

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 03-819

PARTICIPATION ON COMMITTEE SUPPORTING CONSTITUTIONAL AMENDMENT

ISSUES

May a family court judge participate on a bipartisan committee for the “Campaign for Alabama?” **Answer:** Yes, subject to the restrictions in Canons 4, 5B and 7A(1).

FACTS

A family court judge has been asked to participate on a committee for the “Campaign for Alabama.” Its purpose is to provide information to the public concerning the merits of a tax package that will be the subject of a vote by the people of Alabama in September. The provisions in the tax package were recently proposed by the governor and approved by the legislature as a means of ensuring that essential governmental services and functions, including education and the court and corrections systems, can be provided and operated at an appropriate level both now and in the future.

The committee will be bipartisan and its members will be drawn from a cross section of the community. It will inform the citizenry of its strong support for the constitutional amendment authorizing the tax package measures, and encourage people to vote in favor of it. The judge’s role on the committee would be to support the committee and its agenda of passing the constitutional amendment.

DISCUSSION

Canon 4 provides that, “subject to the proper performance of his judicial duties,” a judge

“may engage in activities to improve the law, the legal system, and the administration of justice” so long as he “does not cast doubt on his capacity to decide impartially any issue that may come before him.” Canon 4A specifically authorizes activities such as speaking and writing concerning the law, the legal system, and the administration of justice. Canon 4C states that a judge may serve as a member, officer or director of an organization devoted to the improvement of the law, the legal system, and the administration of justice, and may “assist” such an organization in raising funds and participate in their management and investment.

The foregoing activities are deemed “quasi judicial” in character. The Commentary to Canon 4 recognizes that, as a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to improvement of the law, the legal system and the administration of justice. The Commentary states that, to the extent that his time permits, a judge is encouraged to participate in such activities.

Thus, a judge is encouraged to participate in activities involving the law, the legal system and the administration of justice if the judge’s conduct (1) is not so time consuming as to interfere with the proper performance of judicial duties, and (2) does not cast doubt on the judge’s capacity to decide impartially any issue that may come before him. Taking a public stance advocating the adoption, repeal, or modification of a particular law may be inappropriate under Canon 4 if related issues are likely to come before the judge in his judicial capacity. *See* Advisory Opinions 83-192, 84-204 and 99-732.

Extra-judicial activities of a civic nature are governed by Canon 5B. This canon states 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.” Canon 5B also states the following:

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.
- (2) It is desirable that a judge not solicit funds for any educational, religious, charitable, fraternal, or civic organization or institution, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization or institution.
- (3) A judge should not give investment advice to such an organization or institution, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Canon 5B contains restrictions on general participation in extra-judicial civic activities that are similar to the restrictions in Canon 4 for quasi-judicial activities. Under Canon 5B, a judge may not participate in such activities if they are so time consuming as to interfere with the performance of judicial duties, nor may a judge participate in activities that reflect adversely upon the judge’s impartiality.

Canon 5B also contains additional limitations in connection with what might be characterized as leadership positions in a civic organization concerned with extra-judicial matters that is not conducted for the economic or political advantage of its members. Canon 5B(1) prohibits service in such a capacity if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge, or if it will be regularly engaged in adversary proceedings in any court. Canon 5B(3) prohibits giving investment advice to the organization. A judge may not be a legal advisor to such an organization. While Canon 5B(2) does not absolutely prohibit a judge from participating in fund solicitation, it strongly discourages such activity.

Participation in fund raising presents a danger that the prestige of the judicial office will be used for the solicitation of funds. Advisory Opinions 81-101 and 96-596. It also involves a danger that the person solicited will feel obligated to respond favorably if the judge is in a position of influence or control. Commentary to the Model Code of Judicial Conduct, Canon 4C(3)(b) (1990). A judge who participates in fund raising for a civic or charitable organization must be

ever mindful of the provisions of Canons 1 and 2, and must limit such participation so that he or she does not lend the prestige of his or her judicial office to the event or otherwise violate either the letter or the spirit of Canons 1 and 2. Advisory Opinions 83-174, 83-179, 85-242, and 96-596.

