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## Judicial Inquiry Commission

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The Judicial Inquiry Commission has considered your request for opinions concerning numerous questions involving political and extra-judicial activities of judges as sanctioned or proscribed under the Alabama Canons of Judicial Ethics.

The opinions of the Commission will be given in the order in which your questions are asked with the exception of questions 15 and 16, which will take additional time to answer. However, it must be stated at the outset that Canon 7, relating to political activities, must be considered along with other canons.

Very truly yours,

JUDICIAL INQUIRY COMMISSION

Question 1. What constitutes the “administration of justice” under Canon 7A(3) of the Alabama Canons of Judicial Ethics?

Opinion - It is the opinion of the Commission that the phrase in this instance is meant to be narrowly construed so as to include the functions of the legal system by which and through which cases may be brought before a court, tried, determined and disposed of and judgments enforced. This phrase, in this instance, also includes all of the functions necessary to the proper operation of the court system.

Matters which might be included within this phrase are too numerous to be delineated here by this Commission. However, should a judge have any question as to whether a specific matter is included within the meaning of this phrase, the judge may address that matter to the Commission for its opinion. **82-140**

Question 2. Is a judge prohibited from being a member of an organization, such as the NAACP, which promotes the economic and political interests of minorities?

Opinion - It is the opinion of the Commission that the answer to this question is found primarily within the provisions of Canons 5, 5B, and 7. Canon 5 provides that:

“A Judge Should Regulate His Extra-Judicial Activities To Minimize the Risk of Conflict with His Judicial Duties.”

Canon 5B provides in pertinent part that:

“A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization or institution not conducted for the economic or political advantage of its members, subject to the following limitations.

- (1) A judge should not serve if it is likely that the organization or institution will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.”

The Commentary to Canon 5B warns that:

“The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it.”

These canons do not prohibit mere membership in organizations which are conducted for the economic or political benefit of others. Such membership is prohibited if it raises

conflicts with the judge's judicial duties, reflects adversely upon his impartiality or interferes with the performance of his judicial duties. Further, a judge should not serve in an organization if that organization is likely to be engaged in proceedings before him, or if the organization will be regularly engaged in adversary proceedings in any court.

These provisions of the canons are specifically provided to minimize the risk of conflicts of interest and to minimize the number of cases in which a judge's recusal might be required due to his impartiality being questioned.

Canon 7 is also applicable to this question. Canon 7A provides in pertinent part:

"... It is desirable that a judge ... endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than candidates for judicial offices and not be involved in political fund solicitations other than for himself. However, so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge ... cannot divorce himself completely from political organizations and campaign activities which, indirectly or directly, may be involved in election or re-election. ... should a judge ... be directly or indirectly involved in the internal workings or campaign activities of a political organization, it is imperative that he conduct himself in a manner at all times to prevent any political considerations, entanglements or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process."

This canon specifically allows judges to participate in political organizations. The canon merely admonishes that a judge should refrain as far as possible from participating in certain purely political activities. Of course, under Canon 7, with these admonitions in mind, "A Judge Must Refrain from Political Activity Inappropriate to His Judicial Office." Therefore, a judge may belong to a political organization so long as his activities remain within the provisions of these two canons. **82-141**

Question 3. May a judge actively participate (such as speaking, handing out literature, etc.) in a campaign in which his immediate kin is a candidate?

Opinion - As cited above Canon 7A(l) provides that such activity on behalf of a candidate for a non-judicial office is undesirable and is therefore strongly discouraged by the Commission. The canon then recognizes that political demands will be made on judges, who must gain office through a partisan political system. However, the canon does not recognize a judge's kinship to another candidate for a non-judicial office as a sufficient reason for removing the undesirability of such campaign activity.

Further, Canon 2C is applicable to this situation. Canon 2C provides in pertinent part that a judge should not convey, nor should he permit others to convey the impression that they are in a special position to influence him. **82-142**

Question 4. May a judge allow his picture to be used in a campaign in which his immediate kin is a candidate?

Opinion - Canon 7A(l) provides that such activity on behalf of a candidate for a non-judicial office is undesirable and is therefore strongly discouraged by the Commission. The canon then recognizes that political demands will be made on judges, who must gain office through a partisan political system. However, the canon does not recognize a judge's kinship to another candidate for a non-judicial office as a sufficient reason for removing the undesirability of such campaign activity.

Further, Canon 2C is applicable to this situation. Canon 2C provides in pertinent part that a judge should not convey, nor should he permit others to convey the impression that they are in a special position to influence him. **82-143**

Question 5. Would it violate the spirit of Canon 7 for a judge to attend a \$50 per plate dinner for a candidate?

Opinion - It is the opinion of the Commission that the described activity would violate neither the spirit nor letter of Canon 7. **82-144**

Question 6. If a judge is speaking to a group about the functions of the court and someone asked him how he feels about a certain candidate or candidates, is it proper for the judge to express his views?

Opinion - The question posed is unclear in what manner and to what extent a judge is called upon to express his views about a candidate or candidates. Canon 7 does not specifically prohibit expression of political opinion by a judge. Canon 7 does provide that it is desirable that a judge endeavor not to engage in campaign activities in connection with a political candidate other than candidates for judicial office. Also, Canon 2C provides that a judge should not lend the prestige of his office to advance the private interest of others. It is therefore the opinion of the Commission that for a judge to respond as suggested, could violate the spirit of Canon 7 and Canon 2C. This does not mean that a judge may not express his political viewpoints, but when speaking specifically about the functions of the court, a judge should refrain insofar as possible from using that opportunity to make political comment as to the candidacy of any other person.

