Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

Election Law Compliance: 2012 Elections & Qualifying, Statutory Reporting Mandates, Campaign Contributions and Recusal, Judicial Ethics Standards

Better Practice in Campaigns: 2012 Georgia Judicial Elections  
(focusing on circuit & county judgeships)

- **Instructions for Participating in this Self-Study Course**
- This self-study course targeting ethics and professionalism in the conduct of Georgia judicial election campaigns, consists of several parts, i.e., a: (i) Pre-Test; (ii) Visual Image Presentation; (iii) Written Monograph; and (iv) a Post-Test.
- By taking part in and successfully completing this course, one standard MCJE hour may be earned toward 2012 MCJE requirement, which also embodies 1 MCJE hour of ethics.
- Participants are instructed to: first take the Pre-Test, then to peruse the Visual Image Presentation, next to read the monograph, and finally, to submit to the Post-Test.
- All of these materials are retrievable from the ICJE’s website as e-files, using MS Office software products, specifically MS Word and MS Power Point.
- Participants wishing to earn the MCJE credit available will have to score 70% or higher on the course’s Post-Test, and to submit this Post-Test for screening to the course designer, Atty. Rich Reaves, at the ICJE. This submission can be accomplished by sending an e-mail attachment to (rich@icje.law.uga.edu) or fax (706-369-5842). Those persons submitting will receive, along with an answer key, e-mail or telephone confirmation of their successful participation.
- If there are further questions related to these matters, please direct them at your earliest convenience for a reply to: Atty. Rich Reaves, at the ICJE, by e-mail to (rich@icje.law.uga.edu), or telephone to (706-369-5836) or fax (706-369-5842). Thank you.
- Thanks is given to State Court Judge Wes Tailor for providing the background to this Power Point program, along with portions of contents for images: 4, 5, 6, 7, 10, 14, 20, 24, 25, 27, 28, 29.
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

Part 1:
2012 Elections & Qualifying
Better Practice in Campaigns:
2012 Georgia Judicial Elections

Election Day
July 31, 2012

Party Primary (for some Magistrate Court & Probate Court Judges)

Non-Partisan Election (for Supreme Court Justices, Court of Appeals Judges, Superior Court & State Court Judges, and for some Magistrate Court & Probate Court Judges)

OCGA 21-2-138, 21-2-150(b)(2)
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

General Qualifying Deadlines

2012 election dates follow statutory exceptions related to reliance upon United States decennial census data; after 2012, April qualifying returns for elections in even-numbered years

OCGA. 21-2-132(i)(1)(A)&(B), 21-2-153(c)(1)
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgships)

2012 Deadline for Qualifying . . .

• 9:00 a.m., Wednesday, May 23, 2012, through 12:00 noon, Friday, May 25, 2012,
• @ Secretary of State, for Superior Court Judges
• @ County Election Superintendent, for State Court, Probate Court & Magistrate Court Judges

[O.C.G.A. 21-2-132(i)(1)(A) & (B), 21-2-153(c)(1)]
Better Practice in Campaigns
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

Qualifying Documents

• File “Notice of Candidacy Form”,
• accompanied by an “Affidavit” of qualification
  - available from election superintendent locally
  - available from Secretary of State’s website,
    http://www.sos.ga.gov/elections/candidate_information.htm

[OCCA 21-2-132]
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• Qualifying Fees

• Pay “filing fee”: 3% of 2011 . . .
  – annual salary =
    • Superior Court
  – minimum salary, exclusive of supplements =
    • Magistrate Court & Probate Court
  – gross salary including all supplement/s =
    • State Court

(using payment method acceptable to payee, i.e., cash, bank or cashier’s check, money order)

[OCGA 21-2-131(a)(1)(A),(B) & (a)(2)]
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

Part 2: Key Concepts Relating to Campaign Contributions
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

Contribution Maximums

For non-statewide office, per individual contributor:

