

# **FINAL REPORT**

**of the**

## **LOUISIANA JUDICIAL CAMPAIGN OVERSIGHT COMMITTEE**

**Fall, 2002  
Judicial Elections**

## I.

### Background

Through promulgation of a Resolution on March 13, 2002, the Supreme Court of Louisiana established the Louisiana Judicial Campaign Oversight Committee.<sup>1</sup> (Exhibit 1). The Committee consists of 15 Court-appointed members and includes retired judges, lawyers, and citizens who are neither lawyers nor judges. The 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.  
Mr. Barry Erwin  
Ms. Margaret A. "Peggy" LeBlanc  
Retired Justice Harry T. Lemmon  
Ms. Lynn M. Luker  
Dr. Romell J. Madison, D.D.S., R.Ph.  
Ms. Debra Simmons Neveu  
Mr. John B. Scofield  
Retired Judge Fred C. Sexton  
Retired Judge Melvin A. Shortess  
Christel C. Slaughter, Ph.D.  
Mr. Darrell Douglas Teats  
Retired Judge George Bradford Ware<sup>2</sup>

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<sup>1</sup> The new Court Rule establishing the Committee became effective on April 15, 2002.

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

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
- , 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 made statements that commit the candidate with respect to cases, controversies, or issues that are likely to come before the court (Canon 7B(1)(d)(ii));
- (7) The judge or judicial candidate knowingly misrepresented the identity, qualifications, present position or other fact concerning the candidate or an opponent (Canon 7B(1)(d)(iii));
- (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 or impending in any 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)(iv)).<sup>3</sup>

**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.”

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<sup>3</sup> See, Canon 7, Louisiana Code of Judicial Conduct (Exhibit 2).

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 such a complaint is summarily dismissed.

***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.

**Confidentiality.** Complaints are confidential until such time as the Committee, by a vote of at least two-thirds of its members, has determined clear and convincing evidence exists that a violation has occurred, and the respondent candidate has been given notice and an opportunity to respond.

**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.<sup>4</sup>

## II.

### **Initial Work of the Committee**

In accordance with La. S.Ct. Rule XXXV, § 8, the Committee proposed rules pertaining to its operations, created a campaign conduct “Acknowledgment,” and

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<sup>4</sup> See, Court amendments to Rule XXXV which became effective on May 21, 2002. (Exhibit 3).

created 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" through Court Resolution dated June 4, 2002 (Exhibit 4).<sup>5</sup>

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 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

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<sup>5</sup> Exhibit 4 includes the rules, the complaint form, and the campaign acknowledgment.

time is to be set forth in the transmittal notifying the respondent candidate of the complaint.

**Anonymous complaints.** 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; limited exceptions.** After the issuance of a public statement, the complaint and response, if any, shall be matters of public record. Committee investigatory and deliberation materials 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 disposition.** 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 advise 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.<sup>6</sup>

**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.<sup>7</sup>

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<sup>6</sup> 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.

<sup>7</sup> See generally, Judicial Campaign Oversight Committee Rules and Procedures (Exhibit 4).

### III.

#### Educational Role

In furtherance of its educational role, the Committee conducted six 2-hour educational seminars throughout the state after the qualifying period for judicial elections.<sup>8</sup> The Committee created a PowerPoint presentation which served as an outline for the educational seminars (Exhibit 6).

An Oversight Committee member was designated to preside at each of the educational seminars. Staff of the Judicial Administrator's Office also attended and helped with the seminars. It is estimated that 80-100 candidates and others attended and participated in the seminars.<sup>9</sup> A number of beneficial discussions concerning Canon 7, and campaign conduct in general, ensued at these seminars. Staff of the Louisiana Board of Ethics attended some of the seminars and offered helpful advice concerning financial aspects of judicial campaigning and reporting which are not governed by the Code of Judicial Conduct.

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<sup>8</sup> See Press Release concerning schedule of educational seminars (Exhibit 5).

<sup>9</sup> 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.

## IV.

### **1.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.”

Because qualifying for the Fall 2002 judicial elections occurred only six weeks before the October 5<sup>th</sup> primary elections,<sup>10</sup> the Committee used proactive measures to ascertain the names of non-judge candidates before the qualifying period. The Committee attempted to procure the names of non-judge candidates through contact with the Louisiana Board of Ethics and through a notice published by the Bar Association in which potential candidates were asked to contact the Oversight Committee. Newspaper articles were reviewed and other informal measures were also taken to procure the names of potential candidates.

