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Judicial Election Oversight Committee

2022 Judicial Elections

Public Opinion No. 2022-06

2021-M-01306-SCT

In Public Opinion No. 2022-04, the Judicial Election Oversight Committee (“Oversight Committee”) addressed a complaint regarding a candidate for county court judge who presently serves as a justice court judge. The Oversight Committee found that the candidate had improperly used the title “Judge” in his campaign materials without clearly identifying his present position. The Oversight Committee also found that the candidate’s campaign materials failed to include the disclosures required by Mississippi Code Annotated section 23-15-1025. In Public Opinion No. 2022-04, the Oversight Committee declined to identify the candidate by name; however, for the reasons discussed below, the Oversight Committee now finds it necessary to identify the candidate as Justice Court Judge Robert Davis of Forrest County.

In Public Opinion No. 2022-04, the Oversight Committee gave Judge Davis ten days to take down, cease to use, or correct all campaign materials that used the title “Judge” without clearly identifying his current judgeship or failed to comply with section 23-15-1025. The Oversight Committee issued the opinion on July 15, 2022, and sent it to Judge Davis at the email addresses he previously provided to the Oversight Committee.

On August 5, 2022, the Oversight Committee received a complaint that Judge Davis had failed to comply with Public Opinion No. 2022-04. The complaint alleged that Judge Davis not only had failed to take down or correct his campaign materials but also had put up more yard signs that failed to clearly identify his current judgeship and failed to comply with section 23-15-1025. Following a meeting of the Oversight Committee, a member of the staff of the Judicial Performance Commission sent an e-mail to Judge Davis and his Campaign Finance Committee Chair, with a follow up phone call to Judge Davis after no written response to the e-mail was received, to determine why he had not complied with Public Opinion No. 2022-04. Judge Davis stated that he had not seen the opinion, although he acknowledged that it was sent to his correct email address. On August 11, 2022, Judge Davis stated that he would promptly “cover or remove the signs and materials that [did] not include the required information” and that he would have corrective stickers printed for his signs. On August 15, 2022, the Oversight Committee directed Judge Davis to remove or correct all noncompliant campaign materials no later than August 21, 2022.

On August 22, 2022, the Oversight Committee received a new complaint alleging that Judge Davis still had not removed or corrected his noncompliant signs and other campaign materials. On August 29, 2022, the Oversight Committee received a further

complaint with supporting photographs showing that on August 27, 2022, Judge Davis or his campaign put up noncompliant signs outside a local football stadium prior to a high school football game. The signs used the title “Judge” but failed to identify Judge Davis’s current position and failed to comply with section 23-15-1025. On August 30, 2022, a member of the staff of the Judicial Performance Commission observed additional signs for Judge Davis’s campaign that still did not identify his current judgeship or comply with section 23-15-1025.

In response to these most recent complaints, Judge Davis stated that he had been out of state for nine days and that the signs at the football game were placed “without [his] approval and knowledge.” Judge Davis stated that he and his supporters had been diligent in attempting to take down/remove all noncompliant campaign materials. Judge Davis also stated that he had ordered new signs and other campaign materials that identify his current position and comply with section 23-15-1025, and he provided the Oversight Committee with the designs for those materials. Judge Davis apologized profusely and stated that he would “work exceptionally hard to see that this does not occur again.”

The Oversight Committee acknowledges Judge Davis’s efforts to comply with Public Opinion No. 2022-04 and accepts Judge Davis’s representations that he has not intentionally or willfully failed to comply. However, a candidate is responsible for the activities of his campaign committee and compliance with the election laws and the Code of Judicial Conduct. In addition, more than six weeks after the opinion issued, and after two deadlines had passed, Judge Davis still had not fully complied with the opinion. In Public Opinion No. 2022-04, the Oversight Committee stated that if Judge Davis failed to comply, we would reissue the opinion using Judge Davis’s name and refer the issue to the Commission on Judicial Performance. We now find that it is necessary to take those steps. Therefore, an edited version of Public Opinion No. 2022-04 is reprinted below using Judge Davis’s name.¹ In addition, a copy of this opinion will be forwarded to the Commission on Judicial Performance.²

¹ Part III of the opinion, which addressed an issue not relevant to this opinion, is omitted.

² See Mississippi Code of Judicial Conduct Canon 5F(9) (“The Oversight Committee shall report any violations of the Code of Judicial Conduct or election law to the appropriate authorities. The Oversight Committee, however, does not have the authority to institute disciplinary action against any judicial candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.”).

