

# 2024 EDITION

## JUDICIAL CAMPAIGN ETHICS HANDBOOK

West Virginia Judicial Investigation Commission



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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).

## 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, Intermediate Court of Appeals Judges, Circuit Court Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters. Justices, ICA Judges, 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 to 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.

**“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.

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

“**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. Beginning with the 2024 judicial elections, if no candidate in a division for judge of a circuit court receives more than 30 percent of the votes cast in the election, there shall be a runoff election at the subsequent general election between the two candidates who received the highest and next-highest number of votes cast in that division. *See* W. Va. Code § 3-1-17(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: \$149,600.00  
Filing Fee:<sup>2</sup> \$1,496.00  
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).

Intermediate Appeals Court Judge:

Total No.: 3  
Term: 10 years  
Salary: \$142,500.00  
Filing Fee: \$1,425.00  
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; W. Va. Code §51-11-3).

Circuit Court Judge:

Total No: 80 effective January 1, 2025  
Term: 8 years  
Salary: \$138,600.00  
Filing fee: \$1,386.00  
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>3</sup> (W. Va. Const., art. IV, § 4 and art. VIII, § 7).

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<sup>2</sup> Per W.Va. Code § 3-5-8, the filing fee for a judge is one (1) per cent of the annual salary.

<sup>3</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*.

Family Court Judge:

Total No.: 48 effective January 1, 2025  
Term: 8 years  
Salary: \$103,950.00  
Filing Fee: \$1039.50  
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).

**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.: 168 effective January 1, 2025 (minimum of 2 in each county)  
Term: 4 years  
Salary: \$63,250.00  
Filing Fee: \$632.50  
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 *State ex rel. Judicial Investigation Com'n v. Putnam County Board of Ballot Commissioners*, 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.

**D. OTHER CHANGES**

**1. Circuit Courts**

a. House Bill 3332 created several distinct division rules for elections in certain circuits:

- In the 3<sup>rd</sup> Circuit (Doddridge, Pleasants, Richie, Wirt), no more than one judge can be a resident of the same county. If the highest recipients in both divisions are from the same county, then the judge with the highest number of votes will be the winner. The next highest eligible candidate in the other

division will be the winner of his/her division. W. Va. Code §51-2-1(b)(3).

- In the 5<sup>th</sup> Circuit (Calhoun, Jackson, Mason, Roane), Division 1 shall be for a judge from Jackson County. Division 2 shall be for a judge from Mason County. Division 3 shall be for a judge from Roane or Calhoun County. The residency requirements apply at the time of filing and for the duration of the term. W. Va. Code §51-2-1(b)(5).
- In the 11<sup>th</sup> Circuit (Mingo and Logan), Division 1 shall be for a judge from Mingo County. Divisions 2 and 3 shall be for judges from Logan County. The residency requirements apply at the time of filing and for the duration of the term. W. Va. Code § 51-2-1(b)(11).
- In the 12<sup>th</sup> Circuit (Wyoming and McDowell), Division 1 shall be for a judge from McDowell County. Division 2 shall be for a judge from Wyoming County. The residency requirements apply at the time of filing and for the duration of the term. W.Va. Code §51-2-1(b)(12).
- In the 17<sup>th</sup> Circuit (Braxton, Clay, Gilmer, Webster) no more than one judge can be a resident of the same county. If the highest recipients in both divisions are from the same county, then the judge with the highest number of votes will be the winner. The next highest eligible candidate in the other division will be the winner of his/her division. W. Va. Code § 51-2-1(b)(17).
- In the 18<sup>th</sup> Circuit (Lewis and Upshur), Division 1 shall be for a judge from Upshur County. Division 2 shall be for a judge from Lewis County. The residency requirements apply at the time of filing and for the duration of the term. W. Va. Code § 51-2-1(b)(18).

b. Effective January 1, 2025, the following are the circuit numbers, counties and number of judges in each judicial circuit (W. Va. Code § 51-2-1(b)), with the number in parenthesis indicating how the bill changed the current allocation:

<b>Circuit No.</b>	<b>Counties</b>	<b>No. Judges</b>
1	Brooke, Hancock, Ohio	4
2	Marshall, Tyler, Wetzel	2
3	Doddridge, Pleasants, Ritchie, Wirt	2 (+1)
4	Wood	3



