

REPORT

of the

**LOUISIANA JUDICIAL
CAMPAIGN OVERSIGHT COMMITTEE**

Fall 2006

I.

Background

Through promulgation of a Resolution on March 13, 2002, the Supreme Court of Louisiana established the Louisiana Judicial Campaign Oversight Committee.¹ The Committee consists of 15 Court-appointed members and includes retired judges, lawyers, and citizens who are neither lawyers nor judges. The current members of the Louisiana Judicial Campaign Oversight Committee are:

Mr. Harry S. Hardin, III, Committee Chair
Father M. Jeffery Bayhi
Christopher E. Cenac, M.D.
Ms. Gale B. Clausen
Mr. Barry Erwin
Ms. Donna D. Fraiche
Retired Judge Andrew Gallagher
Prof. Bobby Marzine Harges
Retired Justice Harry T. Lemmon
Ms. Lynn M. Luker
Ms. Debra Simmons Neveu
Retired Judge Freddie Pitcher, Jr.
Mr. John B. Scofield
Retired Judge Fred C. Sexton
Mr. Darrell Douglas Teats²

The Committee's three principal duties are to:

- ◆ serve as a resource for judges and judicial candidates;
- ◆ assist in educating judges and judicial candidates about ethical campaign conduct; and

¹ Rule XXXV, the Supreme Court Rule establishing the Committee, became effective on April 15, 2002.

² The Office of the Judicial Administrator, Supreme Court of Louisiana, provides staff support to the Committee.

- ◆ help deter unethical judicial campaign conduct.

A brief review of the important features of the Court's Judicial Campaign Oversight Committee Rule follows.

Covered Elections. The Committee's oversight jurisdiction extends to supreme court, appellate court, district court, juvenile court, family court, parish court, city and municipal court, and traffic court elections. The Committee has no jurisdiction over justice of the peace elections.

Oversight Jurisdiction. The Committee has oversight jurisdiction over complaints which allege a violation of the following Canons, or partial Canons, of the Louisiana Code of Judicial Conduct:

- (1) The judge or judicial candidate acted as a leader or held any office in a political organization (Canon 7A(1)(a));
- (2) The judge or judicial candidate publicly endorsed or publicly opposed another candidate for public office (Canon 7A(1)(b));
- (3) The judge or judicial candidate made speeches on behalf of a political organization or a candidate for public office (Canon 7A(1)(c));
- (4) The judge or judicial candidate solicited funds for, paid an assessment to, or made a contribution to another candidate (Canon 7A(1)(d));
- (5) The judge or judicial candidate solicited funds for a political organization (Canon 7A(1)(d));
- (6) The judge or judicial candidate, with respect to cases, controversies, or issues that are likely to come before the court, made commitments that are inconsistent with the impartial performance of the adjudicative duties of the office (Canon 7B(1)(d)(i));
- (7) The judge or judicial candidate knowingly made, or caused to be made, a false statement concerning the identity, qualifications,

present position or other fact concerning the candidate or an opponent (Canon 7B(1)(d)(ii));

- (8) The judge or judicial candidate personally solicited or accepted campaign contributions in violation of Canon 7D(1) of the Louisiana Code of Judicial Conduct;
- (9) The judge or judicial candidate authorized or knowingly permitted any person to do for the candidate what the candidate is prohibited from doing concerning the Canons which fall within the Committee's oversight jurisdiction (Canon 7B(1)(c)); or
- (10) The judge or judicial candidate, while a proceeding is pending in any Louisiana state court, made a public comment that might reasonably be expected to affect the outcome of the proceeding or impair its fairness (Canon 7B(1)(d)(iii)).³

Complaints; Authority to Issue a Public Statement. Complaints which do not allege facts which, if true, would constitute a violation of the above ten provisions are to be dismissed. If a complaint sets forth a cause of action, the Committee is to review and investigate the matter and attempt to resolve the complaint informally.