Judicial Election Oversight Committee

2022 Judicial Elections

Public Opinion No. 2022-04

2021-M-01306-SCT

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I. Use of the title “Judge”

Robert Davis currently serves as a justice court judge and is a candidate for county court judge. The Oversight Committee has received photographs of a car magnet and push card for Judge Davis that state, “Judge Robert Davis for Forrest County Court Judge.” These materials fail to disclose that Judge Davis is currently a justice court judge, not a county court judge. Judge Davis’s opponent in the election is the incumbent county court judge.

The former Special Committee on Judicial Election Campaign Intervention (“Special Committee”) addressed this issue in several prior public opinions and statements. For example, in Opinion 2018-26, the Special Committee addressed a complaint regarding a candidate for circuit judge (“O”) who was then serving as a municipal judge. The candidate’s signs and other campaign materials referred to the candidate as “Judge [O]” but failed to clearly state that Judge O was a municipal judge, not a circuit judge. The Special Committee found that Judge O was in violation of Canon 5A(3)(d)(iii) of the Mississippi Code of Judicial Conduct. Reaffirming Opinion 2006-002, the Special Committee again stated as follows:

Canon 5A(3)(d)(iii) prohibits a candidate from knowingly misrepresenting their qualifications or present position. The Special Committee is of the opinion that a candidate who holds another judicial office may use the title “Judge” in campaign materials subject to certain limitations. The campaign material must clearly identify the circumstances justifying use of the title, including identifying the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate’s present position, and must make clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election.

In Opinion 2018-26, the Special Committee cited additional prior public opinions that reached the same conclusion in similar cases.

In the present case, we reach the same conclusion as the former Special Committee. Judge Davis’s use of the title “Judge” in his campaign materials without specifying the judgeship that he currently holds is misleading and violates Canon

5A(3)(d)(iii). Judge Davis should immediately cease distributing signs, push cards, and any other campaign materials that use the title “Judge” without clearly specifying that Judge Davis currently is a justice court judge, not a county court judge. In addition, Judge Davis should immediately correct any of his campaign’s websites or social media accounts that use the title “Judge” without clearly specifying that Judge Davis currently is a justice court judge, not a county court judge. Finally, as soon as possible and by no more than **ten days** from the date of this Opinion, Judge Davis shall take down or alter/correct any campaign signs or car magnets that use the title “Judge” without clearly specifying that Judge Davis currently is a justice court judge, not a county court judge. Judge Davis may continue to use the title “Judge” by altering his signs and other campaign materials to read, “Justice Court Judge Robert Davis for Forrest County Court Judge.” If Judge Davis continues to use the title “Judge” in signs or other campaign materials, the words “Justice Court” must be “in an easily readable size and form, such that the materials will not mislead the voter as to [Judge Davis’s] present position.” Special Comm. Op. 2014-001. Judge Davis may bring his existing signs and other campaign materials into compliance by affixing an easily readable “Justice Court” sticker to his signs/materials. If Judge Davis fails to bring his campaign materials into compliance as set forth above, the Oversight Committee will (a) reissue this Opinion using Judge Davis’s name and (b) refer the issue to the Commission on Judicial Performance.

II. Statutorily required disclosures in campaign materials

Mississippi Code Annotated section 23-15-1025 (Rev. 2018) provides as follows:

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate’s approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars (\$1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

See also Miss. Code Ann. § 23-15-897 (Rev. 2018) (imposing similar requirements applicable to campaign materials distributed by any candidate).

The example of Judge Davis’s push card submitted to the Committee states, “Paid for by Robert Davis.” However, it does not state whether it has been approved by the candidate. The example of Judge Davis’s car magnet does not appear to provide any of the information required by section 23-15-1025. These campaign materials violate section 23-15-1025 because they do not include all information required by the statute.

Judge Davis should immediately bring his signs and other campaign materials into compliance with section 23-15-1025. Such signs may comply with the statute by stating, for example, “Paid for Robert Davis. Submitted to and approved by Robert Davis.” If the materials are paid for/distributed by a committee to elect Judge Davis, then they shall so state and shall also identify the committee’s officers. Judge Davis should immediately cease distributing any campaign materials that do not comply with section 23-15-1025. In addition, as soon as possible and by no means more than **ten days** from the date of this Opinion, Judge Davis shall take down or alter/correct any campaign signs or car magnets that do not comply with the statute. Judge Davis may bring his existing signs/campaign materials into compliance by placing a sticker on his campaign materials that includes all statutorily required information. If Judge Davis fails to bring his campaign materials into compliance as set forth above, the Oversight Committee will (a) reissue this Opinion using Judge Davis’s name and (b) refer the issue to the Commission on Judicial Performance.¹

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¹ The Oversight Committee notes that the former Special Committee similarly directed a candidate “and his committee to immediately place the required statutory language on all campaign signs or remove such signs from public view.” Special Comm. Op. 2018-27.