5	Calhoun, Jackson, Mason, Roane	3
6	Cabell	4
7	Putnam	2
8	Kanawha	8 (+1)
9	Boone, Lincoln	2
10	Wayne	2
11	Logan, Mingo	3
12	McDowell, Wyoming	2 (-1)
13	Mercer	3
14	Raleigh	4
15	Fayette	2
16	Nicholas	2 (+1)
17	Braxton, Clay, Gilmer, Webster	2
18	Lewis, Upshur	2
19	Harrison	3
20	Marion	2
21	Monongalia	3
22	Preston, Tucker	2 (+1)
23	Barbour, Taylor	2
24	Randolph	2 (+1)
25	Grant, Mineral	2
26	Hampshire, Hardy, Pendleton	2
27	Berkeley, Morgan	5
28	Jefferson	2 (+1)
29	Greenbrier, Pocahontas	2
30	Monroe, Summers	1
	<b>TOTAL</b>	<b>80 (+5)</b>

## 2. Family Courts

- a. Effective January 1, 2025, the following are the family court circuit court numbers, counties and number of judges in each family court circuit (W. Va. Code § 51-2A-3(b)):

<b>Circuit No.</b>	<b>Counties</b>	<b>No. Judges</b>
1	Brooke, Hancock, Ohio	2
2	Marshall, Tyler, Wetzel	1
3	Pleasants, Wood	2
4	Roane, Calhoun, Gilmer, Ritchie	1
5	Mason, Jackson, Wirt	2
6	Cabell	3
7	Wayne	1

8	Mingo	1
9	Logan	2
10	Lincoln, Boone	2
11	Kanawha	5
12	McDowell, Mercer	3
13	Raleigh, Summers, Wyoming	3
14	Fayette	1
15	Greenbrier, Monroe	1
16	Clay, Nicholas	1
17	Lewis, Upshur	1
18	Harrison, Doddridge	2
19	Marion	1
20	Monongalia, Preston	2
21	Barbour, Taylor	1
22	Tucker, Randolph	1
23	Mineral, Hampshire, Morgan	2
24	Berkeley, Jefferson	4 (+1)
25	Hardy, Pendleton, Grant	1
26	Putnam	1
27	Webster, Braxton, Pocahontas	1
	<b>TOTAL</b>	<b>48 (+1)</b>

**3. Magistrate Court:**

- a. Monongalia County received one additional magistrate by appointment July 1, 2023. W. Va. Code §50-1-2(b)(31).
- b. Effective January 1, 2025 (W. Va. Code §50-1-2(c)):
  - Berkeley County gets 1 additional magistrate for 7 total;
  - Jefferson County gets 1 additional magistrate for 4 total;
  - Kanawha County receives 3 additional magistrates for 13 total;
  - Logan County receives 1 additional magistrate for 4 total;
  - Monongalia County receives 1 additional magistrate for 6 total;
  - Raleigh County receives 1 additional magistrate for 6 total; and
  - Wood County receives 1 additional magistrate for 5 total.
- c. In 2026, the Administrative Office will perform a new caseload study on the number of magistrates needed in each county. The Court will enter an Administrative Order containing the Court’s recommendation for magistrate allocation and submit it to the Legislature by January 5, 2027. If the Legislature does not enact a different allocation, then that Order will establish the number of magistrates for the 2028 election. W. Va. Code §50-1-2(d).
- d. Under current W. Va. Code § 50-1-2(b), “The administrative order shall allocate no more than 170 magistrates for the entire State of West Virginia, nor shall the allocation reduce the number of magistrates in

any county below that in effect [June 10, 2022]” This language was not included in the new section (d) regarding the 2027 Administrative Order.

### 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 (“RJDP”).<sup>4</sup> A judge or judicial candidate who is also a lawyer can be concurrently disciplined for violating Rules of Professional Conduct. *See* RJDP Rule 4.12.

##### 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.**

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<sup>4</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.courtswv.gov/legal-community/court-rules/judicial-disciplinary/judicial-contents.html>.

