

Campaign Endorsements and Other Campaign Conduct

JUDICIAL QUALIFICATIONS COMMISSION

OPINION #1-24

Code of Judicial Conduct Canon 4

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. However, the Commission may withdraw any opinion. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues.

Issue

Canon 4 of the Code of Judicial Conduct states that judges and candidates for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary. The purpose of this Advisory Opinion is to provide guidance on what constitutes permissible campaign conduct. Specifically, the following queries have been posed by candidates seeking judicial seats selected by partisan election:¹

- 1) May a judicial candidate seek the endorsement of a candidate who is running at the same time but in a different election cycle than the judicial candidate?
- 2) May a judicial candidate publicly endorse and contribute to the campaign of a candidate who has endorsed the judicial candidate but who is not running in the same election cycle?
- 3) May a judicial candidate use photos taken in the courtroom during ceremonial events for campaign materials?
- 4) May a judicial candidate use public areas of the courthouse to take photos for campaign materials?

¹ This Advisory Opinion only addresses campaign conduct for candidates for partisan elective judicial office. Candidates seeking nonpartisan elective judicial office are encouraged to review Indiana Code of Judicial Conduct Rules [4.1\(A\)](#), [4.1\(D\)](#), [4.2\(A\)](#), and [4.2\(C\)](#) for the specific provisions pertaining to their campaign conduct. Candidates for appointed judicial office are encouraged to review Indiana Code of Judicial Conduct Rules [4.1\(A\)](#) and [4.3](#).

Short Answer

A judicial candidate may seek the endorsement of a candidate who is running at the same time as the judicial candidate even if it is not in the same election cycle. However, the judicial candidate may not endorse or contribute to the other individual's campaign or attend that person's campaign events. A judicial candidate may not use the courtroom for promotional materials. The use of public areas of the courthouse for taking photographs for campaign materials might be permissible under limited circumstances. The analysis will be a balance of the appropriate use and the public accessibility to the area of the courthouse.

Recommended Rules for Review

Indiana Code of Judicial Conduct Rules: [4.1\(A\)\(3\), \(10\)](#); [4.2\(A\)](#); [4.2\(B\)\(4\), \(5\)](#)

Summary

Judicial candidates must maintain public confidence in the independence and impartiality of the judiciary, even while campaigning. Thus, judicial candidates must weigh whether their campaign activity would cause a reasonable person to question the candidate's independence, integrity, or impartiality. See Ind. Jud. Cond. R. [4.2\(A\)\(1\)](#).

The following general rules should be considered:

- 1) During a campaign, a judicial candidate is required to act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary. Ind. Jud. Cond. R. [4.2\(A\)](#).
- 2) A judicial candidate may not use court staff, facilities, or other court resources in a campaign for judicial office or for any other political purpose. Ind. Jud. Cond. R. [4.1\(A\)\(10\)](#).
- 3) During a judicial candidate's election cycle, the judicial candidate may seek and use endorsements from any person or organization, including other candidates and political organizations. Ind. Jud. Cond. R. [4.2\(B\)\(5\)](#). A judicial candidate, however, may only publicly endorse, contribute to, or attend the campaign events of other candidates who are running in the same election cycle as the judicial candidate. Ind. Jud. Cond. R. [4.2\(B\)\(3\)](#).
- 4) A judicial candidate is responsible for reviewing and approving the content of all campaign materials. Ind. Jud. Cond. R. [4.1\(A\)\(3\)](#).

Analysis

"An independent, fair and impartial judiciary is indispensable to our system of justice." Preamble, Ind. Code of Jud. Conduct. Unlike legislative and executive elected officials who are expected to be responsive to the preferences of their supporters, judges are to be guided by the

law and facts of every case. Ind. Jud. Cond. R. [4.1](#), Comment 1. “Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.” *Id.*

Nonetheless, as many trial court judges across the state are selected by partisan election, they will inevitably need to engage in some political activities when seeking judicial office. Canon 4 of the Code of Judicial Conduct attempts to strike a balance between the judicial candidate’s need to speak and act in furtherance of the candidate’s judicial campaign while preserving the public’s interest in maintaining the judiciary’s independence, impartiality, and integrity. Ind. Jud. Cond. R. [4.1](#), Comments 1-4, 13.