Following review of a complaint, the Committee may issue a public statement concerning the campaign conduct "provided at least two-thirds of the members determine clear and convincing evidence exists that a violation has occurred, and after the respondent has been given notice and an opportunity to respond."

The Committee has the authority to dismiss any complaint which is frivolous, repetitive or harassing in nature. No appeal rights exist in favor of a complainant when the Committee exercises its discretion to dismiss a complaint.

Sua Sponte Action. The Committee is allowed to review and investigate campaign conduct in the absence of the filing of a campaign conduct complaint, provided two-thirds of the members vote in favor of conducting such an investigation.

³ Rule XXXV, § 3 of the La. Supreme Ct. Rules. After the Committee's first year of operation, portions of Canon 7 of the Louisiana Code of Judicial Conduct were amended. Section 3 of Rule XXXV was thereafter amended to reflect the changes to the Code. Those changes are discussed in more detail in Section III of this report.

Confidentiality. Complaints are confidential until such time as the Committee decides to issue a public statement, the Committee or its Chair decides to dismiss the complaint, or the respondent waives confidentiality, whichever occurs sooner. Although the complaint, response, and disposition then become matters of public record, Committee investigatory and deliberation materials are to remain confidential.

Restriction on Political Involvement. Committee members are restricted in their political activities, in the same fashion as judges and judicial candidates, by Canon 7 of the Louisiana Code of Judicial Conduct.

II.

Initial Work of the Committee

In accordance with La. S.Ct. Rule XXXV, § 8, the Committee proposed rules pertaining to its operations and created both a campaign conduct “Acknowledgment” and a complaint form. The Court approved the Committee’s Rules and Operating Procedures, the Complaint Form, and the “Acknowledgment Regarding Canon 7 of the Louisiana Code of Judicial Conduct.”⁴

The Rules and Operating Procedures of the Judicial Campaign Oversight Committee contain the following salient features.

- ◆ **Preliminary dismissal.** If a complaint does not allege facts that would constitute a violation of the ten provisions within the scope of the Committee’s oversight jurisdiction, the complaint may be dismissed by the Chair, without further review or investigation by the Committee.
- ◆ **Response time.** If a complaint which states a cause of action is received at least two weeks before the primary or general election at issue, the respondent candidate is to be

⁴ This report and many of the documents referenced therein may be downloaded from the Louisiana Supreme Court website (www.lasc.org). Current versions of the Committee’s Rules and Operating Procedures, the complaint form, and the campaign acknowledgment, along with various other Committee-related materials, can be accessed by clicking on the “Judicial Campaign Oversight Committee” link on the bottom left of the Court’s homepage or directly at http://www.lasc.org/judicial_campaign_oversight.asp.

afforded three business days to file his/her response. If the complaint falls within the two-week period preceding the primary or general election, the Committee may ask for an expedited response from the candidate, which response time is to be set forth in the transmittal notifying the respondent candidate of the complaint.

- ◆ **Anonymous complaints and *sua sponte* action.** Anonymous complaints may not be reviewed or investigated unless they state facts, not mere conclusions, that can be independently verified. An affirmative vote of at least ten Committee members is required before the Committee may conduct additional review and investigation of conduct which comes from an anonymous source, or conduct which is not the subject of a written complaint.
- ◆ **Form of public statements.** Public statements are to be issued by the Chair, on behalf of the Committee. The public statement is to set forth the nature of the complaint and/or conduct which resulted in the issuance of the statement, and the Committee's opinion as to the canon or canons which have been violated.
- ◆ **Confidentiality.** Complaints are confidential until such time as the Committee decides to issue a public statement, the Committee or its Chair decides to dismiss the complaint, or the respondent waives confidentiality, whichever occurs sooner. At that time, the complaint, response, and disposition shall become matters of public record. Committee investigatory and deliberation materials shall remain confidential.