- Primary Election = $2,500
- Primary Election Run-Off = $1,300
- General Election = $2,500
- General Election Run-Off = $1,300

[O.C.G.A. 21-5-41 (b) & (k)]
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

Other Key Principles

• Contributors of $100 or more must be identified in required reports
  [O.C.G.A. 21-5-3(3)]

• A contribution is *anything of value* given to influence the outcome of election
  [O.C.G.A. 21-5-3(7)]

• A DOI must be filed before a contribution can be accepted legally
  [O.C.G.A. 21-5-30(g)]
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• Loans to a campaign by a candidate or a member of the candidate’s family are not subject to the campaign contribution limits [O.C.G.A. 21-5-41(g)]

• Contributions made in excess of the statutory permitted minimums should be returned to the donor. [Georgia Code of Judicial Conduct, paragraph 2, Summary to Canon 3E]
Better Practice in Campaigns: 2012 Georgia Judicial Elections (circuit & county judgeships)

Part 3: Financial Reporting & Campaign Activity
The Georgia Government Transparency and Campaign Finance Commission website furnishes copies of forms, links to statutes and additional information, including frequently asked questions.

http://ethics.ga.gov/filer-information/public-officials/
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

Campaign Reports & Forms

- Declaration of Intent to Accept Contributions
- Campaign Committee Registration
- Optional Separate Accounting per Election
- Campaign Contribution Disclosure Report
- Personal Financial Disclosure Report
- State Business Transaction Report
Better Practice in Campaigns: 2012 Judicial Elections
(focusing on circuit & county judgeships)

• The Form DOI

• Declaration of Intent to Accept Contributions
  − The DOI must be filed by each candidate
  − E-filing with GGTCFC is the preferred method
  − **Unlawful to accept contributions if DOI not filed**
  − DOI may be filed once per office held
    • i.e., incumbents need not re-file
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• The Form CCR

• CCR filing is Campaign Committee Registration
  - Identifies campaign committee
  - E-filing with GGTCFC is preferred
  - Requires sign-up for PIN with CCTCFC
Better Practice in Campaigns: 
2012 Georgia Judicial Elections 
(focusing on circuit & county judgeships)

• **The Form COOSA**

• **Choosing Option of Separate Accounting**
  - Declares intent to keep separate accounting for each election in cycle
  - May accept funds for future election that is not the next upcoming election
  - For example, if the next election is the general election, by filing a Form COOSA you may accept contributions for both the general election and the run-off election
Better Practice in Campaigns:  
2012 Georgia Judicial Elections  
(focusing on circuit & county judgeships)

• **The Form CCDR**

• **Campaign Contribution Disclosure Report**  
  - Discloses contributions that must be reported  
  - Non-election year filings: June 30 and Dec. 31  
  - Election year filings: March 31; June 30; Sept. 30; Oct. 25; Dec. 31  

(See GGTCFC website for additional filings for run-off & special elections)
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing upon circuit & county judgeships)

Synopsis on Required Campaign Forms / Reports

Declaration of Intention to Accept Campaign Contributions (FORM DOI):
- If you solicit or accept contributions yourself, without forming a committee, still must file the DOI
- Should file PIN applications shortly after filing Form DOI to ensure that you can e-file reports, which is preferred reporting method

Campaign Committee Registration By Candidate (FORM CCR):
- If you form campaign committee, you must register the committee
- Cannot accept contributions when there is a vacancy in either chairperson or treasurer position
- Same person may serve as chairperson and treasurer, including candidate

Choosing Option of Separate Accounting (FORM COOSA):
- May declare intent to keep separate accounting for each election in election cycle
- May accept funds for future election that is not the next upcoming election
- For example, if the next election is the general election, by filing a Form COOSA you may accept contributions for both the general election and the run-off election

Campaign Contribution Disclosure Report (FORM CCDR):
- Filed 2 times in non-election years
- Filed 4 times, or more, during election years
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing upon circuit & County Judgeships

