



Committee on Professional Ethics

Opinion 558 - 3/26/84 (45-83) Topic: Campaign guidelines for judicial candidates.

Modifies N.Y. State 289 (1973) Digest: No restriction on the wearing of a robe by an incumbent judge in campaign literature.

Code of
Judicial Conduct: 7(B)

QUESTION

May an incumbent judge be depicted in judicial robes in campaign literature?

OPINION

In N.Y. State 289 (1973), we issued general guidelines applicable to campaigns for judicial office. One of those guidelines, paragraph C(5) of the opinion, among other things prohibits the use of campaign material depicting an incumbent judge "in his judicial robes."

Though N.Y. State 289 is distributed to candidates for judicial office by the Committee on Judicial Election Monitoring of the New York State Bar Association, it is a fact that many judges do wear a robe in their campaign literature. Notice is also taken of ABA Inf. 1450 (1980) ruling, without purporting to give reasons, that "there is no violation of the Code of Judicial Conduct when an incumbent Judge, in a re-election campaign, allows the use of a photograph (including a televised photograph) of himself wearing his judicial robe, if the photograph is otherwise proper and if he normally wears the robe in the performance of his judicial duties."

The prohibition against the wearing of a robe in campaign literature was set out in N.Y. State 289 as but an example of the general principle that "[t]he campaign material of an incumbent judge should not arouse reasonable suspicion that he is using the power or prestige of his judicial office to promote his candidacy."

Recognizing that the wearing of a robe by incumbent judges in their campaign literature is a prevalent practice, and also recognizing that consistency of precedent is itself a desirable objective, the Committee now adopts the position set out in ABA Inf. 1450 and modifies numbered paragraph C(5) of N.Y. State 289 to read as follows:

"5. Use of Power or Prestige of Judicial Office to Promote Candidacy.

"The campaign material of an incumbent judge should not arouse reasonable suspicion that he is using the power or prestige of his judicial office to promote his candidacy.²⁶ Thus, for example, an incumbent judge should take no judicial action which is calculated to obtain support for his candidacy.²⁷ Similarly, while a candidate's past or present position as a judge is clearly relevant to his qualifications, an incumbent judge takes unfair advantage of his judicial position if any campaign material shows him in court ~~er-in-his-judicial-robes~~.²⁸"

Accord Florida Opinion 73-15 (1973), indexed in Maru's Digest No. 8204 (Supp. 1977); Washington Opinion 48, indexed in Maru's Digest No. 4566 (1970).

For the reasons stated, and subject to the qualifications set forth in ABA Inf. 1450, the question posed is answered in the affirmative.
