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\*Affiliations are for  
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## National Ad Hoc Advisory Committee on Judicial Campaign Oversight

### Judicial Campaign Oversight Digest

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**Welcome** to the inaugural edition of the *Judicial Campaign Oversight Digest* – a publication designed as a resource for individuals and groups engaged in efforts to encourage a high standard in judicial elections. The Digest is the voice of the [National Ad Hoc Advisory Committee on Judicial Campaign Oversight](#). \* The Ad Hoc Committee was established in 2003 by the National Center for State Courts to protect and enhance the quality of judicial campaigns and candidate behavior by encouraging the establishment of and supporting the work of [judicial campaign oversight committees](#). Oversight committees resolve issues relating to claims of improper conduct during judicial campaigns, and help set the tone of judicial elections in their jurisdiction. The members of the Ad Hoc Committee (*see sidebar*) include bar and civic leaders with extensive experience in factors that make a campaign oversight committee effective. For more on the mission and activities of the Ad Hoc Committee, please see page 4.

### 2006 Elections: Committee Spotlight

Since 2002, eleven states have either established new or reinvigorated previous committees in *Alabama, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, New Mexico, Ohio, South Dakota, and West Virginia*. Fifteen (15) statewide committees were active during the 2006 elections. Two of the more active and visible committees during the 2006 elections were the *Alabama Judicial Campaign Oversight Committee* and the *Kentucky Judicial Campaign Conduct Committee*:



#### The Kentucky Experience

Conditions surrounding Kentucky's 2006 elections were coined "the perfect storm" where all but two of more than 260 judicial seats were up for election. Although Kentucky judicial elections are nonpartisan, more than 100 were contested races in 2006. The Chief Justice of Kentucky saw the need for a committee in anticipation of that electoral storm. The [Kentucky Judicial Campaign Conduct Committee](#), formed in 2005, was one of the most active and visible committees in the country during the 2006 elections. The Committee is an independent non-profit with no affiliation to the bar or Supreme Court. It has one of the broadest scopes of authorized committee actions.

During the 2006 elections, the Committee issued an [op-ed on judicial campaigning](#), and sent letters to all candidates in contested races asking them to sign a campaign agreement disavowing campaigning that would "impugn the integrity of the judicial

## In the News

CONGRATULATIONS to Ad Hoc Committee Co-Chair, *J. Mark White* for receiving the **NCSC Distinguished Service Award** for his dedicated work in the area of judicial independence and judicial campaign oversight committees.

[Justice At Stake](#) recently released its 2006 edition of [“The New Politics of Judicial Elections.”](#)

Sitting Idaho Supreme Court Justice announces retirement in part because “judicial election campaigns have become too nasty and bitter.” “Nasty campaigns lead Idaho Supreme Court Justice to quit.” *The Olympian*. May 24, 2007.

Pennsylvania now joins the growing list of states where the judicial canons guiding judicial campaign behavior have been challenged in lawsuits. [Pittsburgh Post-Gazette](#). [May 21, 2007](#).

Former U.S. Supreme Court Justice Sandra Day O’ Connor urges states to rethink partisan election of judges as “States Weigh Financing Judges’ Elections” [Associated Press](#). [May 16, 2007](#).

The Board of Governors of the Florida State Bar announced plans to create “**an oversight system for judicial elections**” as part of their 2007-2010 operating agenda. [Jacksonville Daily Record](#). [April 2, 2007](#).

system, the integrity of a candidate or erode public trust and confidence in the independence and impartiality of the judiciary.” One sitting Supreme Court Justice, who signed the pledge but then spoke out on issues like abortion, lost his bid for re-election.

Six regional meetings for candidates were organized. Committee members participated in public forums and voter education as well. They maintained a website that responded to candidate questions and provided committee documentation, and produced a widely-distributed [brochure](#) on judicial campaigning.