**Rule 4.1 – Political and Campaign Activities of Judges and Judicial Candidates in General**

- (A) Except as permitted by law,<sup>5</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.
- (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

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<sup>5</sup> The asterisk [\*] symbol means the term is defined in the Definition section set forth above.

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

##### 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 magistrate candidate was **admonished**, in part, 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** for appearing at a Democratic Executive Committee meeting as a proxy for a Committee member and voting his/her proxy.

**JIC Advisory Opinion 2015-15:** A magistrate assistant cannot concurrently serve as a member of a county political executive committee.

**JIC Advisory Opinion 2012-07:** 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 JIC 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.

**JIC Advisory Opinion 2004-04:** A magistrate candidate must resign his/her position as an elected member of the County Republican Executive Committee.

**JIC Advisory Opinion 1992-14:** It is not 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 JIC for publicly endorsing a 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 JIC might make him cut it off. The JIC 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 re-election 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.

**JIC Advisory Opinion 2022-13:** Neither a magistrate or his/her assistant may place a campaign sign in his/her yard for a family member who is running for office even though both candidate and judicial officer reside in same household.

**JIC Advisory Opinion 2022-12:** A magistrate's spouse cannot post a campaign sign in his/her yard for the spouse's friend who is running for city council.

**JIC Advisory Opinion 2020-13:** It is permissible for a judicial candidate to use an endorsement from a member of the WV House of Delegates.

**JIC Advisory Opinion 2016-12:** A judicial candidate 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.

**JIC Advisory Opinion 2016-06:** A magistrate candidate 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.

**JIC Advisory Opinion 2016-07:** 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.

**JIC Advisory Opinion 2004-19:** 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."

**JIC Advisory Opinion 2004-13:** A magistrate candidate cannot properly share equipment expenses with a candidate for nonjudicial office. The JIC stated that the "action could give an appearance that [the magistrate candidate] was supporting the [non-judicial] candidate and/or at least indirectly contributing to that candidate's campaign. Further reporting requirements about campaign expenses could reveal the shared expense relationship and constitute a public disclosure of at least support through the shared expenses."

**JIC Advisory Opinion 2000-26:** A sitting magistrate cannot campaign for his/her assistant who is running for magistrate.

**JIC Advisory Opinion 1992-11:** A circuit judge candidate cannot concurrently serve as co-chair of a state presidential campaign.

**JIC Advisory Opinion 1991-08:** A circuit judge candidate cannot 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.

**JIC Advisory Opinion 2000-23:** A former judge's campaign committee could not contribute all or a portion of the excess balance raised in the judicial campaign to a state candidate for nonjudicial office.

**JIC Advisory Opinion 1995-23:** A judge/judicial candidate could not contribute money to a fellow judge's campaign. The JIC 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 JIC 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.

**JIC Advisory Opinion 1990-10:** It is improper for a judicial officer/candidate to contribute to an individual politician's campaign committee.

**JIC Advisory Opinion 1990-04:** A family law master cannot donate to another individual's political campaign.

**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 JIC admonished a magistrate candidate for personally soliciting campaign contributions.

**JIC Advisory Opinion 2020-09:** A magistrate candidate cannot purchase a gun on his/her own to raffle off at a campaign fundraiser as the public may think he/she is personally soliciting funds.

**JIC Advisory Opinion 2008-02:** A judge/judicial candidate cannot engage in fundraising for his/her political campaign. The judge must have a campaign committee to raise funds.

**JIC Advisory Opinion 2000-33:** A judicial campaign committee can sponsor a roast and a golf tournament for its candidate.

**JIC Advisory Opinion 2000-01:** A judicial candidate's campaign committee could not hold a fundraiser in the judicial candidate's home. The JIC 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."

**JIC Advisory Opinion 1998-03:** 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 JIC 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)]**

**JIC Advisory Opinion 2016-18:** A judge's campaign committee cannot donate excess campaign funds to the bar association for the judge's official courthouse portrait.

**JIC Advisory Opinion 2020-11:** A judicial campaign committee may donate baskets it received as part of the campaign to the needy but the judicial candidate may not do so on his/her own.

**JIC Advisory Opinion 2002-28:** A campaign committee may hold a fundraiser to help pay for a judge-elect's campaign debts.

**JIC Advisory Opinion 2002-08:** A recently elected family court judge's 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.

