



Committee on Professional Ethics

Opinion 612 - 9/7/90 (28-89)

Topic: Part-time judge's campaign use of the term "judge" or "justice."

Digest: Campaign literature and broadcasts of a judge campaigning for higher judicial office, which utilize the term "judge" or "justice," should note the judge's present judicial capacity.

Code of Judicial Conduct: Canon 1; 7(B)(1)(c)

QUESTION

Can an incumbent town, village or city justice use the term "judge" or "justice" in campaign literature or broadcasts when seeking election for a higher judicial office?

OPINION

The Rules of the Chief Administrator of the Courts provide: "Every judge shall participate in establishing, maintaining, and enforcing, and shall himself or herself observe, high standards of conduct so that the integrity and independence of the Judiciary may be preserved." 22 N.Y.C.R.R. § 100.1. See also Code of Judicial Conduct, Canon 1.

N.Y. State 289 (1973) details campaign guidelines for judicial candidates. Paragraph (D)(1) of that opinion states: "Nothing contained in these guidelines should be construed to prohibit an incumbent judge who is a candidate from using the word 'judge' or 'justice' (as may be appropriate) as a title or as a description of his [or her] present office."

Although the campaign use of the term "judge" or "justice" is truthful, it could be misleading to the lay reader or listener without the inclusion of additional information indicating that the candidate is not an incumbent of the higher judicial office sought, but is in fact a lower-court judge or justice. Absent such

full disclosure, the statement has "the potential for deception." **In re Von Wiegen**, 63 N.Y. 2d 163, 175 (1984). Although we did not address the issue of judicial advertising in N.Y. State 487 (1978), we stated: "The need for careful draftsmanship cannot be overemphasized. Even the slightest ambiguity may tend to mislead the uninformed."

Canon 7(B)(1)(c) of the Code of Judicial Conduct provides that a judge should refrain from conduct that would "misrepresent his [or her] identity, qualifications, present position, or other fact." See also N.Y. State 289 paragraph (C)(6). Moreover "[w]hat is truthful and non-deceptive in the context of a statement concerning a [judge's] experience is not always easy to define and may vary . . . as well as the relative sophistication of the persons to whom the statement is addressed." N.Y. State 487. If a judicial candidate wishes to trade on the fact that she or he is or was a town or village justice or a part-time judge, then some mention should be made in the campaign speech, broadcast or literature specifying the nature of the judicial office held.

CONCLUSION

For the reasons stated, the question posed is answered in the affirmative, subject to the foregoing ethical restrictions.
