitation of funds. A magistrate candidate may not sell raffle tickets or food, collect money for a 50-50 drawing or call numbers at a civic or charitable event. The Commission also stated that the magistrate candidate may purchase a ticket and participate in a 50-50 drawing or bid on a silent auction.

In **JIC Advisory Opinion 2012-11**, the Judicial Investigation Commission stated that a judicial candidate can use a PayPal button on his/her campaign committee's official web page to collect campaign contributions.

In **JIC Advisory Opinion 2012-04**, the Judicial Investigation Commission held that a candidate for judicial office may make a loan to his/her campaign committee for the purpose of financing his/her campaign. It is also possible for the candidate to seek repayment of the loan using campaign contributions when they become available. However, it is up to the campaign committee to determine the manner, method, means and timeframe for the loan repayment.

In **JIC Advisory Opinion 2012-01**, the Judicial Investigation Commission stated that if a candidate for judicial office does not accept any contributions from anyone but 100% funds it himself/herself, then he/she does not have to have a campaign committee.

In an **October 28, 2011 advisory opinion**, the Judicial Investigation Commission stated that a circuit court clerk could not serve on the political campaign committee of a circuit court judge. The Commission stated:

[We] feel that judges have extraordinary authority and influence over circuit court clerks. Because of the relationship between a judge and a circuit court clerk caused by this influence and control, the Commission feels that an appearance of impropriety, at a minimum, would be created if a circuit court clerk served on the political campaign.

In a **February 12, 2008 advisory opinion**, the Judicial Investigation Commission answered a question from a family court judge who was running for circuit court judge. The campaign manager was an attorney who regularly appeared before the judge in family court. The attorney's law partner also regularly appeared before the judge. The Commission stated that the judge must disclose the relationship in every case involving the campaign manager and his law partner and if anyone objected the judge must follow recusal procedures.

In a **December 28, 2007 advisory opinion**, the Judicial Investigation Commission informed a judge who was running for reelection that if a judicial candidate receives no contributions from any source but uses only the candidate's personal money and/or assets to fund a judicial campaign then no campaign committee would be necessary.

In a **September 28, 2001 advisory opinion**, an unsuccessful 1996 candidate for the State Supreme Court loaned his campaign \$20,000.00. The candidate, who was also a circuit judge, had since closed out the campaign committee. The judge wanted to know whether he/she would have to form a new committee in order to solicit contributions to retire the debt. The Judicial Investigation Commission stated that the judge must in fact have a committee in order to solicit funds to retire the debt. The

Commission said that “[t]he continuation of the committee or the formation of a new committee must be done in accordance with Canon 4 and [the] Election Laws of West Virginia.”

In a **December 28, 1999 advisory opinion**, the Judicial Investigation Commission told a judge that his/her adult stepdaughter could serve as his/her campaign treasurer since the daughter did not reside in the same household as the judge.

In a **December 28, 1999 advisory opinion**, the Judicial Investigation Commission told a potential judicial candidate that his wife could not serve as his campaign treasurer. The Commission said:

In reviewing these sections of Canon [4] it is apparent to the Commission that a candidate may not personally solicit funds. A candidate should encourage members of the candidate’s family to adhere to the same standards of political conduct in the support of the candidate for the pride of the candidate. The Commission feels that this section places a duty on a judicial candidate to encourage family members to not engage in conduct prohibited of the candidate. You as a candidate would not be permitted to solicit campaign contributions. . . . Since your wife should be encouraged to adhere to the same standards of political conduct in support of your candidacy that apply to you, it would be inappropriate for your wife to personally solicit campaign contributions. It is the opinion of the Commission therefore that the relevant sections of the Canon would prohibit a candidate’s wife from serving as the candidate’s campaign treasurer.

In a **December 14, 1995 advisory opinion**, the Judicial Investigation Commission was asked if a judge’s campaign committee could rent office space in a building owned by a legal partnership where one lawyer practices before the judge. The Commission said the campaign committee could not rent the space since the judge is prohibited from engaging in any financial or business dealings with lawyers who are likely to come before the Court and since it could cause disqualification issues.

In a **December 13, 1995 advisory opinion**, the Judicial Investigation Commission was asked by a circuit judge whether attorneys who appear before him/her could serve on his/her campaign committee. The Commission advised that the attorneys could serve on his/her campaign committee but that the judge should disclose the relationship whenever the attorneys appear before him/her “so that all parties and their attorneys can make an informed decision about whether to seek [the judge’s] recusal from that particular case.

In a **February 15, 1995 advisory opinion**, the Judicial Investigation Commission said that a judicial officer or candidate is not permitted to be named on the checking account signature card for purposes of signing checks for his/her campaign committee.