**JIC Advisory Opinion 2000-41:** A campaign committee may raise additional funds for a judge-elect who is facing a petition to contest the election.

#### **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.

**JIC Advisory Opinion 2016-05:** A judge running for re-election can use his/her staff in campaign ads so as long as their participation is 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.

**JIC Advisory Opinion 2000-16:** 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 to advance his/her campaign.

**JIC Advisory Opinion 1992-03:** 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 stationery. The JIC 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.

**JIC Advisory Opinion 2000-08:** A judge can use his staff in a campaign television ad if they volunteer for the activity and participate on their own time.

**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.

**JIC Advisory Opinion 2018-22:** A judicial candidate may seek, accept and use campaign endorsements from a political action committee ("PAC") or third parties. The JIC 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 JIC found that the Code does not limit the content of PAC/third-party advertisements. 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 JIC 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 JIC clarified Opinion 2018-22 with respect to false or misleading statements. The JIC 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 JIC 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.

**JIC Advisory Opinion 2019-18:** A magistrate candidate violates 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 JIC 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 JIC 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.

**JIC Advisory Opinion 2007-27:** 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 the 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 JIC 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.

**JIC Advisory Opinion 2012-20:** 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.

**JIC Advisory Opinion 2008-04:** The JIC 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 JIC 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 JIC 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 JIC 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.

**JIC Advisory Opinion 2022-27:** A prosecutor who runs for judge cannot use the slogan "Prosecutor \_\_\_\_\_ for Judge."

**JIC Advisory Opinion 2012-19:** A non-incumbent judicial candidate may be in violation of the Code of Judicial Conduct when his/her actions result in a domestic violence order being issued. The JIC 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.

**JIC Advisory Opinion 2019-23:** A misdemeanor conviction for domestic assault involves a crime of moral turpitude which precludes a candidate from running for magistrate.

**JIC Advisory Opinion 2002-26:** The JIC 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 JIC 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. . . ."

**JIC Advisory Opinion 2000-21:** 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.

**JIC Advisory Opinion 2019-02:** The JIC told a 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.

**JIC Advisory Opinion 2018-02:** A candidate for the House of Delegates could not concurrently serve as a campaign treasurer for a judicial candidate. The JIC 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 non-judicial candidate cannot serve as treasurer for a judicial candidate’s campaign.

**JIC Advisory Opinion 2016-11:** 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.

**JIC Advisory Opinion 2016-09:** 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 since the probation officer serves at the will and pleasure of the judge.

**JIC Advisory Opinion 2016-08:** A circuit judge candidate cannot 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.

**JIC Advisory Opinion 2016-04:** 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.

**JIC Advisory Opinion 2016-02:** A circuit judge candidate may have the preacher spouse of a probation officer serve as the candidate’s spokesperson in a television campaign ad. The JIC 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.

**JIC Advisory Opinion 2012-17:** 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 JIC also advised that the candidate must also comply with statutory requirements pertaining to campaign finances.

**JIC Advisory Opinion 2012-12:** 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 JIC also stated that the magistrate candidate may purchase a ticket and participate in a 50-50 drawing or bid on a silent auction.

**JIC Advisory Opinion 2012-11:** A judicial candidate can use a PayPal button on his/her campaign committee’s official web page to collect campaign contributions.

**JIC Advisory Opinion 2012-04:** A judicial candidate 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.

**JIC Advisory Opinion 2012-01:** If a judicial candidate does not accept any contributions from anyone but 100% funds the campaign himself/herself, then he/she does not have to have a campaign committee.

**JIC Advisory Opinion 2011-17:** 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.

**JIC Advisory Opinion 2008-01:** 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 JIC 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.

**JIC Advisory Opinion 2007-30:** The JIC 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.

**JIC Advisory Opinion 2001-18:** An unsuccessful Supreme Court candidate 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 JIC stated that the judge must have a committee in order to solicit funds to retire the debt. The JIC 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.”

**JIC Advisory Opinion 2000-18:** An unopposed judicial candidate is not required to have a campaign committee or a treasurer if he/she does not intend to engage in any campaign activities.

**JIC Advisory Opinion 1999-17:** A judge’s adult stepdaughter can serve as his/her campaign treasurer since the daughter did not reside in the same household as the judge.