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<sup>10</sup> Qualifying for the Fall 2002 judicial elections occurred from August 21 - 23.

When the Oversight Committee procured the name of a potential candidate, a letter was written to that candidate. The candidate was asked to consider signing the acknowledgment. The candidate was also advised of the six educational seminars. More than 130 of these letters were sent.<sup>11</sup>

Ultimately, the Committee procured 216 signed acknowledgments from judges and judicial candidates. This figure included completed acknowledgments from a number of judges who were unopposed in their bid for reelection. According to information provided by the Louisiana Secretary of State's office, immediately after the qualifying period, there were 77 contested judicial elections, with 187 candidates vying for elective judicial office. The Committee received 130 signed acknowledgments from the pool of candidates who qualified in August. Thus, approximately 70 percent of the candidates who qualified forwarded signed campaign acknowledgments to the Committee.

When candidate withdrawals are considered, the percentage of signed acknowledgments received is higher. 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

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<sup>11</sup> The Committee also forwarded two memoranda to Louisiana judges, in which the judges were asked to consider signing the acknowledgment, and in which they were advised of the educational seminars.

of the candidates who were actually on the ballot for the primary elections forwarded signed acknowledgments to the Committee.<sup>12</sup>

## V.

### **Analysis of Complaints Received** **by the Campaign Oversight Committee**

The Committee anticipated that much of its workload, at least with regard to campaign conduct complaints, would occur during the last two weeks preceding the primary elections on Saturday, October 5. As the statistics in the following pages indicate, a significant amount of the Committee's work was concentrated in the period between September 21 and October 5. Unfortunately, the Committee's efforts were made much more complicated and difficult because not one, but two, hurricanes hit Louisiana during this two week time period. Hurricane Isidore hit Louisiana during the week of September 23-27, and Hurricane Lili hit Louisiana during the week of September 30-October 4. The hurricanes caused the closure of a number of Louisiana courts, including the Supreme Court of Louisiana, caused the cancellation of one *en banc* Committee meeting, and caused additional personal difficulties to countless Louisiana citizens.

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<sup>12</sup> This statistic was ascertained by reviewing the election results posted on the Secretary of State's website, and then cross-referencing these names with the signed acknowledgments.

The second storm, Hurricane Lili, caused the Governor to issue an Executive Order which served to delay the primary elections in ten parishes until October 12. (Exhibit 7). As a result, a number of judicial elections were delayed one week. The two hurricanes have been mentioned in this Final Report because they undoubtedly impacted the Fall, 2002 elections and the operations of the Oversight Committee.

(A)

### **Number and Complexity of Complaints**

The Committee received 32 complaints concerning judicial campaign conduct.<sup>13</sup> Staff of the Judicial Administrator's Office reviewed the complaints for the purpose of assisting in preparation of this report. Staff concluded that 14 of the complaints were "complicated" in nature. Complaints were deemed complicated if they included multiple issues, required legal or related research, or involved the review of a number of documents. Some of the more complicated complaints necessitated:

- (1) A review of multiple campaign ads, brochures, flyers, or related news articles;

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<sup>13</sup> As part of its role as an informational resource for judicial candidates, the Committee and its staff responded to hundreds of telephone calls over the period of time between the Committee's creation and the November 5 general election.

- (2) A review of videotapes;<sup>14</sup>
- (3) Case law review an/or independent legal research;
- (4) The review of lengthy and sometimes complex supporting documentation.<sup>15</sup>

The 32 complaints were spread among 14 contested judicial elections. Multiple complaints were filed concerning 7 contested elections. Nine separate complaints were filed concerning the activities of one contested election.

## **(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.<sup>16</sup>

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<sup>14</sup> Videotapes were forwarded in support of 5 complaints.

<sup>15</sup> A response to one complaint included approximately 500 pages of supporting documentation.

<sup>16</sup> 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.