**Campaign Record Keeping**

- Detailed records must be kept of all contributions received and expenditures made
- Must be maintained by treasurer of committee
- Records may be inspected by GGTCFC at any time
- Records are required to be preserved for three (3) years from the termination date of the campaign; GGTCFC advises keeping for at least five (5) years
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing upon circuit & county judgeships)

Other Filings / Forms

Additionally, as public officials, Judges ANNUALLY must file the following reports:

**Personal Financial Disclosure Statement (PFDS)**
- Non-election year: between January 1 and July 1
- Election year: No later than 15 days following qualifying

**State Business Transaction Report**
- Filed on or before January 31 of each year
Better Practice in Campaigns:  
2012 Georgia Judicial Elections  
(focusing upon circuit & county judgeships)  

Part 4:  
Campaign Contributions  
As They Relate to  
Judicial Disqualification
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing upon circuit & county judgeships)

**CANON 1:**
Judges Shall Uphold the Integrity and Independence of the Judiciary.

**CANON 2:**
Judges Shall Avoid Impropriety and the Appearance of Impropriety in All Their Activities.

**CANON 3:**
Judges Shall Perform the Duties Their Office Impartially and Diligently.

**CANON 7:**
Judges Shall Refrain from Political Activity Inappropriate to Their Judicial Office.

This Code now includes express provisions related to judicial impartiality and election campaign contributions. (Derived from Caperton vs. A. T. Massy Coal Co., 129 S.Crt. 2252 (2009))
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing upon circuit & county judgeships)

**Caperton vs. A. T. Massy Coal Co., 129 S.Ct. 2252 (2009)**

- 2004 plaintiff wins $50 million verdict
- trial defendant (loser) petitions for appeal
- incumbent appellate court justice comes up for re-election
- loser pumps $2,500,000+ into challenger’s campaign
- challenger wins, defeats incumbent with 53.3% of the votes
- challenger denies motion to disqualify and takes part in appeal
- trial verdict overturned by State Supreme Court (3-2 decision)
- trial plaintiff appeals to US Supreme Court claiming violation of due process when new judge denied motion to disqualify
- US Supreme Court held that, yes, due process was violated
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing upon circuit & county judgeships)


- Trial defendant corporate board chairman, chief executive officer, and president each contributed $1,000 statutory maximum to challenger’s campaign committee -- Donated almost $2.5 million to "And For The Sake Of The Kids" political organization formed under 26 U.S.C. § 527 (PAC opposing incumbent and supporting challenger) -- Spent just over $500,000 on independent expenditures (direct mailings, letters, and television and newspaper advertisements to support challenger)

- Contributions were more than the total amount spent by all other supporters, and three times the amount spent by candidate’s own committee

- Expenditures were $1 million more than total amount spent by committees of both candidates combined
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing upon circuit & county judgeships)

**Caperton vs. A. T. Massy Coal Co., 129 S.Ct. 2252 (2009)**

- based on objective and reasonable perceptions
- contribution's relative size in comparison to the total amount of money contributed
- total amount spent in election
- apparent effect contribution had on outcome of election
- timing relationship between campaign contributions, judge’s election, pendency and decision of case
- contributor's influence on election, under all circumstances, creates potential temptation to lead the average judge away from remaining impartial, neutral and balanced
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing upon circuit & county judgeships)

• GA Code of Judicial Conduct changes approved Thursday, September 8, 2011, by State Supreme Court, adopting Caperton criteria on judicial disqualifying bias from campaign contributions

• Bottom Line:
  − Receiving regular election campaign contributions allowed by the law are okay, and may not require recusal
  − New issue is presented by “aggregate contributions”, i.e., “PAC money”
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing upon circuit & county judgeships)

Summary: (from recently adopted text for Canon 3E)

(1) If contributions made to judicial candidate or committee are permitted by law and do not exceed the maximum allowable contribution, then no mandatory requirement to recuse.

