

# JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 00-755

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ENDORSEMENT OF A CANDIDATE FOR PROBATE JUDGE BY THE INCUMBENT PROBATE JUDGE

shaking hands, and below the picture the ad is entitled, "A Personal Message from Probate Judge --- ----."

## ISSUE

May a probate judge who is not running for reelection publicly endorse a candidate for the position in an upcoming election? **Answer:** Yes. However, a judge should be careful that the substance of the endorsement complies with the provisions in Canons 1 and 2.

## DISCUSSION

The section in the Alabama Canons of Judicial Ethics entitled "Compliance with the Canons of Judicial Ethics" contains a subsection concerning probate judges. This subsection states, in pertinent part:

## FACTS

A probate judge who is not running for reelection inquires whether it is permissible under the Alabama Canons of Judicial Ethics for him to endorse a particular candidate as his replacement as probate judge. The advertisement in question states:

C. PROBATE JUDGE. Probate judges in Alabama are charged with many administrative and executive duties not judicial in nature. However, when a probate judge performs judicial duties then applicable canons should be followed. A probate judge is not expected to comply with the following:

I have been deeply honored to serve the citizens of --- County in the office of Probate Judge for 23 years. For the last 22 years, --- --- has served as Chief Clerk of the Probate Office with dedication, devotion, and courtesy. I am fully supporting --- --- as she seeks the office of Probate Judge and I respectfully ask all of my friends and supporters to vote for ---. I know that she is fully qualified and capable of serving the people of --- County as your next Probate Judge.

5B(2), 5E and G, 6C, and 7.

The judge's signature appears below this text, and the paid political advertisement disclaimer required by the Fair Campaign Practices Act is printed below that. At the top of the ad there is a picture of the judge and the candidate

Thus, probate judges are not required to comply with Canon 7, the canon devoted expressly to political activity by judges. However, probate judges' political activities are subject to other applicable canons. Canon 1 requires judges to observe "high standards of conduct so that the integrity and independence of the judiciary may be preserved." Canon 2 states that a judge "should avoid impropriety and the appearance of impropriety in all his activities." Canon 2A requires respect and compliance with the law and conduct that "promotes public confidence in the integrity and impartiality of the judiciary." Canon 2B requires a judge to "maintain the decorum and temperance befitting his office" and to "avoid conduct

prejudicial to the administration of justice which brings the judicial office into disrepute.” Canon 2C states that a judge “should not lend the prestige of his office to advance the private interests of others.”

The Commission finds no *per se* violation of Canon 1, Canon 2A, or Canon 2B in a probate judge endorsing a candidate running to replace him as probate judge, nor does it see a potential violation of any of these canons in the particular advertisement presented for its consideration. It has been suggested that the contemplated endorsement is not permissible under Canon 2 in that it violates the provision in Canon 2C that states a judge “should not lend the prestige of his office to advance the private interests of others.” However, the Commission cannot agree with such an application of Canon 2C.

The Commentary to Canon 2 explains that a judge is not *per se* prohibited by Canon 2C from writing a letter of recommendation disclosing personal information of someone’s experience, character or ability. The Commentary explains that such a letter should not be written if the recipient is engaged or likely to be engaged in proceedings before the judge making the recommendation. The Commission recognized in Advisory Opinion 86-269 that the concerns the canon addresses in this regard are that the recipient will feel either that he or she can influence the judge by acting on the judge’s recommendation or pressured to so act, concerns that are not present in a political advertisement that solicits votes for a candidate. The Commission also notes that the particular advertisement at issue states that it is a “personal message” from the judge, and it

bears the paid political advertisement disclaimer required under the Fair Campaign Practices Act.

In Advisory Opinion 98-689, the Commission held that a judge may write a letter to a judicial panel recommending an attorney for appointment to judicial office. The Commission decided that such a letter is not prohibited by Canon 2C, noting that Canon 4 encourages judges to participate in improvements in the administration of justice, and that a judge is uniquely able to contribute insight to the judicial selection process and, thus, to the administration of justice.

The Commission also has previously stated the opinion that “any judge of this State may engage in campaign activities in connection with a candidate for judicial office by allowing the judge’s name to be used as judge in newspaper advertisements or in other media in support of a candidate . . . for judicial office.” Advisory Opinion 82-162. This advisory opinion was requested by circuit and district judges. The Commission’s decision was based on the text of Canon 7, which expressly discourages campaign activities in support of candidates “other than candidates for judicial office,” the Commission finding it clear that Canon 7 does not discourage campaign activities such as those in question in connection with a candidate for judicial office. Advisory Opinion 82-162. Thus, the Commission has previously held that a judge may allow his or her name and judicial title to be used in media advertisements in support of judicial candidates. Nothing in the canons suggests that probate judges should be more restricted in political activity on behalf of judicial candidates than other judges.

The Commission can envision circumstances in which an endorsement of a judicial candidate would violate Canon 2C. For example, an endorsement on a judge's official letterhead would be inappropriate. As noted in Advisory Opinion 82-162, a judge should also always take care that the substance of a particular endorsement complies with the other provisions in Canons 1 and 2.

The Commission finds no violation of the Alabama Canons of Judicial Ethics in the advertisement at issue.

#### **REFERENCES**

Alabama Advisory Opinions 82-162, 86-269, and 98-689.

Alabama Canons of Judicial Ethics, Canons 1, 2, 2A, 2B, 2C, 4, and 7; Commentary to Canon 2; Compliance §C.

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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](mailto:jic@alalinc.net).