



Ohio Judicial Conference

Serving Ohio Judges – Enhancing Judicial Leadership

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Dear News Professional,

The elections season is soon upon us, and with it comes the time when news organizations interview candidates for public office. Among those candidates will be candidates for judge, who pose a special problem – they may not discuss some issues that voters might want information about.

We hope the attached document will help you and the judicial candidates you interview negotiate those restrictions. The document notes the rules that specify what issues judicial candidates may not comment about and provides a long list of questions that may be of interest to voters and that judicial candidates are generally permitted to answer.

The statement was developed by judges who serve on the Public Confidence and Community Outreach Committee of the Ohio Judicial Conference. We are a state agency that serves as the voice of Ohio judges on issues concerning the administration of justice. All Ohio judges are members of the Judicial Conference and many volunteer to serve on committees that guide the work of our staff. You can find out more about us at our website, www.ohiojudges.org

We offer this statement simply as a reminder and suggestion. We do not have the authority to provide official interpretations of judicial rules and of course it is not our place to prescribe what questions should be asked of judicial candidates. But we do hear from judges that the limitations in areas where judicial elections don't occur often.

This statement may be helpful. We are making it available to news organizations and others who interview judicial candidates, as well as to judicial candidates themselves.

If you have any questions or concerns, please don't hesitate to contact me.



Retired Judge Mark R. Schweikert
Executive Director



Interviewing Judicial Candidates

*A statement from the Public Confidence & Community Outreach Committee
of the Ohio Judicial Conference*

Candidates for judicial office are different from other candidates for public office. Like other candidates, they campaign, they want to reach voters, and they have ideas, qualifications, experiences and values that distinguish one from another. But unlike other candidates, they are prohibited from discussing many of the things voters and others might be inclined to ask about—and every time they are asked about those things, they have to decline to answer.

This can produce a frustrating experience, both for judicial candidates and for those who want to learn about them. This statement seeks to help: it reiterates the limitations on what judicial candidates may say, and presents a substantial list of questions that judicial candidates generally may answer.

Limits on Judicial Campaign Speech

The purposes for limitations on judicial campaign speech are familiar. Judicial candidates campaign for a public office—judge—that is not driven by policy making but by impartial and independent decision making in accordance with the law. To preserve their ability to decide with impartiality and independence, as well as the public's confidence in their impartiality and independence, judicial candidates are limited in what they may discuss.

The limits are codified in the Code of Judicial Conduct. Here are the relevant provisions:

Rule 4.1(A):

- 2) A judge or judicial candidate shall not do any of the following:
 - ...
 - (5) Comment on any substantive matter relating to a specific case pending on the docket of any judge;
 - (6) Make any statement that would reasonably be expected to affect the outcome or or impair the fairness of a matter pending or impending in any court;
 - (7) In connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Taken together, these provisions mean that judicial candidates may not answer some questions that might naturally come to a voter's mind. For example: judicial candidates may not talk about which kinds of offenders should receive probation rather than jail or prison sentences, or about whether custody decisions should consider mothers and fathers differently, or about whether some levels of damages assessed against corporations are excessive. Those are all issues that are likely to come before the court, where the judge's responsibility is to apply the law with impartiality and independence, considering each case on its own merits.

Sample Questions for Judicial Candidates

The provisions in Rule 4.1 do leave room for many questions that are highly relevant to assessing a judicial candidate in many areas. Below is a list of such questions, divided into three areas—knowledge, character, and effectiveness.

Some of these questions may be irrelevant in some judicial elections. Their relevance depends on the jurisdiction of the court, the community context, and other things.

Although the questions below are questions that most judicial candidates would be permitted to answer, there will be cases where some of them are ruled out—provisions (5) and (6) of Rule 4.1 mean that some of the questions below may be ruled out by local controversies that are or may come before a court.

We present this not as a list of good or approved questions, but simply as a reminder of the many questions that judicial candidates may answer and that voters might find relevant to making an informed decision on election day. Of course, the list is not exclusive—there are many other questions that judicial candidates may answer.