**JIC Advisory Opinion 1999-19:** A judicial candidate’s wife could not serve as his campaign treasurer. The JIC 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.

**JIC Advisory Opinion 1995-36:** The JIC 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 JIC 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.

**JIC Advisory Opinion 1995-34:** The JIC 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.

**JIC Advisory Opinion 1995-01:** 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. Disclosure/Disqualification:**

**JIC Advisory Opinion 2023-05:** A judge must disclose that he is running against a lawyer appearing in his/her courtroom representing a litigant. The judge should also disclose if the opposing candidate’s campaign manager/treasurer appears before him or a member of the candidate’s firm appears before the judge. The judge should continue to appoint an opposing candidate, his/her partner or his/her campaign manager to abuse and neglect cases in the same manner as when the candidate was not running for office.

**JIC Advisory Opinion 2022-07:** For the first time, the JIC has set the limit for a judge’s obligation to disclose when a lawyer serves on the judge’s campaign committee to one year after the judicial candidate takes office or one year after the dissolution of the campaign committee, whichever is longer.

**JIC Advisory Opinion 2017-19:** Judicial candidates should refrain from learning who contributed to their campaigns in order to avoid disqualification/disclosure issues.

**JIC Advisory Opinion 2015-11:** An incumbent judge running against an assistant prosecutor for re-election does not need to disclose or disqualify since the assistant prosecutor represents the state.

**JIC Advisory Opinion 2009-11:** A judge is disqualified from presiding over cases involving his/her attorney friend who also served as the judge's campaign manager for an extended period of time.

**JIC Advisory Opinion 2009-05:** A judge should disclose that a criminal defendant and her family campaigned for him/her in the 2008 election and follow the appropriate trial court rule where applicable.

**JIC Advisory Opinion 2008-09:** A judge should disclose whenever his/her former campaign manager appears before him representing a party to litigation since the two are also personal friends and vacation together on occasion.

**JIC Advisory Opinion 2003-06:** A judge should disclose whenever an attorney who served as the judge's campaign manager or treasurer appears before him/her and follow the appropriate trial court rule whenever applicable.

**JIC Advisory Opinion 2007-29:** A judge who is running for re-election must disclose the relationship in any case where his campaign treasurer or campaign manager is representing a party.

**JIC Advisory Opinion 2000-06:** Judge should disclose that he/she is running against a lawyer for office whenever the lawyer appears in the judge's courtroom and file the appropriate trial court rule when applicable.

**JIC Advisory Opinion 1995-34:** A judge running for office has a duty to disclose that attorneys appearing in his/her courtroom were serving on his/her campaign committee and to follow the appropriate trial court rule when applicable.

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

**JIC Advisory Opinion 2000-03:** 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.

**JIC Advisory Opinion 1995-17:** A judicial officer/candidate may attend public fundraising events for judicial and non-judicial candidates. However, the judicial officer/candidate could not give an unsolicited financial contribution to another candidate.

**JIC Advisory Opinion 1990-10:** A judicial officer, whether currently a candidate or not, may buy a ticket and attend a fundraiser for a candidate without violating the ethical prohibition against public endorsement of candidates.

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

**JIC Advisory Opinion 2000-36:** A judge can donate building space in which he/she has an interest to the democratic party for use as a headquarters in an upcoming election.

**JIC Advisory Opinion 1992-15:** A magistrate can contribute to a county executive committee so long as the contributions fall within the amounts permitted by statute.

**O. 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 non-judicial 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 non-judicial elective office.

**JIC Advisory Opinion 2019-06:** A member of the House of Delegates 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 “will be immediately subject to other provisions of the Code of Judicial Conduct.”

**JIC Advisory Opinion 2016-10:** A law clerk who filed to run for the House of Delegates before being hired as a judicial employee does not have to resign his position if it is too late for him/her to withdraw from the non-judicial election as long as he/she no longer campaigns for office, takes down all campaign signs, closes the election committee, doesn’t participate in any campaign interviews, and publicly disavows candidacy if asked.

**JIC Advisory Opinion 2018-16:** 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.

**JIC Advisory Opinion 2018-03:** A magistrate assistant must immediately resign her judicial position in order to run for Circuit Clerk.

