



JUDICIAL COUNCIL
OF CALIFORNIA

COMMISSION FOR
IMPARTIAL COURTS

**Task Force on Judicial Campaign Finance
Commission for Impartial Courts**

Administrative Office of the Courts, Southern Regional Office
Sunset Boulevard Room
2255 North Ontario Street, Burbank, CA 91504

Monday, April 28, 2008
10:00 a.m. – 3:00 p.m.

Summary of Meeting

Members present: Hon. William MacLaughlin, Task Force Chair; Hon. Gail Andler; Hon. Alden Danner; Ms. Denise Gordon (via telephone); Mr. Charles Kim, Jr.; Mr. Robert Leidigh (advisory member; via telephone); Hon. Bruce McPherson; Hon. Heather Morse; Mr. Michael Planet; Hon. Mark Simons; Mr. Gerald Uelmen; Hon. Michael Vicencia; Mr. Thomas Warwick, Jr.

Members absent: Ms. Rozenia Cummings; Ms. Angela Padilla.

Consultant present: Ms. Deborah Goldberg.

Staff present: Mr. Chad Finke, Committee Counsel; Ms. Susan O'Brien, Administrative Coordinator.

Others present: Hon. Michael Wolff, Supreme Court of Missouri; Mr. Dan Abendschein, Staff Writer, San Gabriel Valley Tribune.

1. Approval of minutes from February 4, 2008.

The members of the Task Force on Judicial Campaign Finance (TF) voted to approve the minutes from the TF's February 4, 2008, meeting.

2. Discussion of Task Force administrative matters.

Background:

The Chair and staff discussed with the members various administrative matters relating to the TF and the Commission for Impartial Courts (CIC). Items discussed included:

- Introduction by the Chair of the TF's newest members, Hon. Mark B. Simons (Court of Appeal, First Appellate District) and Hon. Michael P. Vicencia (Superior Court of Los Angeles County).
- The fact that a student intern has been located to assist in inputting (into a staff-developed database) the campaign finance disclosure/reporting data obtained for judicial candidates in Alameda, Orange, Los Angeles, and Sacramento Counties for recent election cycles.
- The possibility of changing the location of all future TF meetings to San Francisco.
- Staff's efforts to reorganize the information contained on the TF's Moodle web site to make materials easier to locate.
- An update on the most recent CIC Steering Committee meeting, including the need for more community outreach such as the upcoming Public Forum in Sacramento.

Actions:

- The Chair suggested that the TF might want to obtain campaign finance disclosure reporting information from the several candidates running for judicial office in Los Angeles County, as well as the candidates for the current open-seat election in Santa Cruz County.
- TF member Charlie Kim volunteered to obtain and review recent campaign finance disclosure reporting information for candidates in San Diego County.

3. Report and discussion on April 3, 2008, meeting of Working Group 1 (WG1).

Background:

Judge Morse reported on the issues considered at the April 3, 2008, conference call meeting of Working Group 1. Members of the TF then engaged in open discussion of those issues, including the following:

- The overall rise in independent expenditures (IEs) in election campaigns, and whether that rise is in part or in full a response to contribution limits.
- The fact that in some jurisdictions, groups (including IE groups) have used judicial campaigns as a way to motivate voter bases to come to the polls to vote on issues that may not be related to the judicial candidates.
- Whether limiting the ability of corporations and unions to expend treasury funds on contributions to IE groups would still allow those entities to participate meaningfully in the political process (by, e.g., forming PACs).
- In the context of limiting corporate/union spending in judicial races, whether it is possible analytically to justify treating judicial elections differently from elections for other political office.
- The possibility of political opposition by corporations/unions to legislative efforts to limit treasury spending, even in the limited context of judicial elections.

Actions:

No specific actions were taken in response to the discussion of the issues above.

4. Conference call presentation by Hon. Michael Wolff of the Supreme Court of Missouri.

Background:

Members of the TF were joined (via conference call) by Judge Michael Wolff of the Supreme Court of Missouri. Judge Wolff discussed recent efforts made in Missouri by IE groups to unseat judges who were up for election in both contested and retention elections. The discussion with Judge Wolff included the following topics:

- The fact that judicial campaigns are becoming more high-profile, and that political consultants are becoming involved in those campaigns to a higher degree.
- The dramatic rise in spending in judicial elections.
- The fact that, in Missouri, most trial court elections are both partisan and contested.
- A recent election in Missouri in which a judge was targeted as part of a big-picture effort to mobilize conservative voters generally; i.e., whether the judge was re-elected or not was not the primary concern of the groups engaged in IE spending against that judge.
- The effect on judicial elections of voters' unfamiliarity with the candidates; in retention elections, this may have the effect of votes against candidates being, in essence, "votes against the system."
- An example in Missouri in which a political consultant "targeted" a judge with a low approval rating not because of anything having to do with the judge himself, but as a business development tool, i.e., the consultant wanted to demonstrate to prospective clients that he could wage a successful campaign against an incumbent.
- The relationship between an electorate that is concerned about federal issues and then, because of that concern, mobilizes at the state election level.
- In Missouri, the extreme disparity between spending by judicial candidates themselves and spending by IE groups.
- The effect of limiting judges in retention elections to fundraising only after they have been the subject of negative IE spending, e.g., "attack advertising."
- Missouri's plan under which the Missouri Bar has hired lobbyists and maintains a fund to be used to educate the public generally as to the role of the judiciary when judges are subjected to "attack ads."
- The cost of running a campaign for an open trial court seat in Missouri, which can range from \$100K to \$150K, most of which generally must be raised from attorneys.

- The function that contribution limits can serve in judicial elections, namely that of assuring the public that money will not affect judicial decision-making.
- Reasons why California has not to date experienced issues like those experienced in Missouri, including the availability of peremptory challenges under California Code of Civil Procedure section 170.6 at the trial court level, and, at the appellate level, the fact that California's appellate districts are large, making it difficult for opposing interests to raise sufficient funds to mount a successful challenge against a retention candidate.

Actions:

No specific actions were taken in response to the discussion with Judge Wolff.

5. Return to discussion of April 3, 2008, meeting of Working Group 1 (WG1).

Background:

Following Judge Wolff's presentation, the members of the TF continued discussing the issues considered at the April 3, 2008, conference call meeting of WG1, including the following:

- Whether judges typically maintain a reserve of campaign funds for use in the event they are challenged, or whether they instead must be prepared to raise money on the fly in the face of a challenge.
- Whether it is more common for corporations and unions to contribute money directly to judicial candidates via treasury funds, to contribute money through PACs, or to contribute money to groups making IEs.
- The relationship between an IE which, while not solicited by a judicial candidate, may benefit that candidate, and the possibility that that candidate may later have to recuse him- or herself from certain cases related to the IE group if elected to office.
- Whether the current recusal system under California law is effective at maintaining public trust and confidence in an impartial judiciary, in that it ultimately leaves the decision whether to recuse to the individual judge.
- With respect to recusal and the "triggers" for doing so, the difference between trial court judges and appellate justices.
- The possibility of publicly funding a system for allowing incumbent judicial officers to respond to IE spending, including the "pros" and "cons" of such a system (e.g., allowing incumbent judicial officers a meaningful opportunity to avoid being blindsided by a late, high-dollar IE campaign versus the negative public perception vis-à-vis a system of public funding designed to protect incumbents).

Actions:

No specific actions or recommendations resulted from the above discussion.

6. Report and discussion on April 9, 2008, meeting of Working Group 2 (WG2).

Background:

Judge Andler reported on the issues considered at the April 9, 2008, conference call meeting of Working Group 2. Members of the TF then engaged in open discussion of those issues, including the following:

- WG2's tentative recommendations, including the recommendation that legislation be pursued that would amend current California law to provide that disclosure of IEs be made not at the time of actual dissemination of a communication (e.g., advertising)—as is the case under current law—but rather at some earlier time, e.g., at the time the obligation to make the expenditure is incurred—or the time the expenditure itself is made—in connection with the forthcoming communication.
- The fact that, even if disclosure is made at some earlier time as per the tentative recommendation discussed above, it may not be possible for a judicial candidate to know whether s/he is the subject of the forthcoming IE.
- The related possibility that, at an early stage (e.g., at the time an obligation to make an expenditure is incurred), an IE group may not yet have decided for certain which candidate will be the subject of the advertisement in question.
- The connection generally between IEs and public trust and confidence in an impartial judiciary, e.g., the public may think that judges or judicial candidates will behave certain ways in order to avoid being the subject of IE advertising.
- The need to ensure that any changes to the law directed solely at judicial candidates—as opposed to candidates for other elective office—are not perceived by the public as being designed to “protect” incumbent judges.
- The possibility of justifying laws directed solely at judicial candidates—at least at the retention level—by noting that no other candidates for elective office stand for similar retention-style elections.
- The possibility of looking to private groups (e.g., judges' associations) as vehicles for raising pools of money that could be used to respond to “last minute” IE advertisements.
- The legal possibility not of limiting IEs in the time closer to an election date, but rather limiting contributions to IE groups in that same time period.

Actions:

The members of the TF decided not to take action on the three tentative recommendations of WG2 that arose from that working group's April 9, 2008, meeting.

Staff will prepare and circulate a document listing all of the tentative recommendations discussed to date by both working groups.

7. Adjournment.

The Task Force meeting adjourned at 3:00 p.m.