(2) If (a) judicial candidate has knowledge of contribution made to candidate or committee that exceeds maximum allowable contribution and, (b) after having such knowledge, violation is not corrected in a timely manner (i.e., usually accomplished by returning contribution); then shall recuse.

(3) If judge has knowledge of a pattern of contributions made by a particular party, party's lawyer, or law firm of party's lawyer that include contributions (a) made to judicial candidate or committee and/or (b) made to third party attempting to influence election of the judicial candidate, then judge should consider whether recusal is appropriate in accordance with subsection 1(d) of Canon 3E.
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

PART 5:
Judicial Ethics Standards,
Code of Judicial Conduct &
JQC Advisory Opinions
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

• The Political Activity Canon of GA’s CJC
  – Canon 7A deals with general political conduct

• Judicial Election Campaign Activity
  – Canon 7A(2), 7B(1) & 7B(2) speak to campaign conduct, both by candidates and their committees
  – The terminology section also introduces concepts germane to judicial election campaigning, such as: candidate, aggregate contributions, political organizations, public elections
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• **Range of GA CJC Admonitions**
  - The terms “candidates” and “public elections” embrace partisan, non-partisan as well as retention elections and campaign activities
    • (SEE provisions in the CJC’s Terminology Section)
  - Judicial election candidates in all of these contexts may attend and speak to gatherings of political organizations to seek support on behalf of their election campaigns / candidacies
    • (SEE Canon 7A(2)
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)

- **Range of GA CJC Admonitions** (continued)
  - Public statements of candidates assessed for impact on court’s impartiality
    - SEE Canon 7B(1)(b)
  - Candidate’s campaign advertising subject to critique for truthfulness
    - SEE Canon 7B(1)(c),(d),(e)
  - Functions of campaign committee set out
    - SEE Canon 7B(1)(d) & 7B(2)
Better Practice in Campaigns:
2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

- JQC Advisory Opinions
  - Sometimes restore as permissible campaign activity that CJC appears to take away
  - Often refine or illustrate application of CJC restrictions to specific conduct
  - When relied upon can offer a shield to judicial disciplinary sanction
  - In dissecting Canon 7, present the single largest topical area for advisory comment on the CJC
Better Practice in Campaigns: 2012 Georgia Judicial Elections  
(focusing on circuit & county judgeships)

- **CJC & Advisory Opinions, on Political Parties**
  - Code prohibits leadership in & contributions to political parties
  - Opinions permit judicial candidates’ attendance at political party gatherings, soliciting support from party regulars, making contributions to party candidates, purchasing party dinner tickets, display of party affiliation pedigree in judicial campaign literature, perpetual status as a candidate that eliminates specific seasonal limits to permissible political activities . . .
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• **CJC & Advisory Opinions, on Public Endorsements**
  - Code prohibits public endorsement of candidates
  - Code & Opinions condone making campaign contributions to a candidate as not being a prohibited public endorsement
  - Opinions list common campaign support activities that amount to improper endorsement, if engaged in by a judge or judicial candidate
  - No family-member exception is given on the public endorsement restrictions
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

- CJ C & Advisory Opinions, on Campaign Speech
  - Code bars subscription to party positions, commitments to decisional positions on issues likely to come before the court, reckless disregard for falsity or truthfulness,
  - Code & Opinions permit solicitation of support for election, statements on personal beliefs about the law, terms reflecting general political philosophy but avoiding pledges or promises, accurate recounting of qualifying experience and training, accurate critique of opponent’s record
Better Practice in Campaigns: 2012 Georgia Judicial Elections
(focusing on circuit & county judgeships)

• CJ C & Advisory Opinions
  – Pervasive lens for permissible campaign conduct
    • Know, honor and follow the law
    • Avoid undermining ability to preside impartially
    • Preserve dignity appropriate to the judiciary
    • Uphold the integrity of the court system
Better Practice in Campaigns: 2012 Georgia Judicial Elections (focusing on circuit & county judgeships)