**JIC Advisory Opinion 2012-06:** 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 non-judicial 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.

**JIC Advisory Opinion 2012-03:** A magistrate must immediately resign from office upon announcing his/her candidacy for sheriff.

**JIC Advisory Opinion 2012-02:** A non-incumbent candidate for Magistrate does not have to resign his/her seat on City Council to run for judicial office.

**JIC Advisory Opinion 2007-28:** A Mental Hygiene Commissioner who wanted to run for prosecuting attorney must 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.

**JIC Advisory Opinion 2007-21:** A Mental Hygiene Commissioner does not have to resign his/her position in order to run for circuit or family court judge but would have to resign if he/she were to run for prosecuting attorney. The JIC also advised that the Mental Hygiene Commissioner would have to resign if he/she accepted a position as an Assistant Prosecutor.

**JIC Advisory Opinion 2004-08:** A magistrate assistant would be required to resign to run for the nonpartisan nonjudicial position of member of the Board of Education.

**JIC Advisory Opinion 2002-07:** A senior status magistrate must resign her position in order to run for the non-judicial position of member of the County Commission.

**JIC Advisory Opinion 1996-16:** A domestic violence advocate, which is a nonjudicial position, would not be required to resign from office to run for magistrate. The JIC 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.

**JIC Advisory Opinion 1996-22:** A senior status judge could not concurrently serve on the County Board of Education.

**JIC Advisory Opinion 1994-06:** A family law master would have to resign his/her judicial office to run for the non-judicial position of county commissioner.

**P. Campaign Materials/Signs:**

**In the Matter of Jeffries, Complaint No. 67-2022 (WV Aug. 16, 2022):** A magistrate candidate was admonished for wearing a law enforcement uniform in campaign advertisements/social media postings and creating the appearance that he/she was publicly supporting other candidates for non-judicial office.

**JIC Advisory Opinion 2020-14:** A magistrate candidate in one county may use prior swearing-in photos from his/her time as a magistrate in another county so long as he/she clarifies in the caption underneath the photo that it involves prior service in a different county.

**JIC Advisory Opinion 2020-04:** A law enforcement officer who is running for magistrate cannot use photographs of himself/herself in uniform in campaign materials and/or on social media.

**JIC Advisory Opinion 2019-25:** A judicial candidate may use photos from the public domain as long as he/she removes any judges or other candidates from the pictures so there is no question about endorsement/opposition for or against any candidate or you use a disclaimer on the campaign material in print large enough to see that “the photo is from the public domain and is not indicative of any endorsement or opposition by or for another judge or candidate depicted therein.”

**JIC Advisory Opinion 2017-05:** A judge’s daughter and son-in-law may place a campaign banner at a real estate office jointly owned with the judge’s spouse when it is supportive of the son-in-law’s run for municipal office and the judge has no involvement in the business.

**JIC Advisory Opinion 2015-23:** 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 JIC’s belief that old campaign signs cease to have value when the campaign they were created for ends.

**JIC Advisory Opinion 2014-09:** A mental hygiene commissioner is precluded from posting campaign signs on his/her property or engaging in other campaign activity for a family court judge candidate.

**JIC Advisory Opinion 2002-08:** A magistrate 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 JIC stated that the magistrate could not give the signs away because the action could be construed as a contribution to another candidate.

**JIC Advisory Opinion 2014-11:** 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 one hundred (100) feet away from the courthouse/county premises. The opinion references the language of W. Va. Code § 3-9-9 that no person may do any electioneering on election day within one (100) hundred feet of the outside entrance to the building housing a polling place.

**JIC Advisory Opinion 2002-10:** A judicial candidate’s posters can be placed publicly with posters from other candidates. However, the JIC stated that a judicial candidate could not go campaigning, traveling with, or visiting potential voters with a non-judicial candidate.

**JIC Advisory Opinion 2000-10:** A judicial candidate may not use the state seal on any campaign materials.

**JIC Advisory Opinion 1996-07:** 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.

**JIC Advisory Opinion 1990-09:** 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.

**Q. Declaration of Candidacy:**

**JIC Advisory Opinion 2020-02:** A senior status magistrate does not have to resign to run for judicial office.



**JIC Advisory Opinion 2014-04:** 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.

**JIC Advisory Opinion 2007-24:** A judge who has filed the appropriate pre-candidacy papers and has a committee could begin campaigning in a non-election year.

