

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 06-869

SERVICE ON A COUNTY COMMITTEE FOR A CANDIDATE FOR NON-JUDICIAL OFFICE

ISSUE

May a judge or a candidate for judicial office serve on a county committee for a candidate for election to a non-judicial statewide office?

Answer: Such activity is strongly discouraged, and some of the specific conduct proposed is not permitted.

FACTS

A part-time municipal judge who is also a candidate for a local judicial office has been asked to serve on the county campaign steering committee for a candidate for election to a non-judicial office elected statewide. Service on the steering committee would include submitting names to another committee for possible campaign donors and volunteer workers, helping to organize fund-raising events, making telephone calls on behalf of the candidate, and serving as a host to the candidate upon the candidate's visit to the county.

DISCUSSION

The Commission has long recognized that Canon 7 of the Alabama Canons of Judicial Ethics governing political activity of Alabama judges strongly discourages political activity on behalf of candidates for non-judicial office. *See*, Advisory Opinions 78-39, 84-209, 86-251, 93-493 and 97-676. These opinions reference Canon 7A(1), which provides the following:

A judge or a candidate for election to a judicial office shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds or seeks. It is desirable that a judge or a candidate for election to judicial office endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a

political candidate other than a candidate for a judicial office and not be involved in political fund solicitations other than for himself or herself. However, so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge or a candidate for election to a judicial office cannot divorce himself or herself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his or her election or re-election. Nevertheless, should a judge or a candidate for a judicial position be directly or indirectly involved in the internal workings or campaign activities of a political organization, it is imperative that he or she at all times conduct himself or herself in a manner 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 in the judicial process.

This canon stops short of prohibiting all activity on behalf of a candidate for non-judicial statewide office, stating that political involvement with the campaigns of non-judicial candidates is discouraged, but recognizing that there may be instances where such activity may be engaged in out of necessity due to the nature of the political process. However, if such conduct is undertaken, this canon places a heavy burden on the judge/candidate for judicial office to "conduct himself or herself in a manner 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 in the judicial process" (emphasis added). In addition, the judge or judicial candidate must endeavor at all times to refrain from specific political activities that are inappropriate to the judicial office that he or she holds or seeks.

In determining whether an activity is inappropriate to judicial office, other provisions in the canons may be instructive. The Commission finds a provision in Canon 2C to be particularly pertinent to some of the specific activities proposed by the inquiring judge. Canon 2C includes a requirement that a judge "should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him."

The Commission has previously recognized that Canon 7A(1) does not prohibit service on a county committee for a candidate for non-judicial statewide office *per se*, but that it strongly discourages this conduct, and that specific activities in conjunction with such service may be prohibited. Advisory Opinion 93-493.

It is the opinion of the Commission that Canon 7A(1) strongly discourages but does not prohibit the inquiring judge from serving on the county committee for a candidate for non-judicial statewide office. However, some of the specific activities proposed to be involved in such service are not permitted.

The Commission finds that submitting names of possible campaign donors and volunteer workers to another committee is strongly discouraged under Canon 7 but not prohibited. The Commission also finds that helping to organize fund-raising events is strongly discouraged but not prohibited. However, if the judge chooses to engage in these two activities, he should do so in his individual capacity, and not identify himself or allow himself to be identified as a judge. In addition, the judge should not solicit funds from lawyers or litigants appearing before either the judge's current court or the court on which he seeks to sit.

In Advisory Opinion 84-209, the Commission wrote that if a judge chose to serve on an advisory committee for a candidate for the United States Senate, he should do so in his

individual capacity, and not identify himself or allow himself to be identified as a judge. The Commission reaffirmed this in Advisory Opinion 93-493, which involved proposed service on a county committee for the election of a gubernatorial candidate. In Advisory Opinion 78-39, the Commission concluded that, while fund solicitation on behalf of a non-judicial candidate is not generally prohibited but only strongly discouraged, it would be virtually impossible to solicit funds from lawyers or litigants appearing before the judge's court without violating the requirement to conduct oneself "in a manner at all times as to prevent any political considerations, entanglements or influences from . . . ever appearing to be involved in any judicial decision or in the judicial process."

The Commission is of the opinion that the judge could not serve as a host to the candidate upon the candidate's visit to the county without lending the prestige of his office to the candidate. The Commission is also of the opinion, under the facts presented, that the inquiring judge would not be able to make telephone calls on behalf of the candidate in which the judge is identified by either name or title without lending the prestige of his office to the endeavor. Thus, the Commission finds that these two activities are not permitted by the canons of judicial ethics. (A judge *may* under most circumstances *privately* advise or assist a non-judicial candidate. See Advisory Opinion 78-39.)

Finally, if the judge chooses to serve on the county committee at issue, he should, before engaging in any other specific activity, consider whether the activity would create an appearance that political entanglements or influences are or will be involved in any judicial decision or in the judicial process, and whether the activity is inappropriate to the judicial office held or sought.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 2C and 7A(1).

Advisory Opinions 78-39, 84-209, 86-251, 93-493,
and 97-676.

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.