**L. Attend/Purchase Political Organization or Candidate Event Tickets [Rule 4.1(B)(3)]:**

In a **January 12, 2000 advisory opinion**, the Judicial Investigation Commission stated that a judicial officer or candidate may attend a fundraiser referred to as an “elimination dinner” which raises funds in a lottery fashion for a nonprofit group. However, the judicial officer or candidate must not solicit funds for the organization or for himself/herself. Furthermore, the judge or judicial candidate should not attend the function if the sponsor is an organization which regularly appears before the judge or any court.

In a **June 14, 1995 advisory opinion**, the Judicial Investigation Commission stated that a judicial officer/candidate may attend public fundraising events for judicial and nonjudicial candidates. However, the judicial officer/candidate could not give an unsolicited financial contribution to another candidate.

In a **November 5, 1990 advisory opinion**, the Judicial Investigation Commission said that a judicial officer, whether currently a candidate or not, may buy a ticket for and attend a fundraiser for a candidate without violating the ethical prohibition against public endorsement of candidates.

**M. Contributions to Political Organizations [Rule 4.1(B)(6)]:**

In a **July 23, 1992 advisory opinion**, the Judicial Investigation Commission stated that a magistrate could contribute to a county executive committee so long as the contributions fall within the amounts permitted by statute.

**N. Candidates for Judicial/Nonjudicial Office [Rule 4.5]:**

In *State ex rel. Carenbauer v. Hechler*, 208 W. Va. 584, 542 S.E.2d 405 (2000), a sitting supreme court justice who had four years left on his term of office decided to run for a separate twelve year term on the State Supreme Court. A citizen filed a petition for writ of mandamus seeking to prohibit the justice from running for a different seat on the Court before the expiration of his term. In granting the petition, the Court stated that “[n]o person who is serving a term as a justice of the Supreme Court of Appeals of this state shall be eligible to file as a candidate to seek nomination or election to another term on said Court which begins prior to the expiration of the term then being served.” Syl. pt. 7, *Carenbauer*. The Court stated:

Both [the citizen] and this Court have identified multiple bases for concluding that the state has a compelling interest in prohibiting an incumbent justice whose term has not expired from seeking election to another term on this body. In addition to maintaining the integrity of the judiciary, the state also has a valid interest in assuring the public an independent and impartial judiciary, minimizing the involvement of the judiciary in the political process, upholding the constitutionally-delegated method of selecting supreme court justices, and ensuring that the judiciary can sustain the critical and unique element of collegiality necessary to the decision-making process of this Court. Collectively, these legitimate state interests combined with the judiciary’s inherent power to regulate itself, compel the conclusion. . . .

*Id.* at 598, 542 S.E.2d at 419.

In *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995), the State Supreme Court held that a requirement that a magistrate assistant resign her judicial office upon becoming a candidate for Circuit Clerk was a reasonable condition of judicial employment.

In *Feltz v. Crabtree*, 179 W. Va. 524, 370 S.E.2d 619 (1988), a sitting magistrate filed to run for the position of circuit clerk. The Administrative Director of the State Supreme Court notified the magistrate that since he was running for a nonjudicial position he would have to resign his position as magistrate. The Administrative Director then removed the magistrate from the payroll. The magistrate filed a petition for writ of mandamus asking the Supreme Court to reinstate him to the payroll. In denying the magistrate’s petition, the Court stated that the office of circuit clerk was not a judicial

office for purposes of Article VIII, § 7 of the West Virginia Constitution or the Code of Judicial Conduct, both of which state that a judge must resign his or her office before seeking nonjudicial elective office.

In **JIC Advisory Opinion 2019-06**, the Judicial Investigation Commission told a member of the House of Delegates that he would not have to resign his position to run for magistrate, and if elected he/she could remain in the legislature until such time as he took the oath of office for Magistrate. However, the Commission reminded the delegate that he must follow Rules 4.1 through 4.5 of the Code of Judicial Conduct while a candidate for magistrate and that if elected, he/she “will be immediately subject to other provisions of the Code of Judicial Conduct.”

In **JIC Advisory Opinion 2018-16**, the Judicial Investigation Commission stated that a law clerk who wants to run for a partisan nonjudicial office in 2020 must immediately resign her position if she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes the solicitation of campaign contributions or support.

In **JIC Advisory Opinion 2018-03**, the Judicial Investigation Commission stated that a magistrate assistant would immediately have to resign her judicial position in order to run for Circuit Clerk.

