

Supreme Court Advisory Committee on the Code of Judicial Ethics

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INVITATION TO COMMENT

SP16-07

Title	Action Requested
Proposed Amendments to Canon 5B(1)(b) and Commentary of the Code of Judicial Ethics	Review and submit comments by September 20, 2016
Proposed by	Proposed Effective Date
Supreme Court Advisory Committee on the Code of Judicial Ethics Hon. Richard D. Fybel, Chair	November 1, 2016
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Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics proposes amendments to canon 5B(1)(b) of the code. The proposed amendments would clarify that a judge who makes false or misleading statements during an election campaign or the appointment process violates canon 5B(1)(b). After receiving and reviewing comments on this proposal, the committee will make recommendations to the Supreme Court regarding the proposed amendments. The full text of the proposed amended canon is attached.

Discussion

Canon 5B(1)(b) states that judicial candidates and applicants seeking judicial appointment “shall not knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning himself or herself or his or her opponent or other applicants.” The commentary following canon 5B states that the canon “prohibits making knowing misrepresentations, including false or misleading statements” The commentary refers to “false or misleading statements,” but the canon mentions only misrepresentations.

In 2015, the State Bar Court considered a matter in which an attorney who was an unsuccessful candidate for judicial office made misleading but truthful statements about his opponent. (*In the Matter of Parish* (Review Dept. 2015) 5 Cal. State Bar Ct. Rptr. 370. The court declined to discipline the attorney because rule 1-700 of the State Bar Rules of Professional Conduct, which incorporates canon 5B(1)(b), refers only to misrepresentations. The court stated: “[Rule 1-700 and canon 5B(1)(b)] do not purport to regulate true statements that may be misleading or true

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

statements that might imply or suggest through innuendo that voters draw false conclusions.”
(*Ibid.*)

The committee agrees that misleading statements in judicial elections and applications for appointment to the bench, like misrepresentations or false statements, should be prohibited, as noted in the commentary. To make the canon and the commentary consistent, and in response to *Parish*, the committee proposes that the canon be amended to add a reference to “false or misleading statements.” The proposed language would track rule 4.1(A)(11) of the American Bar Association’s Model Code of Judicial Conduct, which states that a judge or a judicial candidate “shall not knowingly, or with reckless disregard for the truth, make any false or misleading statement.”

Canon 5B(1)(b) of the California Code of Judicial Ethics and the Advisory Committee
Commentary would be amended to read:

CANON 5

**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**

Judges and candidates for judicial office are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety. Judicial independence, impartiality, and integrity shall dictate the conduct of judges and candidates for judicial office.

Judges and candidates for judicial office shall comply with all applicable election, election campaign, and election campaign fundraising laws and regulations.

A. * * *

B. Conduct During Judicial Campaigns and Appointment Process

(1) A candidate for judicial office or an applicant seeking appointment to judicial office shall not:

(a) * * *

(b) knowingly, or with reckless disregard for the truth, ~~misrepresent~~ make false or misleading statements about the identity, qualifications, present position, or any other fact concerning himself or herself or his or her opponent or other applicants.

(2)–(3) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5B

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Canon 5B(1)(b) prohibits ~~making knowing misrepresentations, including knowingly making false or misleading statements,~~ during an election campaign because doing so would violate Canons 1 and 2A, and may violate other canons.

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C. – D. * * *