



# NYSBA

## The High Road— Rules for Conducting a Judicial Campaign in New York



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Association's Special Committee on  
Judicial Campaign Conduct

*Portions of this guide have been adapted from "The Higher Ground: Standards of Conduct for Judicial Candidates" published by The Constitution Project, a bipartisan, nonprofit organization which advocates for judicial independence, and from ethics opinions published by the New York State Bar Association Committee on Professional Ethics*



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Judges are not political candidates in the traditional sense. They do not represent constituents; they represent the law. Their decisions must be based on an informed and good faith interpretation of the law and the Constitution, not popular opinion or special interests. They should not support any political or ideological agenda.

Because of the unique role of judges in our democratic system, candidates for judicial office must be held to higher standards than candidates for other elective offices. Judicial candidates not only must be unbiased and impartial, they also must avoid any appearance of bias or partiality.

In New York State, the conduct of lawyers and candidates for judicial office is governed by the Lawyer's Code of Professional Responsibility and the Code of Judicial Conduct (codified as Part 100 of the Rules of the Chief Administrator of the Courts). DR 8-103 of the Code of Professional Responsibility specifically requires a lawyer who is a candidate for judicial office to comply with Canon 5 of the Code of Judicial Conduct.

These rules ensure that judicial candidates conduct campaigns that are consistent with the dignity and integrity of the legal profession and the judicial system. Election by means of conduct that debases the dignity of the judicial office not only devalues the victory but, more importantly, decreases the effectiveness of the judicial system in playing its part to uphold the rule of law, which is the highest calling of all members of the profession.

In reviewing the following guidelines for judicial campaign conduct, the candidate should be guided by the overriding principle that all campaign conduct is to be compatible with and in furtherance of professional and judicial dignity and integrity.



### CAMPAIGN THEMES: *Avoiding the Pitfalls*

- 1. Qualifications:** Campaign material may include a discussion of the candidate’s qualifications as well as those of an opponent. Any such discussion must be truthful and dignified. Campaign material may not include statements as to positions on contested legal or political issues, appeals to passion, fear or prejudice, or any other topic inappropriate for judicial campaign material.
- 2. Endorsements:** Campaign material may include references to endorsements the candidate has received. However, care should be taken to avoid soliciting improper endorsements, and the candidate should not personally solicit endorsements.
- 3. Issues which may come before the court; views on disputed legal or political issues:** It is a long-standing rule that a judicial candidate may not discuss how he or she would decide a case that might come before the candidate if elected. In addition, while it is recognized that a candidate will have views on disputed legal or political issues, a public pronouncement of these views may be seen as an indication of how the candidate would decide cases as a judge and would give the impression that the candidate would not approach a case involving those issues with an open mind. Accordingly, the candidate should not announce his or her views on disputed legal or political issues if it is foreseeable that such issues may bear upon a case that may come before the court in the future.

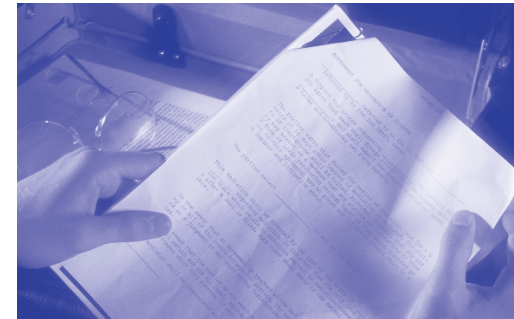
- 4. Appeals to passion, fear, prejudice or other improper basis for voter action:** The only basis on which a candidate should seek voter support is whether the candidate will be a capable and impartial judge. A candidate should not, either directly or indirectly, appeal to voters’ fears, passions or prejudices. The candidate should not use appeals for or against any particular race, ethnic group, gender, religion, or similar group.
- 5. Incumbent judges:** An incumbent judge should not give the impression that he or she is using the judicial office improperly to promote his or her candidacy. The judge should not take any judicial action which is designed to gain support for his or her campaign. At the same time, the judge is expected to discharge fully his or her judicial responsibilities, without interference by his or her campaign.
- 6. Misrepresentation:** None of a judicial candidate’s campaign material should knowingly make false statements concerning either the candidate or an opponent.

### CAMPAIGN BOUNDARIES: *Media and Appearances*

- 1. Presentation of campaign material:** Any media, including television and radio, newspaper and other publications, posters, signs and handbills, may be used in a campaign. The presentation of campaign materials should comport with the dignity and integrity of judicial office, and should not be done in a sensational or dramatic manner. Particular care should be taken in preparing campaign material for television, in light of the potential impact of that medium.
- 2. Appearances by the candidate; endorsements:** A judicial candidate may appear before political, civic or other organizations, either alone or in the company of other candidates. However, while merely appearing with other candidates is not

improper, a judicial candidate may not endorse other candidates for either judicial or non-judicial office.

- 3. Appearances or support by others:** Any person may appear in support of a judicial candidate, except the following: (a) another judicial candidate; (b) a judge in the Unified Court System; (c) a non-lawyer who is a party to litigation which is or reasonably may be expected to come before the candidate, or has come before the candidate so recently as to give the appearance of impropriety; and (d) a lawyer involved in such litigation.



### FUNDRAISING: *The Limitations*

- 1. Persons soliciting funds:** Neither a judicial candidate nor a member of the candidate’s immediate family may solicit campaign funds, except from family members. Campaign funds should be solicited only through campaign committees. A judicial candidate may not solicit funds on behalf of any other candidate, whether judicial or non-judicial.
- 2. Solicitation of parties to litigation:** Campaign funds may not knowingly be solicited or accepted from a party to litigation that is or may reasonably be expected to come before the candidate, or has come before the candidate so recently as to give the appearance of impropriety. This ban

extends to those employed by, affiliated with or immediately related to a party. Funds also may not knowingly be solicited or accepted from an organization that has as one of its purposes the promotion of one side of a legal issue that reasonably may be expected to come before the candidate if elected.

- 3. Soliciting lawyers:** Because lawyers have a better opportunity than many to appraise the qualifications of judicial candidates, there is no blanket prohibition against soliciting campaign funds from lawyers. However, contributions should not knowingly be accepted from lawyers who then have cases pending before a trial court candidate, and a lawyer with a case pending before that candidate should not contribute to the candidate’s campaign.
- 4. Identity of donors:** To prevent the appearance of impropriety, the names of campaign contributors should be kept secret from the candidate to the extent legally permissible. The candidate should not seek access to a list of contributors, nor should the candidate seek in any other way to learn the names of contributors.
- 5. Amount of donations:** The total amount of funds contributed to a candidate’s campaign should not exceed either any limits imposed by law or the actual needs of the candidate’s campaign. A campaign should not accept a donation so large as to give the appearance that the donor is trying to gain some special favor from the candidate.

### CONCLUSION

A judge’s position is one of great and sacred trust. Judicial candidates should adhere to these and all principles that uphold the dignity of the courts, promote judicial independence, and avoid even the appearance of impropriety.