In **JIC Advisory Opinion 2012-06**, the Judicial Investigation Commission held that a mental hygiene commissioner must resign his/her position immediately upon becoming a candidate for the nonjudicial office of House of Delegates. Once a candidate for a nonjudicial office, he/she could not be appointed Mental Hygiene Commissioner for the limited purpose of serving as the substitute Drug Court Judge during the pendency of the election.

In **JIC Advisory Opinion 2012-03**, the Judicial Investigation Commission stated that a magistrate must immediately resign from office upon announcing his/her candidacy for sheriff.

In **JIC Advisory Opinion 2012-02**, the Judicial Investigation Commission stated that a non-incumbent candidate for Magistrate does not have to resign his/her seat on City Council in order to run for judicial office.

In a **December 21, 2007 advisory opinion**, the Judicial Investigation Commission said that a Mental Hygiene Commissioner who wanted to run for prosecuting attorney would have to resign his/her judicial position. The Commission also said that the Mental Hygiene Commissioner’s law partner, who is also a Mental Hygiene Commissioner, could as a “continuing part-time judge” serve as the candidate’s campaign treasurer.

In an **August 27, 2007 advisory opinion**, the Judicial Investigation Commission advised a Mental Hygiene Commissioner that he/she does not have to resign his/her position in order to run for the office of circuit or family court judge but would have to resign the position if he/she were to run for prosecuting attorney. The Commission also advised that the Mental Hygiene Commissioner would have to resign if he/she accepted a position as an Assistant Prosecutor.

In a **March 15, 2004 advisory opinion**, the Judicial Investigation Commission stated that a magistrate assistant would be required to resign to run for the nonpartisan nonjudicial position of member of the Board of Education.

In a **February 10, 2002 advisory opinion**, the Judicial Investigation Commission told a senior status magistrate that she would have to resign her position in order to run for the nonjudicial position of member of the County Commission.

In a **June 7, 1996 advisory opinion**, the Judicial Investigation Commission stated that a domestic violence advocate, which is a nonjudicial position, would not be required to resign from office to run for magistrate. The Commission said that if the advocate was elected he/she may be required to recuse himself/herself from cases involving domestic violence issues in order to avoid the appearance of partiality or reasonable questioning of impartiality.

In an **October 15, 1996 advisory opinion**, the Judicial Investigation Commission stated that a senior status judge could not concurrently serve on the County Board of Education.

In a **February 25, 1994 advisory opinion**, the Judicial Investigation Commission stated that a family law master would have to resign his/her judicial office to run for the nonjudicial position of county commissioner.

**O. Campaign Materials/Signs:**

In **JIC Advisory Opinion 2015-23**, the Judicial Investigation Commission said a judge cannot use old campaign materials as printed if the information pertaining to whether a committee has been formed or the name of the treasurer is outdated because they would not contain true and accurate information. However, the judge could use the signs if he/she could cover, cut out or remove the outdated information from the old campaign materials. The decision hinged on the Commission's belief that old campaign signs cease to have value when the campaign they were created for ends.

In a **February 19, 2002 advisory opinion**, the Judicial Investigation Commission told a magistrate that he could sell his/her old campaign signs to a person who is a candidate for office in the current election because they would be altered to reflect the name, office and other information pertinent to the candidate and there would be nothing on the sign to reflect an endorsement on the magistrate's part. The Commission stated that the magistrate could not give the signs away because the action could be construed as a contribution to another candidate.

In **JIC Advisory Opinion 2014-11**, the Judicial Investigation Commission held that a judge who has campaign signs or paraphernalia on his/her private vehicle could park at a public parking spot as long as it was located more than 300 feet away from the courthouse/county premises. The opinion references the language of W. Va. Code § 3-3-9 that no person may do any electioneering on election day within three hundred feet of the outside entrance to the building housing a polling place.

In a **March 28, 2002 advisory opinion**, the Judicial Investigation Commission stated that a judicial candidate's posters can be placed publicly with posters from other candidates. However, the Commission stated that a judicial candidate could not go campaigning, traveling with, or visiting potential voters with a nonjudicial candidate.

In a **March 4, 1996 advisory opinion**, the Judicial Investigation Commission held that a judicial officer should not park a privately owned automobile with a re-election campaign sign attached in a parking spot located near the courthouse and designated as the parking spot for the on-call judicial officer.

In an **April 19, 1996 advisory opinion**, the Judicial Investigation Commission stated that a judicial officer is prohibited from parking a privately owned automobile displaying a campaign sign in a parking spot rented from the county building commission on a lot which is adjacent to a building which houses magistrate offices, the magistrate clerk's office and the family law master's office.