Notwithstanding the confidentiality restrictions contained in the Court and Committee rules, the Committee may disclose the status and/or disposition of a complaint or investigation if:

- (1) Either the complainant or the respondent candidate, or any person or entity subject to the direction and control of the candidate or complainant, has stated publicly that a complaint has been or will be filed;
- (2) The fact that a complaint has been filed, or will be filed, or that an investigation is ongoing, becomes generally known to the public; or
- (3) When sources other than complainant or candidate cause notoriety concerning a complaint or investigation, and the Committee decides that the best interests of the complainant or candidate would be served if disclosure were made of the status and/or disposition of a complaint or investigation.

- ◆ **Recusal.** Committee members are to recuse themselves in any campaign oversight matter in which recusal would be required of a judge.
- ◆ **Informal resolution.** The Committee is to make reasonable attempts to informally resolve disputes involving campaign conduct in lieu of issuing a public statement. Such informal action and resolution includes, but is not limited to, procuring an agreement from the respondent candidate to withdraw an advertisement, to retract or clarify a campaign statement, or such other informal disposition as may be deemed appropriate.
- ◆ **Educational and informational outreach.** The Oversight Committee may mail instructional campaign materials to judicial candidates and advise them of upcoming educational seminars. In

furtherance of its educational role, the Committee and members may offer informal, non-binding advice and consultation to judges and candidates concerning any canon of the Code of Judicial Conduct, or concerning judicial campaign conduct in general, at educational seminars. However, Committee members and staff are not to provide advisory opinions in response to questions or inquiries about the propriety of particular campaign conduct if Committee members and staff know the question or inquiry concerns a matter which is, or may be, the subject of a formal complaint.

- ◆ **Referral to Judiciary Commission.** An affirmative vote of ten Oversight Committee members is required before a matter may be referred to the Judiciary Commission.⁵

- ◆ **Campaign conduct acknowledgment.** The Oversight Committee may ask candidates to voluntarily sign a campaign conduct acknowledgment. Thereafter, the Oversight Committee may produce a signed acknowledgment for public inspection when asked to do so.

III.

Changes to the Rules

Since the establishment of the Judicial Campaign Oversight Committee in 2002, the rules governing the Committee have been amended three times. The first set of amendments were precipitated by the Committee's experiences during the Fall

⁵ The Judicial Campaign Oversight Committee is not affiliated with the Judiciary Commission. La. S.Ct. Rule XXXV, § 1 Commentary. The Judiciary Commission is a constitutionally-created body charged with reviewing and investigating the conduct of judges and recommending judicial discipline to the Supreme Court of Louisiana where appropriate. 1974 La. Const., Art. V, § 25. The Judicial Campaign Oversight Committee, on the other hand, has no disciplinary authority or enforcement power. La. S.Ct. Rule XXXV, § 3 Commentary.

2002 elections. Although the consensus was that the overall process ran very smoothly, the Committee suggested a few changes to the Judicial Campaign Oversight Committee Rules and Operating Procedures it felt might be beneficial. The Louisiana Supreme Court agreed with and adopted most of the Committee's suggestions. The changes to the Rules, which took effect on July 9, 2003, are summarized below:

- ◆ In order to expedite the forwarding of complaints to respondent candidates, a provision was added to Section I of the Rules and Operating Procedures requiring complainants to provide duplicate originals of any videotape or photograph forwarded with their complaint.
- ◆ Insofar as the Committee received many complaints that were difficult to assess because they lacked supporting evidence, a paragraph was added to Section II allowing preliminary dismissal by the Chair of those “[c]omplaints which lack sufficient evidentiary support to allow the Committee to adequately assess whether clear and convincing evidence exists of a violation of one of the canons which falls within the Committee’s oversight jurisdiction.” Similar language was also added to the complaint form.
- ◆ A sentence was added to Section VI clarifying the Committee Chair’s authority to “forward a public statement to any media outlet deemed appropriate.”
- ◆ Section X was amended to allow the Chair, with the approval of a majority of Committee members, to attempt “to negotiate and finalize an informal resolution to the complaint.”
- ◆ Section XV was enacted to provide:

When a matter before the Oversight Committee has been closed or otherwise terminated, each member of the Oversight Committee shall destroy his or her file on that matter.