Advisory Opinions 00-747 and 00-753. A judge's name may be listed as an officer, director, or trustee of a civic organization, but his judicial position or title may not be used in fund-raising activities. Advisory Opinions 84-216, 96-596, 00-753, and 01-773. A judge should not solicit funds from a person or entity who regularly is a party to proceedings in the judge's court. Advisory Opinion 01-773.

Canon 7A(1) requires judges to refrain from political activities inappropriate to their judicial office, and it discourages judges from becoming involved in the internal workings of political organizations and from participating in political fund solicitations apart from the judge's own campaign for office. Canon 7A(1) also requires that judges conduct themselves at all times in a manner so as 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 the judicial process. Canon 7A(3) states that judges "may engage in activity on behalf of measures to improve the law, the legal system, or the administration of justice."

Under Canon 7, activities on behalf of measures to improve the law, the legal system, or the administration of justice are not inappropriate to the judicial office. However,

involvement in political organizations involving extrajudicial issues and fund raising for such organizations are discouraged, and it is imperative that a judge take care that his or her particular actions in this regard do not create an appearance that political influences, entanglements or considerations are involved in judicial decisions or the judicial process.

Activities in support of appropriate funding for the courts, as well as for related systems such as the Department of Corrections, fall within the scope of Canon 4. As the Commission has previously recognized, the "administration of justice" includes 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. Advisory Opinions 82-140 and 95-570. Thus, activities in support of appropriate funding for the courts and related governmental systems are encouraged under Canon 4, so long as the particular activities involved do not interfere with the proper performance of the judge's judicial duties or cast doubt on the judge's capacity to decide impartially any issue that may come before him. *See*, Advisory Opinion JI-46 (Michigan State Bar Standing Committee on Professional & Judicial Ethics, Feb. 20, 1992); Advisory Opinion 94-01 (Arkansas Judicial Ethics Advisory Committee, Feb. 18, 1994); Opinion 98-06 (Washington Ethics Advisory Committee, July 24, 1998); Opinion 00-03 (Washington Ethics Advisory Committee, March 10, 2000); Opinion 94-01 (Florida Supreme Court Judicial Ethics Advisory Committee, March 2, 1994); *see also*, Opinion 98-14 (Florida Supreme Court Judicial Ethics Advisory Committee, July 13, 1998).

While Canon 4 may sanction activities in support of funding measures that contribute to the improvement of the law, the legal system or the administration of justice, the Canon does not presuppose that there will be unanimity of opinion as to what proposals do and do not serve that purpose. Accordingly, Canon 4 may likewise sanction activities against proposals that are reasonably deemed damaging to the law, the legal system or the administration of justice.

Under Canon 7A, a judge engaged in activities on behalf of measures to improve the law, the legal system or the administration of justice must take care that he conducts himself in a manner so as to prevent political considerations, entanglements or influences from becoming involved in, or from appearing to be involved in, any judicial decision or the judicial process. Florida Opinion 94-01 contains the following pertinent comments:

[I]t may be inappropriate for a judge to become so identified with a cause that the public would lose confidence in the judge's ability to preside over a case involving a party who has a position opposing the judge's. Another danger a judge faces in making public comment is that the judge could become embroiled in what could be partisan party conflicts over the best way to spend tax dollars. Much of the Committee's concern is based on the specifics of the public comment and not the fact that some public comment is being made.

Before joining any organization either for or against the constitutional amendment in question, a judge should consider the areas of

concern expressed in Canons 4, 5B and 7A(1). If he decides to participate, he should be mindful of these provisions as he determines the appropriate scope of his participation. It is the opinion of the Commission that a judge may participate on the committee for the "Campaign for Alabama" so long as the nature of his participation is consistent with the provisions in Canons 4, 5B and 7A(1).

REFERENCES

Alabama Advisory Opinions 83-192, 82-140, 84-204, 84-216, 95-570, 96-596, 99-732, 00-747, 00-753 and 01-773.

Alabama Canons of Judicial Ethics, Canons 4, 4A, 4C, 5B, 5B(1), 5B(2), 5B(3), 7A(1) and 7A(3), and Commentary to Canon 4.

Arkansas Advisory Opinion 94-01.

Florida Advisory Opinions 94-01 and 98-14.

Michigan Advisory Opinion JI-46.

Washington Advisory Opinions 98-06 and 00-03.

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, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043; E-mail: jic@alalinc.net.