**R. 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.

**JIC Advisory Opinion 2019-22:** A judge whose spouse is running for governor may attend fundraisers for the spouse outside the marital home. A judge may not attend fundraisers put on by the spouse or his/her campaign committee inside the marital home as the public make misconstrue that as an endorsement or the solicitation of funds on his/her behalf. The judge also cannot appear in a parade with the candidate spouse or introduce the candidate or speak about the campaign. The judge’s name and photograph may appear on campaign literature for the spouse as long as the judge is not identified as such in any of the materials.

**JIC Advisory Opinion 2012-13:** A law clerk may make a monetary donation to the political campaign of an out-of-state judge by whom the law clerk was previously employed.

**JIC Advisory Opinion 2012-08:** 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.”

**JIC Advisory Opinion 2004-12:** 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 JIC 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.”

**JIC Advisory Opinion 2004-11:** 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 JIC stressed that the magistrate assistant would not be able to conduct any fundraising for her husband.

**JIC Advisory Opinion 2002-30:** 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 JIC told the judge that under those caveats it would be permissible for him to appear in his wife's campaign photo.

**JIC Advisory Opinion 2002-13:** The JIC 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 JIC stated that the home could be used for such events if the judge was not involved in fundraising or endorsing any candidate. The JIC 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.

**JIC Advisory Opinion 2000-07:** It's acceptable for a magistrate candidate to appear on the same ballot as her daughter who was running for prosecuting attorney. The JIC reminded the magistrate candidate that he/she could not endorse or oppose any candidate for public office, which includes her daughter.

**JIC Advisory Opinion 1995-24:** 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 JIC 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.

**JIC Advisory Opinion 1994-04:** 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 JIC stated that it would be permissible for the magistrate to attend campaign rallies or other social functions with his wife. The JIC 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 JIC also stated that if the magistrate's wife were elected prosecutor, he would be automatically disqualified from handling all cases involving that office.

**JIC Advisory Opinion 1992-16:** A member of a judge's staff cannot be required to appear at political functions for, make speeches for or make public endorsements on behalf of his/her boss.

**JIC Advisory Opinion 1991-05:** The JIC 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 JIC 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 JIC 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 JIC 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.

## **S. 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 JIC 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.”

**JIC Advisory Opinion 2018-05:** 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 JIC 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.”

**JIC Advisory Opinion 2018-13:** 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.

**JIC Advisory Opinion 2016-01:** 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.

**JIC Advisory Opinion 2015-26:** 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.

**JIC Advisory Opinion 2000-33:** A judicial candidate’s campaign committee 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.

**JIC Advisory Opinion 2000-24:** A judicial candidate can continue to serve as an expert witness in insurance cases during the pendency of the campaign as long as the candidate does not use any position which he/she might take as an expert to advance his/her campaign or in a political way.

**JIC Advisory Opinion 2000-11:** The daughter of a magistrate candidate was running for prosecuting attorney of the same county. The JIC 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 JIC 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.

**JIC Advisory Opinion 1995-29:** A judge may serve as a moderator of a debate between candidates for governor.

**JIC Advisory Opinion 1986-02:** A circuit court judge cannot serve as an election night commentator for a local radio station.

V.

**RELEVANT RULES OF PROFESSIONAL CONDUCT**

**A. Rule 3.6. Trial Publicity**

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicatory proceeding in the matter. . . .

**COMMENT**

- [1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.
- [2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such Rules. [3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.
- [3] The Rule sets forth a basic general prohibition against a lawyer making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

**B. Rule 8.2. Judicial and Legal Officials**

- (a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or a candidate for election or appointment to judicial or legal office.
- (b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

## COMMENT

- [1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.
- [2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.
- [3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

### C. **Rule 8.4. Misconduct**

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

## COMMENT

- [1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.
- [2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept

can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately can indicate indifference to legal obligations.

- [3] A lawyer, who, in the course of representing a client, knowingly manifests by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (d) when such actions are prejudicial to the administration of justice. Legitimate advocacy respecting the foregoing factors does not violate paragraph (d). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.
- [4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.
- [5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney. The same is true of abuse of administrator, guardian, agent and officer, director or manager of a corporation or other organization.