- ◆ The Acknowledgment Form was amended to include the business and campaign office telephone numbers of judicial candidates, and the business and campaign office e-mail addresses of judicial candidates.

Effective February 1, 2005, the Court ordered changes to the Louisiana Code of Judicial Conduct concerning campaign and related speech, as well as corresponding changes to Louisiana Supreme Court Rule XXXV governing the Judicial Campaign Oversight Committee.⁶ Subsections 3(6), (7) and (10) of Louisiana Supreme Court Rule XXXV were amended such that the Committee's jurisdiction now includes complaints alleging the following:⁷

- ◆ (6) The judge or judicial candidate, with respect to cases, controversies, or issues that are likely to come before the Court, made commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.
- ◆ (7) The judge or judicial candidate knowingly made, or caused to be made, a false statement concerning the identity, qualifications, present position or other fact concerning the candidate or an opponent.
- ◆ (10) The judge or judicial candidate, while a proceeding is pending in any Louisiana state court, made a public comment that might reasonably be expected to affect the outcome of the proceeding or impair its fairness.

The most recent amendments to Louisiana Supreme Court Rule XXXV and the Committee Rules and Operating Procedures took place in March 2006. The principal changes are summarized below:

⁶ The rule changes were precipitated in part by the United States Supreme Court's decision in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), which held unconstitutional the "announce clause" of the Minnesota Code of Judicial Conduct.

⁷ The Committee's jurisdiction otherwise remains unchanged.

- ◆ Complaints, responses, and dispositions are now confidential only until the Committee decides to issue a public statement, the Committee or its Chair decides to dismiss a complaint, or the respondent waives confidentiality, whichever occurs sooner.
- ◆ A respondent candidate may waive confidentiality at any time after the complaint is filed, through written notice directed to the Committee and the complainant.
- ◆ Any informal resolution which is effected must be in writing, and the underlying complaint and response leading up to the informal resolution will become public. However, the informally resolved matter can remain confidential if all parties agree in writing to maintain confidentiality.
- ◆ The complaint form and campaign acknowledgment were both amended to reflect these changes.

IV.

Educational Role

In the Committee's first year of operation, shortly after qualifying ended for the Fall 2002 elections, six 2-hour educational seminars were conducted throughout the state to introduce judicial candidates and others to the new Committee. It is estimated that this first set of seminars had 80-100 participants. Prior to the Fall 2004 elections, the Committee again presented educational seminars. This time two were held - one in New Orleans and one in Alexandria - with a total of approximately 20 attendees.⁸ At both sets of seminars, beneficial discussions concerning Canon 7, and campaign conduct in general, ensued.

Due to the small number of contested judicial races during the Fall 2006 election cycle, the Committee presented no educational seminars. Instead, in addition to sending candidates the informational packets described in Section V below,

⁸ Each of the seminars was approved for continuing legal education credit. Attorneys could fulfill their annual ethics and professionalism requirements by attending one of the seminars.

candidates were contacted and emailed a link to an updated version of the PowerPoint presentation used in the earlier educational seminars.⁹

V.

Campaign Conduct Acknowledgments

As noted, the rules allow the Committee to ask judicial candidates to sign a campaign conduct acknowledgment in which the candidates acknowledge that they “have read and understand the Louisiana Code of Judicial Conduct, including Canon 7” Through their signature on the acknowledgments, candidates also acknowledge that they are “bound by the provisions of Canon 7 during [their] campaign for judicial office.” As soon as the qualifying period ends and candidate information is posted on the Secretary of State’s website, the Committee retrieves the names and addresses of all candidates in contested judicial races. These candidates are sent a campaign conduct acknowledgment form, which they are asked to sign and return, along with an informational packet. This packet contains a cover letter from the Committee Chair, an informational statement prepared by the Committee, the Acknowledgment Regarding Canon 7, the Code of Judicial Conduct, and a paper entitled “2002 - Ethical Guidelines for Judicial Campaigning.”