In a **November 5, 1990 advisory opinion**, the Judicial Investigation Commission stated that a judicial officer who is not currently a candidate for office is prohibited from: (1) publicly endorsing judicial and nonjudicial candidates for any office; (2) displaying posters, billboards, etc. on private property; and (3) from displaying posters, bumper stickers, etc. on private automobiles.

**P. Declaration of Candidacy:**

In **JIC Advisory Opinion 2014-04**, the Judicial Investigation Commission stated that once a person who is a finalist for an appointment to fill a circuit court judge vacancy declares his or her candidacy to run for the open position, he/she is then permitted to campaign and to establish a committee which can solicit funding and support for the election.

In an **October 31, 2007 advisory opinion**, the Judicial Investigation Commission stated that a judge who has filed the appropriate pre-candidacy papers and has a committee could begin campaigning in a non-election year.

**Q. Judicial Employees/Family Member Campaign Activities:**

In Syl. pt. 2, *Witten v. Butcher*, 238 W. Va. 323, 794 S.E.2d 587 (2016), the State Supreme Court held that the "campaign activities conduct by [a] judicial candidate's wife were not misconduct which warranted vitiation of election results at [the] precinct." The opponent alleged that the wife was unlawfully campaigning in a restricted area at a precinct and that the remedy was to reject all of the votes cast there. The Court found that no misconduct had occurred since: (1) poll workers had erroneously cordoned off an area 75 feet short of the no campaigning within 300 feet of a poll requirement; (2) the wife engaged in campaign activity outside the posted boundary; (3) she never crossed the marked boundary; and (4) there was no evidence that any of the poll workers were engaged in any kind of fraud or intentional misconduct.

In **JIC Advisory Opinion 2012-08**, the Judicial Investigation Commission stated that a probation officer whose spouse was running for Magistrate is limited in what he/she can do for the campaign. The probation officer could attend campaign rallies or other social functions but could not provide volunteer manual labor for the campaign and could not engage in any fundraising activities. In addition, the probation officer could not drive a vehicle normally driven by his wife when the vehicle had campaign signs or posters on it. He/she would also not be permitted to deliver or pick up items from the printers or commercial advertisers at the request of his/her spouse or any member of the campaign committee. The limited campaign activity could only occur "after office hours and outside the area where court proceedings are conducted."

In a **March 15, 2004 advisory opinion**, the Judicial Investigation Commission stated that a magistrate assistant is bound by the same rules in the Code of Judicial Conduct with respect to campaigning. Therefore, she could engage in limited activity as set forth in Canon 4 in support of her husband who was running for sheriff, but it must be done after office hours and off Court property. The Commission stressed that the magistrate assistant would not be able to conduct any fundraising for her husband.

In a **March 19, 2004 advisory opinion**, the Judicial Investigation Commission stated that a probation officer should not participate in a gubernatorial campaign even though his/her campaign activities would take place outside his circuit and he would not make any public verbal endorsement as an employee or representative of the State Supreme Court. The Commission said that “[b]ecause of the unique schedule and time restraints placed on a probation officer, . . . spending much time outside his circuit to be actively involved in [campaign] activities . . . would cause a problem.”

In a **December 30, 2002 advisory opinion**, a circuit judge’s wife was running for reelection as City Municipal Judge. She wanted to use a family photo with a caption that simply referred to her husband as her spouse and made no reference to him serving as a circuit judge. The Judicial Investigation Commission told the judge that under those caveats it would be permissible for him to appear in his wife’s campaign photo.

In a **May 7, 2002 advisory opinion**, the Judicial Investigation Commission was asked if a judge’s spouse could hold political fundraisers for other candidates at the couple’s personal residence as long as the judge was not present and did not participate in them. The Commission stated that the home could be used for such events if the judge was not involved in fundraising or endorsing any candidate. The Commission further cautioned the judge to be careful since the language of Canon 4 is clear in prohibiting the public endorsement or public opposition of another candidate for public office by a judge and the solicitation of funds for a political organization or candidate by a judge.

In a **February 18, 2000 advisory opinion**, the Judicial Investigation Commission said it was acceptable for a magistrate candidate to appear on the same ballot as her daughter who was running for prosecuting attorney. The Commission reminded the magistrate candidate that he/she could not endorse or oppose any candidate for public office, which includes his/her daughter.

In an **August 28, 1995 advisory opinion**, the Judicial Investigation Commission stated that the wife of a judge could hold a political fundraiser for a candidate in the couple’s home as long as the judge is not involved in raising funds or endorsing any candidate. The Commission said the “judge should be very careful about any such activity since the language of Canon [4] is clear in prohibiting the public endorsement or public opposition of another candidate and in the solicitation of funds for a political organization or candidate.

