

1 **RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates**

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3 (A) A judge or judicial candidate shall not do any of the following:

4
5 (1) Act as a leader of, or hold an office in, a political party;

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7 (2) Make speeches on behalf of a political party or another candidate for public
8 office;

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10 (3) Publicly endorse or oppose a candidate for another public office;

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12 (4) Solicit funds for or make a contribution or expenditure of campaign funds to a
13 political party or a candidate for public office, except as permitted by division (B)(2) or
14 (3) of this rule;

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16 (5) Comment on any substantive matter relating to a specific case pending on the
17 docket of any judge;

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19 (6) Make any statement that would reasonably be expected to affect the outcome or
20 impair the fairness of a matter pending or impending in any court;

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22 (7) In connection with cases, controversies, or issues that are likely to come before
23 the court, make pledges, promises, or commitments that are inconsistent with the
24 impartial performance of the adjudicative duties of judicial office.

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26 (B) A judge or judicial candidate may do any of the following, subject to limitations
27 set forth in this canon:

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29 (1) Attend or speak to a political gathering;

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31 (2) Make a contribution or expenditure of campaign funds to purchase a ticket to
32 attend a social or fundraising event held by or on behalf of another public official or
33 candidate for public office;

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35 (3) Make a contribution or expenditure of campaign funds to a political party or to
36 purchase a ticket to attend a social event sponsored by a political party, provided the
37 contribution or expenditure will be used for any of the purposes set forth in R.C.
38 3517.18(A) and will not be used for any of the purposes set forth in R.C. 3517.18(B).

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41 **Comment**

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43 General Considerations

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45 [1] Though subject to public election, a judge plays a role different from that of a
46 legislator or executive branch official. Rather than making decisions based upon the expressed

47 views or preferences of the electorate, a judge makes decisions based upon the law and the facts
48 of each case. Therefore, in furtherance of this interest, judges and judicial candidates must, to
49 the greatest extent possible, be free and appear to be free from political influence and political
50 pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign
51 activities of all judges and judicial candidates.

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53 [2] When a person becomes a judicial candidate, this Canon becomes applicable to
54 his or her conduct. See Rule 4.6.

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56 *Participation in Political Activities*

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58 [3] Public confidence in the independence and impartiality of the judiciary is eroded
59 if judges or judicial candidates are perceived to be subject to political influence. Although
60 judges and judicial candidates may register to vote as members of a political party, they are
61 prohibited by division (A)(1) from assuming leadership roles in political organizations.

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63 [4] Divisions (A)(2) and (A)(3) prohibit judges and judicial candidates from making
64 speeches on behalf of political organizations or publicly endorsing or opposing candidates for
65 public office to prevent them from abusing the prestige of judicial office to advance the interests
66 of others. See Rule 1.3. These rules do not prohibit candidates from campaigning on their own
67 behalf or from other permitted conduct. See Rule 4.2(C).

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69 [5] Although members of the families of judges and judicial candidates are free to
70 engage in their own political activity, including running for public office, there is no “family
71 exception” to the prohibition in division (A)(3) against a judge or candidate publicly endorsing
72 candidates for public office. A judge or judicial candidate must not become involved in, or
73 publicly associated with, a family member’s political activity or campaign for public office. To
74 avoid public misunderstanding, judges and judicial candidates should take, and should urge
75 members of their families to take, reasonable steps to avoid any implication that they endorse
76 any family member’s candidacy or other political activity.

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78 [6] Judges and judicial candidates retain the right to participate in the political
79 process as voters in both primary and general elections.

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81 *Statements and Comments Made during a Campaign for Judicial Office*

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83 [7] Divisions (A)(5) and (A)(6) prohibit judicial candidates from making comments
84 that might impair the fairness of pending or impending judicial proceedings. This provision does
85 not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate,
86 or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a
87 matter.

88

89 Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative
90 Duties of Judicial Office.

91
92 [8] The role of a judge is different from that of a legislator or executive branch
93 official, even when the judge is subject to public election. A judge must at all times strive for the
94 respect and confidence of all persons who come before the judge and decide each case on the law
95 and facts presented. Campaigns for judicial office must be conducted differently from
96 campaigns for other offices so as to foster and enhance respect and confidence for the judiciary.
97 Judicial candidates have a special obligation to ensure the judicial system is viewed as fair,
98 impartial, and free from partisanship. To that end, judicial candidates are urged to conduct their
99 campaigns in such a way that will allow them, if elected, to maintain an open mind and
100 uncommitted spirit with respect to cases or controversies coming before them. The narrowly
101 drafted restrictions upon political and campaign activities of judicial candidates provided in
102 Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information
103 to permit them to distinguish between candidates and make informed electoral choices.

104
105 [9] Division (A)(7) makes applicable to both judges and judicial candidates the
106 prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments
107 that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

108
109 [10] The making of a pledge, promise, or commitment is not dependent upon, or
110 limited to, the use of any specific words or phrases; instead, the totality of the statement must be
111 examined to determine if a reasonable person would believe that the candidate for judicial office
112 has specifically undertaken to reach a particular result. Pledges, promises, or commitments must
113 be contrasted with statements or announcements of personal views on legal, political, or other
114 issues, which are not prohibited. When making such statements or announcements, a judge
115 should acknowledge the overarching judicial obligation to apply and uphold the law without
116 regard to his or her personal views.