In Fall 2002, according to information provided by the Louisiana Secretary of State’s office, there were 77 contested judicial races, with 187 candidates vying for elective judicial office. From that pool of candidates, the Committee received 130 signed acknowledgments. Based upon information obtained from the Secretary of State’s website, as well as information forwarded by that office in early September concerning candidate withdrawals, it is estimated that more than 75 percent of the candidates who were actually on the ballot for the primary elections forwarded signed acknowledgments to the Committee.

The Fall 2003 elections included five contested judicial races, with a total of twenty candidates at the time of qualifying. Fourteen of those candidates (70 percent) provided the Committee with signed acknowledgments.

In 2004, there were twelve contested judicial races – one in the Spring and eleven in the Fall – with a total of 41 candidates qualifying. Of these, 28 (68 percent) mailed Canon 7 acknowledgments to the Committee.

⁹ For the September 30, 2006 election period, there were three contested judicial races.

2005 saw four contested judicial races in the Spring but only one in the Fall.¹⁰ There were a total of twelve candidates in the Spring races and five in the Fall race, for a total of 17 candidates. Acknowledgments were submitted by eight (67 percent) of the Spring candidates and three (60 percent) of the Fall candidates.

In 2006, there were four contested judicial races. The one contested race in the Spring had two candidates, and the three in the Fall had a total of eight candidates. Of these ten candidates, six (60 percent) provided the Committee with acknowledgments.

To conclude, through its first four years of operations, the Committee received signed acknowledgments from approximately two-thirds of judicial candidates in contested races.

VI.

Analysis of Complaints Received by the Campaign Oversight Committee

(A)

Number and Complexity of Complaints

The Committee received one complaint in 2003, seven in 2004, two in 2005, and two in 2006, for a total of twelve complaints for the period from January 2003 to December 2006.¹¹ The twelve complaints were spread among eight contested judicial

¹⁰ Initially, there were two contested judicial races in the elections scheduled for October 15, 2005. The first election was for the 9th JDC and went forward as planned. The second was for the 5th Circuit Court of Appeal and had to be rescheduled due to Hurricane Katrina. Prior to the election, however, one of the candidates for the 5th Circuit race withdrew, allowing the other to be elected automatically.

¹¹ An analysis of the complaints received during the Committee's first year of operations can be found in the Committee's initial report. This report, entitled "Final Report of the Louisiana Judicial Campaign Oversight Committee - Fall, 2002 Judicial Elections," may be accessed through the Judicial Campaign Oversight Committee section of the Louisiana Supreme Court website (www.lasc.org) or downloaded directly at: http://www.lasc.org/judicial_campaign_oversight/FINAL_REPORT_JCOC_2002.pdf.

aces.¹² Four separate complaints were filed concerning the activities in one contested race.

In preparing this report, staff of the Judicial Administrator’s Office reviewed the complaints to determine if they were simple or complex. Complaints were deemed “complex” if they included multiple issues, required legal or related research, or involved the review of a number of documents. Some of the more complex complaints necessitated:

- (1) A review of multiple campaign ads, brochures, flyers, or related news articles;
- (2) A review of videotapes;¹³
- (3) Independent research (legal or otherwise);
- (4) The review of lengthy and sometimes complex supporting documentation.

Based on the above criteria, seven of the twelve complaints were deemed complex.

(B)

Breakdown of Complaints by Canon

Table A, below, lists the number of complaints in which a particular Canon, or partial Canon, was alleged to have been violated.¹⁴

TABLE A¹⁵

¹² One complaint involved a judge who was not up for re-election. That complaint was dismissed for lack of subject matter jurisdiction.

