



ARKANSAS JUDICIARY

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## **Rule 4.1 - Political And Campaign Activities of Judges, Judicial Candidates and a Judge-Elect in General**

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge, a judicial candidate, and judge-elect 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, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
- (5) solicit the efforts of any individual, committee, or organization to expend money outside of the judge's campaign when such expenses will not be reported by the campaign if the purpose of the expenditure is to influence the outcome of the judge's election.
- (6) publicly identify himself or herself as a candidate of a political organization;
- (7) seek, accept, or use endorsements from a political organization or an elected official who was elected in a partisan election; however, nothing prevents a judicial candidate from speaking to a political organization or elected official concerning the judicial candidate's election;
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;
- (12) 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
- (13) 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;

(14) use the term "re-elect" unless the judge was previously elected to that same position.

(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).

(C) For purposes of this Rule, a judge may use the title "Judge" if the judge is currently serving as a judge on the district court, circuit court, or court of appeals. A judge may use the title "Justice" if currently serving on the Arkansas Supreme Court. A judge who previously has held one of these positions may use the appropriate title as long as it is preceded by the term "former."

### **Comment Text:**

#### COMMENT

#### GENERAL CONSIDERATIONS

[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, judicial candidates, and a judge-elect must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges, judicial candidates, and a judge-elect taking into account the various methods of selecting judges.

[2] When a person becomes a judge, judicial candidate, or judge-elect, this Canon becomes applicable to his or her conduct. In addition, Arkansas Rule of Professional Conduct 8.2(b) provides that a "lawyer who is candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct."

#### PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges, judicial candidates, or a judge-elect are perceived to be subject to political influence. Although judges, judicial candidates, and a judge-elect 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, judicial candidates, and a judge-elect 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, or from endorsing or opposing candidates for the same judicial office for which they are running.

[5] Although members of the families of judges, judicial candidates, and a judge-elect 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, candidate, and judge-elect publicly endorsing candidates for public office. A judge, judicial candidate, and a judge-elect must not become involved in, or publicly associated with, a family member's political activity or campaign for public office.

[6] Judges, judicial candidates, and a judge-elect retain the right to participate in the political process as voters in both primary and general elections. Judges are permitted to request a ballot in a party's primary without violating this Code.

[6A] Judges, judicial candidates, and a judge-elect are permitted to attend or purchase tickets for dinners or other events sponsored by a political organization.

## STATEMENTS AND COMMENTS MADE BY JUDGES, JUDICIAL CANDIDATES, AND A JUDGE-ELECT

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) 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. As an example, "judicial experience" is misleading unless referring to the person's service on a district court, circuit court, court of appeals, or supreme court.

[8] Judges, judicial candidates, and a judge-elect 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 judge, judicial candidate, or judge-elect's integrity or fitness for judicial office. As long as the judge, judicial candidate, or judge-elect does not violate these Rules, 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)(12), a judge, judicial candidate, or judge-elect 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)(12) prohibits judges, judicial candidates, and judge-elect 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 judge-elect, 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)(13) makes applicable to judges, judicial candidates, and a judge-elect 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.

[13A] Before speaking or announcing personal views on social or political topics in a judicial campaign, candidates should consider the impact of their statements. Such statements may suggest that the judge lacks impartiality. See Rule 1.2. They may create the impression that a judge has or manifests bias or prejudice toward individuals with contrary social or political views. See Rule 2.3. Public comments may require the judge to disqualify himself or herself when litigation involving those issues come before the judge. See Rule 2.11. 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)(13) 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)(13), 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.

**History Text:**

Amended and effective December 15, 2016.

**Associated Court Rules:**

Arkansas Code of Judicial Conduct

**Group Title:**

CANON 4

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