When evaluating whether specific campaign activities are permitted, candidates seeking a judicial office filled by partisan election should pay particular attention to the interplay of Indiana Judicial Conduct Rules [4.1](#) and [4.2](#). Rule [4.1\(C\)](#) sets forth the political activities that a judge in an office filled by partisan election or a judicial candidate for such office may engage in at any time (regardless of the election cycle). Rule [4.1\(A\)](#) lists the political activities that a judge or judicial candidate is generally prohibited from doing. Ind. Jud. Conduct R. [4.1\(A\)\(1\)-\(13\)](#). Rule [4.2\(B\)](#) then sets forth the additional political activities that a judicial candidate may engage in during his or her election cycle. An election cycle is defined as one year prior to the primary or general election in which the judicial candidate is running. *Id.*

A. Campaign Endorsements

The issue of endorsements exemplifies why a judicial candidate should be attentive to the interplay between Judicial Conduct Rules [4.1](#) and [4.2](#). Under Rule [4.1\(C\)](#), a judge holding a judicial seat filled by partisan election (or a judicial candidate for such office) may at any time identify as a member of a political party and attend dinners and other events sponsored by a political organization. However, neither judges nor candidates for judicial office may seek, accept, or use endorsements from a political organization unless they are within their current election cycle. Ind. Jud. Cond. Rule [4.1\(A\)\(7\)](#); [4.2\(B\)\(4\)](#). During that cycle, candidates for judicial office may “seek, accept, or use endorsements from any person or organization, including a political organization.” Ind. Jud. Cond. Rule [4.2\(B\)\(4\)](#).

Because Rule [4.2\(B\)\(4\)](#) places no restriction on the status of persons whom the judicial candidate may seek an endorsement, a judicial candidate may seek endorsements from candidates for public office who are not on the ballot at the same time as the judicial candidate. For example, if a candidate for mayor is running for election in an odd-year election cycle, but the judicial candidate is running for election in an even-year election cycle, the judicial candidate generally may seek and use the endorsement of the mayoral candidate, provided the judicial candidate is within his or her election cycle. However, the judicial candidate still should evaluate whether a particular endorsement might cause members of the public to question the candidate’s

impartiality or lead to frequent disqualification should the judicial candidate be successful in his or her election.

Regarding public endorsements of other candidates for public office from judges or judicial candidates, the propriety of such endorsements by judicial candidates turns on whether the two candidates are running in the same election cycle. A judge or judicial candidate may not “publicly endorse or oppose a candidate for any public office” unless both are within their election cycle, meaning both the judicial candidate and the candidate who is being endorsed will be on the general election ballot in the same election year. Jud. Cond. R. [4.1\(A\)\(3\)](#); [4.2\(B\)\(3\)](#). If both are on the ballot, the judicial candidate may publicly endorse and contribute to the candidate’s campaign. Rule [4.2\(B\)\(3\)](#).² Again, by way of example, mayoral races typically run in odd years and judicial races run in even years. If a judicial candidate is running in a primary race while the mayoral officeholder is running in the general election, there may be crossover in campaigning, but they are not within the same election cycle. Therefore, the judicial candidate cannot endorse the mayoral candidate.

B. Use of the Courthouse for Campaign Materials

Indiana Judicial Conduct Rule [4.1\(A\)\(10\)](#) provides that judges and judicial candidates shall not “use court staff, facilities, or other court resources in a campaign for judicial office or for any political purpose.” There is no exception for judicial candidates in an election cycle.

In [Advisory Opinion 1-14](#), the Commission opined:

The most obvious applications of [Rule [4.1\(A\)\(10\)](#)] involve using court email addresses to send out campaign material, requesting that staff stuff envelopes or prepare campaign mailings on court time ... or hosting campaign committee meetings in chambers.