In connection with this question, we refer you also to Advisory Opinion 78-39, a copy of which is attached. **82-145**

Question 7. How active can a judge's spouse be in a candidate's campaign?

Opinion - The Canons of Judicial Ethics do not prohibit independent political activities by a judge's spouse. **82-146**

Question 8. Can a judge, who has completed a successful campaign for judicial office, accept campaign contributions which are tendered after his election is concluded and he has assumed office, for the purpose of reducing his campaign debt?

Opinion - A judge may accept campaign contributions at any time where such contributions comply with the various laws which pertain to campaign contributions and elections. Of course, a judge in accepting such contributions must remain ever mindful

of the provisions of Canon 7B(l)(d). **82-147**

Question 9. Regarding Canon 7A(2), must a judge resign his judicial office to run for District Attorney?

Opinion - The office of District Attorney is not a “judicial office” within the meaning of Canon 7A(2). Therefore, a judge must resign from his judicial office to run for the position of District Attorney. **82-148**

Question 10. In Canon 7A(l): Please define what is meant by the phrase, “...should endeavor at all times to refrain from political activities inappropriate to the judicial office that he holds or seeks.”

Opinion - Activities inappropriate to the judicial office are activities that the Canons in their entirety seek to prohibit. In its opinion, 78-39, the Judicial Inquiry Commission has previously discussed political conduct in general. That opinion is attached. **82-149**

Question 11. Please give specific examples of just what type political activities are considered appropriate and what activities are considered inappropriate?

Opinion - We have attempted to render opinions with regard to specific examples of conduct and those opinions are contained in Advisory Opinions 30, 39, 85 and 86. Other concerns may be addressed to the Commission. **82-150**

Question 12. Under Canon 7B(l) regarding campaign conduct: Please explain the phrase, “... maintain the dignity appropriate to judicial office” in sub paragraph (a).

Opinion - A judge, who becomes involved in any political campaign, must exercise extreme caution to maintain the dignity of his office, to uphold the independence, integrity and impartiality of the judiciary, and to refrain from interjecting the prestige of his office into the campaign. As is stated in the commentary to Canon 2:

“Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must, therefore, accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” **82-151**

Question 13. Please give examples of permissible conduct under Canon 7B(l)(a) and impermissible conduct in a political campaign.

Opinion - The specific activities directed to this Commission have been stated in the answer to the preceding question, No. 11, above. Other specific concerns may be addressed to the Commission. **82-152**

Question 14. Under 7B(l)(c) does this subparagraph limit all campaign speeches to the single phrase, i.e. "I pledge and/or promise to faithfully and impartially perform the duties of the office I seek?" Is nothing else permissible? If so, give examples of what a judicial candidate can say at political rallies?

Opinion - The campaign speeches by a candidate for judicial office are not limited to the single phrase, "I pledge and/or promise to faithfully and impartially perform the duties of the office I seek." The provisions of the Canons are not so restrictive as to prohibit ordinary campaigning by judges or candidates for judicial office so long as the campaign is conducted in accord with the high standards of conduct to which judges of this State should aspire in order to maintain the independence, impartiality and integrity of the judiciary of this State as mandated by Canon 1 and Canon 2. Candidates for a judicial office in the conduct of their campaign should make every effort to refrain from political activities inappropriate to the office held or sought. Canon 7 places a burden upon the candidates to carefully consider whether their participation in a course of conduct under a given set of circumstances would violate either the letter or the spirit of Canon 7 or would violate any of the remaining Canons, i.e., Canons 1 and 2. Whether such violations occur would depend on the facts of each particular case. **82-153**

Question 17. Under Canon 7A(l) Please explain the phrase, "... not to be involved in the internal workings of political organizations ..." and give examples of what conduct is permissible and what conduct is not permissible.

Opinion - It is the opinion of the Commission that the candidate should not hold any office in a political organization nor serve on any committee of such organization involved in the solicitation of funds for any purpose of that organization; except, he may pay the qualification fee required by such political organization for qualification as a candidate. See Advisory Opinions 30, 39, and 46. **82-154**

Question 18. Under Canon 7A(l) is the paying of qualifying fees to a political party considered being involved "in the internal workings of a political organization"? **82-155**

Question 15. Under Canon 7, what can be said in campaign literature?

Opinion - It would not be possible to list what can be said in campaign literature to the exclusion of all things that cannot be said. The Canons are not so restrictive as to require that only certain things may be said. However, Canon 7B establishes sufficient guidelines which constitute a framework upon which words and phrases may be used by a candidate to promote himself as a candidate for election or re-election to judicial office and not violate the dignity appropriate to the judicial office.

The language of Canon 7B(l)(c) is definitive in that it prohibits a judge from commenting on pending litigation and from publishing his conclusions of law on pending litigation. Except under the most extraordinary circumstances, a judge may not publicly explain the basis of his rulings or sentences in criminal cases. He should refrain from commenting on specific cases in which he has participated, especially where such comment could compromise the validity of any ruling or order entered by him in such cases. However, it is the opinion of the Commission that a judge may make general

references to court records, statistics and procedures. A judge may also explain generally that sentences on guilty pleas were, in many cases, based upon recommendations of the district attorney and acquiesced in by the victim or his family. Also, a judge may comment on the useful effects of probation as a part of our law system or our court procedure. Additionally, he may comment on his duty to set a reasonable bail and appoint counsel in criminal cases. See Advisory Opinion 80-85 and 80-86. **82-156**

Question 16. Under Canon 7, what subjects can be discussed in newspaper interviews during political campaigns? (For the purposes of answering this question, the Commission assumes that it refers to campaigns for judicial office.)

Opinion - It is the opinion of the Commission that this question is answered by our Opinion stated in Question 15 above. **82-157**