A. Knowledge

- 1 Does the composition of juries adequately and fairly reflect society at large? Why or why not? If not, what can we do to change this? What are the pros and cons of using drivers' license registration as a source of jurors?
- 2 How could the costs of judicial administration be reduced? Give a specific example of how you have reduced costs in your law practice/court.
- 3 In the area of hate crimes, what are some of the issues in balancing free speech rights against the need to control offensive activity?
- 4 What have been the most effective methods for improving court procedures and efficiency? What other methods would you suggest?
- 5 What do you perceive as the greatest obstacles to justice in our judicial system?
- 6 Under what circumstances can the courts seal court files or close court proceedings?
- 7 What factors are considered in granting and setting bail amounts for defendants?
- 8 If you became aware of unethical conduct on the part of a trial advocate in a case in which you were presiding, how would you handle it? Do you believe judges should be required to report attorney misconduct?
- 9 If you were the person responsible for deciding what cases would be tried in what order, how would you split the court's time between the criminal calendar and the civil calendar?
- 10 To what extent have you practiced in the area of criminal law? Family law? Complex civil litigation?
- 11 What do you believe are the causes of the high rates of minority incarceration?
- 12 Violent crime, particularly youth violence, is perceived to be at a crisis level by many experts today. What, if any, do you believe is the appropriate role for the judiciary in addressing this perceived crisis?

- 13 Do you believe there is such a thing as a “victimless crime?” If so, what offenses would you place in this category?
- 14 What do you think about the growing prison population? What response should society have to prison overcrowding?
- 15 Has the war on drugs been effective or ineffective?
- 16 Are women and minorities under-represented in the court system? If so, how would you work to correct the problem?
- 17 Do you believe that all citizens have adequate access to legal help and the legal system? If not, what can be done to provide wider and better access?

B. Character

- 1 Do you ever wake up at night, thinking about a case and wishing you had handled something differently? If so, please describe one situation.
- 2 Please describe one instance in which you faced an ethical dilemma and how you resolved it.
- 3 What kind of jobs, interests, or volunteer activities did you pursue during college and law school?
- 4 Do you believe that voluntary professional and community service is a necessary commitment for persons holding public office? What forms of voluntary professional and community service have you been involved with in the past? Currently?
- 5 As a prospective judge, what do you consider your greatest strengths? Weaknesses?
- 6 What has been your greatest accomplishment in your legal career? In your personal life?
- 7 If elected or re-elected to the position you seek, what is the minimum number of years you intend to serve before seeking a judicial post at a higher level? What is your commitment to serving out the full term?
- 8 What are the major influences in your life? Why?
- 9 What injustices have you witnessed in or outside the courtroom and what was your response to those events?
- 10 Do you believe the current system for disciplining lawyers and judges is effective? Why or why not?
- 11 Have you ever been disciplined by the Board of Commissioners on Grievances and Discipline?
- 12 Who are your judicial role models? Why?

C. Effectiveness

- 1 How do you deal with difficult people, including peers, lawyers, clients or litigants?
- 2 Please describe a situation in which you took a controversial position that angered or offended people and explain how you handled it.
- 3 How would/do you deal with a pro se party appearing in your court?
- 4 How would you prepare yourself to handle cases involving unfamiliar areas of the law?

- 5 Please describe your administrative experience. What are your primary strengths as a supervisor?
As an administrator?
- 6 If you observed a party in your courtroom being poorly represented by an unprepared or ineffective lawyer, how would you handle the situation?
- 7 Do you believe you would encounter any problems moving from your role as an advocate to a new role as a judge? (*For non-incumbents*)
- 8 While serving on the bench, do you believe you have a role in bringing important legal or judicial issues before the public or the legislature? Why or why not? What should your role be?
- 9 Is it appropriate to impose more restrictions on what cases go to trial? Is there a need for more mandatory mediation and settlement efforts? What specifically do you propose to do about this, if elected?
- 10 What are the issues regarding alternative sentences for non-violent offenders?
- 11 What is your general judicial philosophy?
- 12 What is your vision for the future of our judicial system? What changes would you advocate and why?
- 13 Do judges have an obligation to improve public understanding of the courts? If so, how should they carry out that obligation?
- 14 What are your views on whether the court, as a whole, deals effectively with racial and gender bias?
- 15 Would you favor or oppose a system in which all sentencing decisions were routinely reported in local newspapers, indexed by the name of the judge?
- 16 Do you think the court system is working or do you believe the civil or criminal justice system is breaking down?
- 17 What types of clients have you represented while you have been an attorney?
- 18 Why should voters support you rather than your opponent?
- 19 Why do you believe you received the ratings you received from the organizations which rated you for the position of judge? Why do you believe you received the evaluations you received from the organizations which rated you for your position on the bench?
- 20 Do you possess any expertise in a field other than law?
- 21 To what extent do you believe that a judge should or should not defer to actions of a legislature?

These sample questions are a modified version of a list prepared by the King County Bar Association in Seattle, Washington. Note that local circumstances may make it impermissible for a judicial candidate to answer some of these questions.