## VI.

### RULE OF PROFESSIONAL CONDUCT RELEVANT CASE LAW

***Lawyer Disciplinary Bd. v. Hall***, 234 W. Va. 298, 765 S.E.2d 187 (2014): Three-month suspension warranted for attorney who made statements in a pleading accusing Human Rights Commission ALJ of racial bias, unethical behavior, and predisposition against attorney's clients based on fact that ALJ was African American. There was no objectively reasonable basis for statements which Court held violated rules prohibiting attorney from making a false or reckless statement concerning the qualifications or integrity of a judge and prohibiting conduct prejudicial to the administration of justice.

***Lawyer Disciplinary Bd. v. Turgeon***, 210 W. Va. 181, 557 S.E.2d 235, 210 W.Va. 181, cert. denied 534 U.S. 841 (2000): Two-year suspension appropriate for attorney's misconduct in three cases which included in part making false statements about a judge presiding over civil battery case brought against his client.

***Committee on Legal Ethics of West Virginia State Bar v. Douglas***, 179 W. Va. 490, 370 S.E.2d 325 (1988): Question whether attorney's public comments on circuit court investigation of real estate transaction in which attorney had prepared all the documents were protected under the free speech clause of the 1st Amendment from being the subject of discipline warranted remand. Free speech clause protects lawyer's criticism of legal system and its judges, but this protection is not absolute. Lawyer's speech that presents serious and imminent threat to fairness and integrity of judicial system is not protected by free speech clause. When lawyer makes personal attacks upon judge or other court

official, such speech is not protected by free speech clause if it consists of knowingly false statements or false statements made with reckless disregard of the truth.

***LDB v. Mohler***, Supreme Court No. 20-0260, Complaint Nos 18-03-070 and 19-05-049 (April 21, 2021). Count II of a two-count formal statement of charges alleging that Respondent violated Rules 8.2(a) and 8.4(c) and (d) of the Rules of Professionals Conduct was dismissed for failure to prove by clear and convincing evidence that the lawyer called the judge presiding in a case an expletive. Only one person heard the alleged comment while the lawyer repeatedly denied the claim.

***Facemire v. Lewis***, Complaint No. 17-02-174 (W. Va. Oct. 1, 2018): Lawyer admonished for violating Rule 8.2(a) of the Rules of Professional Conduct for making reckless statements about the integrity of a presiding judicial officer and that such comments “can undermine the integrity and public confidence in the administration of justice.”

***Ferguson v. Hoover***, Complaint No. 16-03-427 (W. Va. June 27, 2018): Lawyer’s partner ran against a circuit judge. Prior to the election, the lawyer caused to be printed details of a confidential complaint that he had filed against the Judge with the Judicial Investigation Commission. The JIC subsequently dismissed the JIC complaint 10 days after it appeared in the newspaper. The judge then filed an ODC complaint alleging that in releasing the JIC complaint to the newspaper the lawyer violated Rule 8.2(a) of the Rules of Professional Conduct. While the 8.2(a) claim could not be substantiated, the IP Panel admonished the lawyer for violating Rule 3.6(a) for providing a copy of the JIC complaint to the reporter. The IP Panel stated that “at the time the lawyer spoke with the reporter he had not received notification that the JIC complaint had been closed and therefore, he knew or should have known that the JIC investigation was still on-going at the time. Moreover, Respondent should have been on notice that disclosure of the JIC complaint was prohibited pursuant to Rule 2.4 of the Rules of Judicial Disciplinary Procedure and that the information contained therein was confidential.”

***ODC v. Thompson***, Complaint No. 14-02-282 (W. Va. June 9, 2015): Unsuccessful candidate for prosecuting attorney was admonished by the Investigative Panel of the Lawyer Disciplinary Board for publicly criticizing the newly elected prosecutor as it related to his handling of a sexual assault case. In finding that the lawyer violated Rule 8.2, the IP found that he “did not have [an] objectively reasonable factual basis for his conclusions that [the] Prosecutor . . . handled a case in a ‘cavalier way,’ or that [the Prosecutor] apparently will not [safeguard children].”