**TABLE A<sup>17</sup>**

Canon or Partial Canon Within Oversight Jurisdiction	Summary of Canon or Partial Canon	Number of Complaints which Implicated Canon
Canon 7B(1)(d)(iii)	Knowing misrepresentations	23
Canon 7B(1)(c)	Candidate permitted persons to do for them what they are prohibited from doing	6
Canon 7B(1)(d)(ii)	Statements committing the candidate with respect to cases, controversies, or issues likely to come before court	5
Canon 7B(1)(d)(iv)	Prohibited comments about pending or impending cases	5
Canon 7D(1)	Personally soliciting or accepting campaign contributions	1
Canon 7A(1)(d)	Soliciting funds for, paying an assessment to, or contributing to another candidate	1
Canon 7A(1)(b)	Publicly endorsing or opposing another candidate for public office	1
Canon 7A(1)(d)	Soliciting funds for a political organization	0
Canon 7A(1)(c)	Making speeches on behalf of a political organization or candidate	0
Canon 7A(1)(a)	Candidate acted as a leader or held an office in a political organization	0

As Table A indicates, complaints which alleged misrepresentations by candidates were by far the most frequent type of allegation reviewed by the Committee.

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<sup>17</sup> Some complaints specifically named more than one Canon or partial Canon as having been violated. A few of the complaints alleged violations of Canons which did not fall within the Committee's oversight jurisdiction.

(C)

**Timing of Complaints**

As noted, the Oversight Committee anticipated that much of its “complaint” work would occur in the last two weeks leading into the primary elections, since that is the generally-recognized period in which the most money and time is expended by candidates seeking election. This conjecture was borne out by a review of when the complaints were received. Table B depicts the period of time in which the complaints were received.

**TABLE B**

<b>Time Period in which Complaint was Received</b>	<b>Number of Complaints Received Within Time Period</b>
Received more than 2 weeks before primary election	8
Received more than 2 weeks before general election <sup>18</sup>	2
Received between 2 weeks and 1 week before primary election	6
Received between 2 weeks and 1 week before general election	3
Received between 3 and 6 days before primary election	10 <sup>19</sup>
Received between 3 and 6 days before general election	1
Received less than 3 days before primary election	1
Received after election	1

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<sup>18</sup> The Fall 2002 general elections occurred on November 5.

<sup>19</sup> Four of these ten complaints were received on Wednesday, October 2, three days before the October 5<sup>th</sup> primary election.

Table B indicates that 12 of the 32 complaints were received within one week of the primary or general election at issue. As noted, the Committee's ability to handle these complaints was made more difficult by the two hurricanes which hit Louisiana in the two week period before the October 5<sup>th</sup> primary. Furthermore, 7 of the 12 "late-filed complaints" were deemed to be "complicated" in nature. Thus, 22% of all of the complaints received by the Committee (7 out of 32) were received within a week of the election at issue, **and** were complicated in nature.

## VI.

### **Public Statement; Other Dispositions**

The Committee issued one public statement (Exhibit 8). The issuance of this statement resulted in the filing of a lawsuit by the respondent candidate against the Campaign Oversight Committee and its Chair. The lawsuit was dismissed in May of 2003.

Also, pursuant to the authority provided by Section VIII of the Campaign Oversight Committee Rules and Procedures, the Committee issued one "Protective Statement" concerning a confidential complaint which had become a matter of public knowledge. (Exhibit 9).

Four of the 32 complaints were summarily dismissed because they were anonymous and less than ten Committee members voted to conduct further review and investigation of them, they were deemed by the Chair to be frivolous, repetitive or harassing in nature, or because they did not allege facts which would constitute a violation of any canon which falls within the Committee's oversight jurisdiction. One of the complaints was concluded by informal resolution. All of the other complaints were dismissed after review and investigation, or were administratively closed without action.

## **VII.**

### **Conclusion**

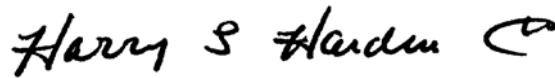
In the collective view of the Committee, the campaign conduct "acknowledgment" process was successful in helping judicial candidates focus on the limitations on their campaign activities which are incorporated in Canon 7 of the Code of Judicial Conduct. The educational seminars were also viewed by the Committee as beneficial endeavors which helped judicial candidates conform their campaign activities to the limitations placed upon them by the Code.

Finally, a number of persons have mentioned to the Supreme Court Judicial Administrator and staff that the 2002 judicial election cycle seemed less rancorous

than in years past. The members of the Louisiana Judicial Campaign Oversight Committee hope their efforts improved the administration of justice in Louisiana and served to encourage less rancorous and “better” judicial campaigning.

The Committee members are honored to have been chosen to serve by the Supreme Court of Louisiana, and look forward to future years of service to the Court and the judicial system.

January, 2003  
Louisiana Judicial Campaign Oversight Committee

A handwritten signature in black ink that reads "Harry S. Hardin" followed by a stylized flourish or symbol.

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By: Harry S. Hardin, III, Chair