



NEW YORK STATE BAR ASSOCIATION

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Committee on Professional Ethics

Opinion 581 — 5/4/87 — (30-86) Topic: Campaign guidelines for judicial candidates.

Digest: No restriction on the wearing of a robe by an incumbent judge in campaign material.

Modifies N.Y. State 289 (1973) Code: Code of Judicial
N.Y. State 558 (1984) Conduct, Canon 7(B)

QUESTION

May an incumbent judge be shown wearing judicial robes in campaign material during a judicial campaign for re-election or for election to another judicial office?

OPINION

Canon 7(B)(1)(c) of the Code of Judicial Conduct ("CJC") states that a candidate should not "misrepresent his identity, qualifications, present position, or other fact." N.Y. State 289 (1973) and N.Y. City 882 (1973) held that "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." The authority for this proposition was Canon 30 of the Former Canons of Judicial Ethics ("CJE"), which stated: "If a judge becomes a candidate for any judicial office, he should refrain from all conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party." However, this language was not transferred from the CJE to the CJC.

Under the rubric of prohibiting the use of the power or prestige of judi-

cial office to promote the judge's candidacy, N.Y. State 289 (1973) originally held that "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 or in his judicial robes."

In 1980, the ABA published ABA Inf. 1450, which held that "there is no violation of the Code of Judicial Conduct when an incumbent Judge, in a reelection 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." Because an increasing number of judicial candidates depicted themselves in judicial robes after the publication of the ABA opinion, the Judicial Election Monitoring Committee, in 1983, requested this Committee to reconsider N.Y. State 289 in that respect. The result of that reconsideration was N.Y. State 558 (1984), in which this committee "adopt(ed) the position set out in ABA Inf. 1450," and modified paragraph C(5) of N.Y. State 289 to delete the prohibition against being depicted in judicial robes. Although the revision of paragraph C(5) deleted all reference to judicial robes, rather than approving photographs with robes "where the judge normally wears the robe in the performance of his judicial duties," it nevertheless seems likely that we intended to preserve this distinction.

The CJC prohibits the candidate from misrepresenting his identity, qualifications, present position, or any other fact. Being depicted in robes is not such a misrepresentation, even if the judge normally does not wear robes in the course of his duties, because it does not constitute a representation that he wears his robes, but only that he is a judge and is entitled to wear them.

Accordingly, we modify N.Y. State 289 (1973) and N.Y. State 558 (1984) to the extent that an incumbent judge may be shown wearing judicial robes in campaign material during a judicial campaign for reelection or for election to another judicial office whether or not he customarily wears such robes. The question posed is, therefore, answered in the affirmative.
