

SUMMARY OF FINDINGS

2001-1 To use lawn signs with the candidate's name and office sought, without qualifiers such as "elect" or "for" is an unfair campaign practice when there is the possibility of creating an erroneous impression of incumbency.

2001-2 No finding issued in case involving use of religious leaders' names as members of a committee to elect a candidate, allegedly without the leaders' knowledge or consent, because there was conflicting testimony about whether the leaders supported the candidate complained against.

Violation of Election Law and the Canons of Judicial Ethics are better handled through the appropriate administrative bodies or courts. No finding.

2003-1 Correction of lawn signs, which admittedly created the misleading impression of incumbency, reading

JUDGE PEARSON, Town of Coeymans, JUSTICE.
to read,

Elect JUDGE PEARSON, Town of Coeymans, JUSTICE
promptly, more than a month prior to the election, and prior to the filing of a FCP complaint resulted in a finding of no unfair campaign practice.

2003-2 Publishing or failing to repudiate paid political advertisements that looked like banner headlines and that were published without attribution or mention that they were paid political ads was misleading. Although the candidate cannot be held responsible for the original publication by a third party, the candidate violated Principle 7, which required candidate disavowal. The duty to disavow relates not to the fact of initial publication but to the candidate's duty to distance himself from the misleading materials.

2003-3 Material claiming an opponent had entered into a deal with a union in return for a political party endorsement, without evidence in support of the assertion, was misleading.

Characterization of an opponent for the office of mayor as a "big supporter" and the "hand-picked successor" of the unpopular outgoing mayor and allegations that the opponent would retain the outgoing mayor's employees if elected, when there was no evidence to support these claims, was misleading. When debate consists of misleading innuendo unsubstantiated by fact, it has crossed the line into the realm of the unfair campaign practice.

2003-4 A technical violation of principle 5, requiring campaign materials to contain the name and address, or other contact information, of the sponsor, in which the sponsorship information provided was that of the candidate's business rather than that of his campaign committee, did not constitute an unfair campaign practice, because the

actual information provided easily lead to the sponsor of the campaign materials and contained no risk of misleading voters.

Use of a city seal, without any indication that voters were misled by its use, did not violate FCP principles.

A claim that candidate violated a city ordinance by misuse of a city seal is a legal matter considered outside of FCP's jurisdiction because such matters are more appropriately handled by the courts.

2004-1 A political advertisement claiming a candidate "secretly funded his campaign with over \$100,000 from special interest groups" was misleading because a court had previously determined that the candidate had properly disclosed all campaign funds and their sources.

Another advertisement claiming, "Over \$80,000 came from an out of touch special interest group that advocates eliminating jail sentences for crack dealers," was misleading because there was no evidence that contributors advocated eliminating jail sentences for crack dealers, although some proposed reforms to the drug laws that would give greater discretion in sentencing, including the right to order treatment in lieu of jail.

A third advertisement claiming the candidate "won't enforce the laws keeping our communities safe from drug dealers and gun violence" was found to be misleading because the candidate indicated support for using prosecutorial discretion to allow people with substance abuse issues to receive treatment instead of incarceration, or a combination of both, depending on criminal history. There was no evidence he would fail to enforce any law.

The candidate claimed his opponent appealed to prejudice by pronouncing his name in a manner that indicated Hispanic ancestry, when the candidate was African American. This opponent claimed mispronunciation was an innocent mistake and not an appeal to prejudice. FCP issued no finding with guidance for the future. FCP Principle 3 provides that the candidate will not participate in, permit, or condone any appeal to prejudice. FCP's Candidate's Guide provides that candidates should refrain from unnecessary allusions to an individual's race, religion, gender, age, or sexual orientation. Candidates are responsible for the content of their campaign materials and should refrain from mention of potentially prejudicial personal characteristics absent relevance to the political campaign.

2004-2 A political advertisement claiming a candidate had received the benefit of \$120,000 in illegal campaign contributions to help him buy the election violated FCP Principle 2, which prohibits unfair and misleading attacks on an opponent's character, and Principle 4, which prohibits the use of any campaign material that misrepresents, distorts, or otherwise falsifies a fact regarding the candidate or an opponent. Prior litigation had determined that no illegal contributions had been made either to the candidate's campaign or to the party that supported his campaign.

2004-3 A candidate alleged his opponent violated FCP Principle 1, in which he agreed to conduct his campaign for office openly, fairly, and truthfully, because a political party illegally gave him \$121,776.91 in election contributions, in violation of New York State Election Law. FCP found no unfair campaign practice because a recent court decision found opinion made clear, the Candidate had received no illegal campaign contributions and had properly disclosed the contributions he did receive.