In a **February 25, 1994 advisory opinion**, a magistrate explained that his wife was running for prosecuting attorney. The magistrate wanted to know what activities he could engage in during his wife’s campaign. He also wanted to know whether he could hear criminal cases if his wife were to become the elected prosecutor. The Commission stated that it would be permissible for the magistrate to attend campaign rallies or other social functions with his wife. The Commission stated that it would not be permissible for the magistrate to: (1) engage in fundraising activities; (2) perform volunteer manual labor connected to the campaign; (3) drive a vehicle normally driven by his wife when the vehicle had campaign stickers displayed; (4) assist in handing out campaign signs or posters to individuals; and (5) deliver or pick up campaign items from a printer or commercial advertiser. The Commission also stated that if the magistrate’s wife were elected prosecutor, he would be automatically disqualified from handling all cases involving that office.

In a **June 19, 1991 advisory opinion**, the Judicial Investigation Commission told a family law master that her name and photograph could appear in her husband’s campaign literature for House of Delegates since the activity would “clearly involve actions on the part of you as a wife to the candidate

and not as a law master.” The Commission also stated that the family law master could ride in a parade with her husband as a candidate for House of Delegates as long as the family law master’s appearance is “discrete and low profile.” The Commission stated that it would not be appropriate for the Family Law Master to display her husband’s campaign bumper sticker on her automobile. Lastly, the Commission stated that the family law master’s husband could make financial contributions to other candidates as long as they came from a bank account entirely separate and not belonging at all to the family law master.

**R. Miscellaneous:**

In *In the Matter of Willett*, JIC Complaint No. 59-2016 (WVJIC Sept. 1, 2016), an unsuccessful candidate for circuit judge was **admonished** by the Judicial Investigation Commission for violating Rule 2.16(A) of the Code of Judicial Conduct for failing to timely reply to allegations contained in an ethics complaint despite numerous requests to submit a response. Rule 2.16(A) provides that “[a] judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.”

In **JIC Advisory Opinion 2018-05**, the Judicial Investigation Commission held that a candidate for circuit judge must immediately resign his position as President for the West Virginia Association for Justice as it created the appearance that he/she favored plaintiffs in certain types of litigation. The Commission reasoned the group is geared toward plaintiffs’ lawyers. In fact, an applicant for membership has to certify that he/she or his/her firm does not handle “the defense of personal injury claims, wrongful death claims, workers compensation claims and/or the representation of other interest adverse to consumers, workers and the mission of the West Virginia Association of Justice.”

In **JIC Advisory Opinion 2018-13**, the Judicial Investigation Commission held that a circuit judge candidate can generally mention, without giving names or very many facts, that his/her brother was murdered, that it led him/her to become a lawyer, and that it was the motivating force behind the decision to run for judge since the defendant convicted of the crime is a repeat habeas petitioner in the circuit in which the candidate is running.

In **JIC Advisory Opinion 2016-01**, the Judicial Investigation Commission said that a judicial candidate cannot place videos on his/her campaign website or Facebook page in which he/she answers questions about family law issues since that would constitute the impermissible practice of law.

In **JIC Advisory Opinion 2015-26**, the Judicial Investigation Commission stated that a city councilwoman who is not currently running for office can serve as a host for a “meet and greet” social for a judicial candidate.

In a **July 27, 2000 advisory opinion**, the Judicial Investigation Commission stated that a committee for a judicial candidate may raise funds by the sale of tickets to an event or entry fees to a golf tournament as long as they are done without the candidate’s knowledge or input. Knowledge by the judge may be relevant to disqualification pursuant to Rule 2.11 of the Code of Judicial Conduct.

In a **March 10, 2000 advisory opinion**, the daughter of a magistrate candidate was running for prosecuting attorney of the same county. The Judicial Investigation Commission advised the magistrate candidate that she would be disqualified from hearing any case involving the prosecutor’s office if both her daughter and she were elected to their respective offices. The Commission stated:

Based upon the statutory duties placed on a prosecuting attorney it is the opinion of the Commission that you would be disqualified in all proceedings involving cases represented by any lawyer in the prosecuting attorney's office. An assistant prosecuting attorney serves as an extension of the duly elected prosecuting attorney whose statutory responsibility is to attend to the criminal business of the state and county in which he or she is elected and qualified.

In a **November 3, 1995 advisory opinion**, the Judicial Investigation Commission held that a judge may serve as a moderator of a debate between candidates for governor.

In an **October 28, 1986 advisory opinion**, the Judicial Investigation Commission told a circuit court judge that he/she could not serve as an election night commentator for a local radio station.