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118 [11] A judicial candidate may make campaign promises related to judicial
119 organization, administration, and court management, such as a promise to dispose of a backlog
120 of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A
121 candidate may also pledge to take action outside the courtroom, such as working toward jury
122 selection system, or advocating for more funds to improve the physical plant and amenities of the
123 courthouse.

124
125 [12] Judicial candidates may receive questionnaires or requests for interviews from the
126 media and from issue advocacy or other community organizations that seek to learn their views
127 on disputed or controversial legal or political issues. Division (A)(7) does not specifically
128 address responses to such inquiries. Depending upon the wording and format of such
129 questionnaires, judicial candidates' responses might be viewed as pledges, promises, or
130 commitments to perform the adjudicative duties of office other than in an impartial way. To
131 avoid violating division (A)(7), therefore, candidates who respond to media and other inquiries
132 should also give assurances that they will keep an open mind and will carry out their adjudicative
133 duties faithfully and impartially if elected. Candidates who do not respond may state their
134 reasons for not responding, such as the danger that answering might be perceived by a reasonable

135 person as undermining a successful candidate’s independence or impartiality, or that it might
136 lead to frequent disqualification. See Rule 2.11.

137
138 Permitted Conduct

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140 [13] Subject to the other requirements in this canon, a judge or judicial candidate may
141 attend and speak to a political gathering and may make contributions and expend campaign funds
142 to attend a social or fundraising event on behalf of or sponsored by another office holder or
143 candidate.

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146 **Comparison to Ohio Code of Judicial Conduct**

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148 Rule 4.1 contains the provisions applicable to judges and judicial candidates that are
149 found in Ohio Canons 7(B) and (C)(7)(b) and (c). Specifically:

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- 151 • Rules 4.1(A)(1) to (3) correspond to Ohio Canons 7(B)(2)(a) and (b);
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 - 153 • Rules 4.1(A)(4) and (B)(2) and (3) correspond to Ohio Canons 7(C)(7)(b) and (c);
 - 154
 - 155 • Rule 4.1(A)(5) corresponds to Ohio Canon 7(B)(2)(e);
 - 156
 - 157 • Rule 4.1(B)(1) corresponds to Ohio Canons 7(B)(3)(a)(i) and (ii).
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159 Rule 4.1(A)(6) is a new rule insofar as it addresses a statement made by a judge or
160 judicial candidate in the course of political and campaign activity. However, the rule is similar
161 to Ohio Canons 3(B)(9) and 7(B)(2)(e). Also see Rule 2.10(A)(1).

162
163 Rule 4.1(A)(7) replaces Ohio Canons 7(B)(2)(c) and (d), with the primary difference
164 being elimination of the phrase “appear to commit” found in Canon 7(B)(2)(d).

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166 **Comparison to ABA Model Code of Judicial Conduct**

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168 Rule 4.1 is analogous to portions of Model Rule 4.1. Specifically:

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- 170 • Rule 4.1 retains, with minor modifications, the provisions of Model Rules 4.1(A)(1), (2),
171 (3), (12), and (13);
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 - 173 • Rules 4.1(A)(4) and (B)(2) and (3) replace Model Rules 4.1(A)(4) and (5);
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 - 175 • Model Rules 4.1(A)(6) and (7) are not adopted since Rule 4.2 permits judicial candidates
176 to solicit political party endorsements and advertise or otherwise state party affiliation,
177 membership, nominations, and endorsements;
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 - 179 • Model Rule 4.1(A)(8) is moved to Rule 4.4;
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181 • Model Rules 4.1(A)(9) and (10) contain prohibitions found in the Ohio Revised Code and
182 are thus duplicative;

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184 • Model Rule (A)(11) is moved to Rule 4.3(A);

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186 • Model Rule 4.1(B) is moved to Rule 4.2(A)(3).

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188 Comments [1] to [6] are taken from the corresponding comments to Model Rule 4.1.

189 Comment [1] does not contain a phrase found in the Model Rule comment that references

190 different judicial selection methods. Comment [4] is modified to remove a phrase contained in

191 the Model Rule comment that would permit candidate endorsements prohibited by Rule

192 4.1(A)(3). Comment [6] is revised to delete a reference to caucus elections.

193

194 Comment [7] corresponds to Model Rule 4.1, Comment [10], and Comments [8] to [12]

195 correspond to Model Rule Comments [11] to [15]. Comment [8] is revised to further underscore

196 the need for narrowly tailored limitations on the campaign activity of judicial candidates. The

197 inserted language is based on the public reprimand administered by the Supreme Court of Florida

198 to Judge Carven Angel in 2004. See Florida Bar News, July 1, 2004. Comment [13] is added to

199 acknowledge conduct that is permissible under Rule 4.1(C).