A candidate complained that a protest staged at his campaign headquarters by seven members of the clergy and a letter signed by the same seven individuals distributed at the protest, constituted campaign materials on behalf of his opponent that violated FCP principle 5 because they did not contain appropriate sponsorship information. The degree of candidate involvement in the protest was unclear, with the complainant alleging and the opponent denying involvement. Given the uncertain involvement of the opponent in the protest and letter, the fact that the letter was directed to all the candidates, and the fact that it was not distributed to the public at large, it cannot be said to be campaign material and therefore does not require identification as such pursuant to Principle 5. Furthermore, the letter contained no factual distortions, misrepresentations, or untruths, so it would not be subject to the disavowal requirements of FCP principle 7.

A candidate did not violate FCP principle 6, which prohibits abuse of the FCP process for political gain, by holding a press conference to announce the filing of an FCP complaint.

An advertisement, which erroneously stated that a judge threw out the candidate's frivolous lawsuit, when the judge had specifically ruled that the candidate's lawsuit had merit and had refused to dismiss it, was misleading. FCP did not issue findings with respect to the alleged violation of principal 2, but advised candidates against using words such as "lying" to characterize opponents without reference to the underlying facts constituting the lie could constitute a violation of principle 2.

2005-1 A flier that misrepresented the source of a candidate's financial support as coming from "New York City Liberals" was misleading because not supported in fact.

2006-1 When a candidate had prior notice of campaign literature distributed on his behalf by a party committee, the literature effectively became that of the candidate for purposes of operation of the FCP principles.

2006-2 Although FCP procedures require a complaining candidate to describe the offensive material and the principles violated, failure do so may be overlooked by the Hearing Panel if the complaint is sufficiently specific to enable the responding candidate to prepare a defense. The purpose of the complaint is to give notice of the offensive materials with factual information to be developed at the hearing. While FCP seeks the maximum specificity in complaints filed, it will hear a complaint that specifies the offensive materials, articulates the principles violated, whether by written narrative or by number, and is properly served upon the candidate complained against. In articulating this standard it is important to note that the purpose of FCP is to inform voters of the

fairness of campaign materials in an expeditious fashion. FCP does not purport to be a court of law or a duly constituted administrative body.

That the candidate complained against had no hand in the preparation and distribution of this flier, is not a defense to a violation so. FCP principle 7, which requires candidates to promptly and publicly disavow the materials of any group whose materials violate the FCP principles or whose materials would constitute a violation if disseminated by the candidate.

2006-3 Campaign material featuring only non-incumbent candidate's name and office may imply that the candidate holds the office and is therefore inherently misleading. Materials should contain language that makes the candidate's non-incumbent status clear, such as "Preston Jenkins **for** County Treasurer." The question of intent to deceive voters is irrelevant because campaign materials must avoid the possibility of erroneously implying a candidate is an incumbent.

2006-4 A flier that purported to be a comparison of candidate stands on issues by comparing the official record of candidate votes on those issues was misleading because, although both candidates had taken stand on the issues mentioned, only the incumbent had an official voting record.

The flier was also unfair because it stated the candidate, "Broke her promise to listen to Ballston voters when she skipped the League of Women Voters debate was misleading because the purpose of the forum was to inform voters about candidate positions rather than to listen to voter's concerns.

2007-1 A flier in which a Town Justice candidate claimed he would save the town \$15,000 in health insurance costs if elected was misleading because the town did not provide health insurance for that office.

2007-2 Failure to promptly disavow a campaign flier with no contact information constituted an unfair campaign practice. While there are no hard and fast rules about what constitutes prompt public disavowal, a public disavowal is one that is calculated to apprise voters that the materials in question run afoul of fair campaign standards and thus should not be relied upon. This could be achieved by means of a letter to the editor of a local paper, a press release, or a campaign flier, which informs the public that the materials were neither permitted nor condoned by the candidate, that they violate fair campaign principles, and that, consequently, they are not a reliable source of campaign information.

2007-3 Failure to disavow unfair material distributed by a third party was an unfair campaign practice.

Failure to identify sponsorship information on a flier was an unfair campaign practice.

2007-4 Failure to disavow unfair material sponsored by another was an unfair campaign practice.

Inclusion of a letter with no sponsorship attribution in a flier with adequate sponsorship attribution letter inside the four-page flier, met the requirement for attribution. It would have been a better campaign practice to have the attribution printed on each discrete piece of the literature drop or to have all the pieces firmly attached to each other.

2007-5 Failure to disavow unfair material sponsored by another was an unfair campaign practice.

2007-6 Failure to disavow unfair material sponsored by another was an unfair campaign practice.

Linking two unrelated events in a manner that distorted the situation to imply the two events constituted an either/or decision was misleading.

2007-7 Failure to identify sponsorship information on campaign billboards and fliers was an unfair campaign practice.