

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: FEBRUARY 28, 2000

ADVISORY OPINION 00-745

DISCIPLINARY RESPONSIBILITIES

ISSUE

May a judge promise not to report campaign conduct or material in violation of the Canons of Judicial Ethics to the Judicial Inquiry Commission, the State Bar, or other committee or tribunal? **Answer:** No.

FACTS

The Charge to the Judicial Campaign Oversight Committee contains a prerequisite to membership on the Committee that “the prospective member must renounce his or her right to prefer charges against any candidate for any campaign conduct or material before the Judicial Inquiry Commission, the State Bar, any grievance committee, or any other tribunal.” A judge who has been appointed to the Oversight Committee inquires whether the Canons of Judicial Ethics permit him to make such an agreement.

DISCUSSION

Canon 1 requires judges to uphold the independence of the judiciary. “A judge should participate in establishing, maintaining, and enforcing . . . high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.”

Canon 3B(3) provides that a judge “should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge has personal knowledge.” The official Commentary to Canon 3B(3) states that reporting a lawyer’s misconduct to an “[d]isciplinary measures may include

appropriate disciplinary body.” The Commission has previously addressed circumstances under which this canon imposed a duty to report a violation of the canons to this Commission. Advisory Opinions 78-50, 78-51, 78-52, and 95-598.

Canon 7 contains the following provision:

C. Reporting Violations of Canon 7:

(1) If such filing is permitted by law, a complaint alleging a violation of this Canon 7 shall be filed with the Judicial Inquiry Commission.

It is the opinion of the Commission that the Canons of Judicial Ethics do not permit a judge to agree in advance to not report to the Commission, the State Bar, or other appropriate body campaign conduct or materials in violation of the canons. Such an agreement takes away a judge’s independence to decide whether particular campaign conduct or materials must be reported to one of these bodies under Canon 3B(3) or Canon 7C(1).

This opinion is rendered after confirmation by the Commission that the Charge to the Judicial Campaign Oversight Committee is not in the form of a standing order which supercedes the Alabama Canons of Judicial Ethics, nor has any other standing order been issued by the Alabama Supreme Court modifying the canons.

REFERENCES

Alabama Advisory Opinions 78-50, 78-51, 78-52, and 95-598.

Alabama Canons of Judicial Ethics, Canons 1, 3B(3), and 7C(1).

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; e-mail: jic@alalinc.net.