¹³ A videotape of a television advertisement was forwarded in support of one complaint.

¹⁴ On occasion, complainants did not allege a violation of a specific Canon. Nonetheless, the allegations were such that the activity complained about could easily be categorized by staff.

¹⁵ As discussed previously in Section III of this Report, Canon 7B (1)(a) and (d) of the Code of Judicial Conduct were amended effective February 1, 2005.

Canon or Partial Canon Within Oversight Jurisdiction	Summary of Canon or Partial Canon	Number of Complaints Implicating Canon
Canon 7B(1)(d)(iii) (old) Canon 7B(1)(d)(ii) (new)	Knowing misrepresentations (old) Knowingly false statements (new)	6 1
Canon 7B(1)(d)(ii) (old) Canon 7B(1)(d)(i) (new)	Commitments re cases, controversies, or issues likely to come before court (old) Commitments re cases, controversies, or issues likely to come before court if inconsistent with the impartial performance of judge's adjudicative duties (new)	4 1
Canon 7B(1)(c)	Authorized or knowingly permitted someone to do for candidate what candidate is prohibited from doing	1
Canon 7B(1)(d)(iv) (old) Canon 7B(1)(d)(iii) (new)	Prohibited comments about cases pending in any court Prohibited comments about cases pending in any Louisiana state court	0 1
Canon 7A(1)(a)	Acted as a leader or held an office in a political organization	1
Canon 7D(1)	Personally solicited or accepted campaign contributions	1
Canon 7A(1)(d)	Solicited funds for, paid an assessment to, or contributed to another candidate	0
Canon 7A(1)(b)	Publicly endorsed or opposed another candidate for public office	0
Canon 7A(1)(d)	Solicited funds for a political organization	0
Canon 7A(1)(c)	Making speeches on behalf of a political organization or candidate	0

As Table A indicates, complaints which alleged knowing misrepresentations (under the old rule) and false statements (under the new rule), along with those alleging violations of the commitment clause, were the most frequent types of allegations reviewed by the Committee from 2003 to 2006.

VII.

Disposition of Complaints

Five of the twelve complaints were summarily dismissed by the Chair. Of those five, two were dismissed because they did not allege facts which would constitute a violation of any canon which falls within the Committee's oversight jurisdiction. One was dismissed because the complainant failed to specify his or her allegations and the Committee would thus be unable to evaluate them. Another was dismissed because it was repetitious in nature. A fifth complaint was dismissed and referred to the Louisiana Attorney Disciplinary Board because the election had already taken place.

Two of the complaints were concluded by informal resolution negotiated by the Chair on behalf of the Committee. One complaint was dismissed because it had been made anonymously and less than ten Committee members voted to conduct further review and investigation of the complaint. The other four complaints were dismissed after review and investigation by the Committee. Thus, unlike the first year of its operations, in which the Committee issued one public statement, in the period from 2003 to 2006 the Committee issued no public statements.

VIII.

Public Statements; Litigation

In the Committee's first year of operations, it issued one public statement regarding the conduct of a judicial candidate. Following the issuance of the public statement, the candidate in question brought suit against the Committee. The suit was voluntarily dismissed by the candidate in May 2003.

A candidate for judicial office in the Fall 2004 elections sued the Committee Chair and members. The candidate attacked the constitutionality of both the "commit clause" of the Louisiana Code of Judicial Conduct and the confidentiality provisions of the campaign oversight rules. In early 2005, while the litigation was pending, the Court amended both the commit clause and the confidentiality provisions. This second lawsuit was ultimately dismissed in late November 2006.

IX.

Conclusion

It appears the 2003-2006 judicial elections in Louisiana were less acrimonious than in past years. Hopefully, the work of the Committee and candidates' awareness of the Committee's existence have played a role in promoting and fostering ethical judicial campaigns.

December 2006

Louisiana Judicial Campaign Oversight Committee

Harry S Hardin III

By: Harry S. Hardin, III, Chair