However, this prohibition also addresses the use of court facilities in campaign photos. A judge should not use the prestige of judicial office to promote his or her candidacy, nor should he or she use the courthouse for political purposes. [Ind. Comm’n on Jud. Qualification, Adv. Op. 1-14](#)

Judicial candidates have inquired whether the prohibition against using court facilities for campaign activities extends to 1) “repurposing” photos previously taken in the courtroom during

² With respect to political activities involving other candidates for public office, judges and judicial candidates generally are prohibited under Rule [4.1\(A\)\(5\)](#) from purchasing tickets for or attending dinners or other events for a political candidate, but Rule [4.2\(B\)\(4\)](#) permits an exception to this general prohibition during the judicial candidate’s election cycle if the other candidate is also running in the same election cycle.

a ceremonial event to use in campaign materials; or 2) taking photos in other areas of the courthouse to use in campaign materials.

Generally, the Commission discourages these activities. Using photos of the courtroom in campaign materials, regardless of the occasion of the original photograph, poses a danger that the public could believe that the judiciary is entangled in the political process or that the candidate has special access to the courts. This appearance of entanglement and special access can erode public confidence in the independence of the judiciary. See, e.g. [New York Advisory Committee on Judicial Ethics, Opinion 05-101 \(Sept. 8, 2005 and re-issued June 20, 2019\)](#).

Repurposing courtroom photos for campaign purposes has the potential to devalue the sanctity of the courtroom as a unique place for citizens to resolve disputes in a just and orderly fashion.³ For these reasons, the Commission believes that it is inconsistent with Rule [4.1\(A\)\(10\)](#) to use the courtroom as a backdrop in campaign materials.

The question of the ethical propriety of a judicial candidate using photos taken in other areas of the courthouse in campaign materials is more complicated and turns on what is meant by “court facilities.” While the Commission emphasizes that the preferred approach is to avoid the courthouse entirely with respect to judicial campaigns, it recognizes there must be appropriate balancing of a candidate’s appropriate use of the courthouse and the public’s access to the area of the courthouse.

First, the Commission believes the judicial candidate should look to whether the public has access to the area of the courthouse that the judicial candidate seeks to photograph, or whether the public is restricted from access. Second, the judicial candidate should ask whether the use by the judicial candidate is appropriate for the area of the courthouse. For example, the judicial candidate should limit taking photographs in areas of the courthouse to which the public has access and is free to take photographs. This use of the courthouse would not be considered a violation of Judicial Conduct Rule [4.1\(A\)\(10\)](#). By contrast, it would be an inappropriate use of the courthouse to take photographs in areas restricted to judges, court staff, and attorneys. Use of the restricted area by judicial candidates creates an appearance of special access and inappropriate use of the “court facilities” for the political advantage of the judicial candidate. This appearance of special access by the judicial candidate undermines the public’s confidence in the impartiality and integrity of the judiciary. As such, this use of a restricted area is an impermissible use of court facilities for campaign purposes and is considered a violation of Rule [4.1\(A\)\(1\)](#).

³ Justice Douglas noted in [Illinois v. Allen](#), “a courtroom is a hallowed place where trials must proceed with dignity and not become occasions for entertainment by the participants, by extraneous persons, by modern mass media, or otherwise.” [397 U.S. 337, 351 \(1970\)](#) cited in *Inquiry Concerning a Judge, Sean M.A. Hatfield, State of Kansas Hearing Panel for Formal Judicial Complaints*, No. 2348 (July 16 2021).

Conclusion

When a candidate is in the candidate's election cycle, the candidate may seek and use endorsements from candidates for public office who are not running in the same election cycle, but the judicial candidate may only publicly endorse or contribute to candidates who are running in the same cycle as the judicial candidate. A judicial candidate may not use photographs taken in the courtroom, regardless of the initial purpose for which the photo was taken. Whether a judicial candidate can use photos taken in other areas of the courthouse for campaign-related activities will depend on whether members of the public would be permitted to engage in the same use in that area. Determining whether a specific area within the courthouse is a court facility is fact specific, and judicial candidates are encouraged to contact staff of the Indiana Commission on Judicial Qualifications to resolve such questions.

This nonbinding advisory opinion is issued by the Indiana Commission on Judicial Qualifications. The Indiana Commission on Judicial Qualification is solely responsible for the content of this advisory opinion, and the advice contained in this opinion is not attributable to the Indiana Supreme Court.