The Committee received 19 complaints in 15 races. They investigated and substantiated claims in a Supreme Court race and a Court of Appeals race that several TV ads had grossly misrepresented the opponents’ records. They issued public statements – [as press releases on their website](#) - in response to those complaints and others. The media portrayed the Committee’s overall efforts positively with statements like “a non-partisan group that has stepped up to referee candidates’ claims and tactics.” In their final report, Committee co-chairs assessed their impact this way:

*We believe our activity reminded voters that judicial elections are supposed to be different...and [the Committee activity] probably influenced voters to cast ballots for candidates who demonstrated that they agreed with that principle.*



### The Alabama Experience

Alabama is one of eight states that hold partisan judicial elections for their high courts. Alabama elections historically have been some of the most contentious and most expensive in the nation. [The 2006 elections were no exception](#). The race for Chief Justice of the Alabama Supreme Court was particularly controversial. It was also the second most expensive judicial race in the country.

The *2006 Alabama Judicial Campaign Oversight Committee* was formed as a voluntary, non-profit, non-partisan group “to encourage, support and protect the public interest in a dignified and highly competent judiciary...and judicial campaign conduct that will reflect the highest levels of personal integrity.” Its authorized actions included candidate outreach and education, receipt and investigation of complaints, issuance of public statements and recommendations of appropriate campaign conduct. Although the Committee had no disciplinary authority itself, it could make referral to disciplinary boards in appropriate situations.

During the 2006 elections, the Committee received three formal campaign complaints. A written opinion was issued in response to one; the other two complaints were addressed through discussions with the involved parties. No public statements were issued.

*An Unexpected Opportunity:* The Committee’s candidate pledge unexpectedly became a political flashpoint in the race for Chief Justice. The incumbent Chief Justice of the Supreme Court refused to sign the pledge under the advice of his political party’s chairperson. The challenger did sign and publicly called on the Chief Justice to help keep the campaign fair and ethical by doing so. The Committee turned this unexpected situation into an opportunity for more candidate outreach and voter education and issued the following press release:

## Upcoming Events & Articles

David Rottman's article *Campaign Oversight Committees and the Challenge of Perpetuating Ethical Judicial Elections* will be appearing in an upcoming issue of the Justice System Journal (excerpts follow):

*"Some committees enforce official ethical regulations on what candidates can do and say. Most rely largely or entirely on persuasion to influence candidate behavior."*

*"The history and 2006 election experience provide more reasons for optimism than for pessimism regarding the effectiveness of oversight committees."*

*"The concept of judicial campaign oversight committees is viewed favorably by both judges and the public."*

*"There is...the need to finely balance the role of a voluntary committee to be effective with the need for it to avoid being oppressive."*

*"Accusations of being 'speech police' underline the importance of having a broad-based committee membership... The growing involvement of non-lawyers in committees offers some protection against being dismissed as part of the establishment."*

...At the start of the 2006 Judicial Campaigns, the Committee asked every judicial candidate to sign a "campaign agreement." ...The agreement asks that the candidate conduct his or her campaign in a manner that reflects respect for the integrity and dignity of judicial office. ...The agreement is, in essence, between the individual candidates and the citizens of Alabama. The agreement is *not* between the candidates and the Committee.

The candidate agreement is not intended to be a point of dispute between candidates... Whether a candidate signs the agreement or not is his or her personal decision. The Committee continues to encourage all candidates who have not previously signed to do so. In so doing, they affirm to the citizens of Alabama that they will conduct their campaigns in a manner befitting the judiciary and the office they seek. It is not too late.

The incumbent Chief Justice who did not sign the pledge was unseated by the challenger.

The Committee assessed their impact this way: ***"The Committee believes that it convinced several candidates to change the tone of their campaigns from negative to positive."*** The Alabama State Bar Association recently announced the Committee co-chairs were being awarded the Bar's 2007 Award of Merit because of their work with the oversight committee.

For more on these committees and others, please see [Conduct Committees by State](#) on the Ad Hoc Committee's website. (NOTE: The Ad Hoc Committee website is under redesign; committee information may be incomplete and is currently being updated.)

### Election by Questionnaire: Old Concept, New Targets?

Candidate questionnaires have been used in elections for years. But third-party and special interest groups are now using them in judicial elections more frequently and more pointedly. In 2006, judicial candidates in at least 21 states (*see sidebar on page 4*) received such questionnaires. Answering questions on specific issues may give the appearance of making pledges or promises or committing to issues on cases that might come before the court. Declining to answer questionnaires based on the Canons has led to litigation in a number of states.

What can oversight committees do to help judicial candidates facing this dilemma? The National Ad Hoc Committee offers the following suggestions:

1. Do not be rushed in deciding how to handle the questionnaire.
2. Never use the pre-printed answers provided on the questionnaire.
3. Consider responding with a letter.
4. Never use a judicial Canon to justify a decision not to respond.
5. Distinguish general-interest, non-advocacy groups from special-interest advocacy groups—and be consistent.
6. Consider using your response as an opportunity to discuss the judicial role (please see "Judicial Questionnaires: A Judge Responds" on the next page for an example).

The full recommendations are in the Ad Hoc Committee's [Advisory Memorandum on How Judicial Candidates Should Respond to Questionnaires](#).

## Trends and Issues

### **MORE use of judicial candidate questionnaires:**

2006 Questionnaire States:

Alabama  
Arizona  
Arkansas  
California  
Florida  
Georgia  
Illinois  
[Indiana](#)  
Iowa  
[Kansas](#)  
Kentucky  
Michigan  
Montana  
Nevada  
North Carolina  
Ohio  
Tennessee  
Texas  
Washington (state)  
[Wisconsin](#)

### **MORE challenges to the canons:**

Successful or partially successful challenges to date:

Georgia (2002)  
Kentucky (2004)  
North Dakota (2005)  
Minnesota (2002, 2006)  
Kansas (2006, on appeal)  
Pennsylvania (2007, new)  
Indiana (2006, on appeal)  
[Wisconsin \(2007\)](#)

## Judicial Questionnaires: A Judge Responds

In response to the [questionnaire from Florida Family Policy Council](#) sent to him, Judge Peter D. Webster wrote:

I have been a judge nearly 21 years... My experiences lead me to conclude without reservation that questionnaires such as that which I have received from your organization are ill-conceived. Over the long term, their impact cannot be anything but bad—bad for the judiciary as an institution; bad for the rule of law; and bad for the people... I say this because such questionnaires create the impression in the minds of voters that judges are no different from politicians—that they decide cases based on personal biases and prejudices... By virtue of the oath they take, judges are obliged to decide cases based exclusively on the facts and the controlling law, without regard to their personal feelings. Such questionnaires also create the impression that the answers will provide clues as to how a judge is likely to decide cases. This, too, is not true. We need only look to the careers of Chief Justice Earl Warren and Justice David Souter on the United States Supreme Court for proof. ([Click here](#) for Judge Webster's complete response).

## More on the Ad Hoc Committee...

The Ad Hoc Committee pursues its mission by: (1) making groups such as state and local bar associations and civic organizations aware of the campaign oversight committee model; (2) offering advice on organizing and setting up operations for oversight committees, establishing procedures and best practices; (3) serving as a clearinghouse for the exchange of information about oversight committees and their impact; and (4) collaborating with local and national organizations to analyze issues facing oversight committees. Committee activities have also included:

- Two national *Workshops on Establishing and Operating Effective Judicial Campaign Oversight Committees* (held in February 2004 and October 2005). At least seven new statewide and two new local committees were formed as a result. A third workshop is being planned for the fall of 2007.
- Publishing [Effective Judicial Campaign Conduct Committees: A How-to Handbook](#) - a practical guide to organizing an oversight committee and its various functions and activities. An updated third revision is scheduled soon.
- Participating in amicus curiae briefs on appeals in the Tenth Circuit's *Kansas Judicial Watch vs. Stout* and the Seventh Circuit's *Indiana Right to Life vs. Shepard* cases.
- Developing an [Advisory Memorandum on How Judicial Candidates Should Respond to Questionnaires](#) which provides guidance to judicial candidates on responding to special-interest group questionnaires on specific issues while maintaining judicial impartiality.
- Conducting and compiling results from a national *Survey on Judicial Campaign Oversight Committees* - the latest from the 2006 election cycle.

For more information on the Ad Hoc Committee or other questions, please contact Denise O. Dancy at [ddancy@ncsc.dn.us](mailto:ddancy@ncsc.dn.us) or 757.259.1593.