

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: May 17, 2012

ADVISORY OPINION 12-914

POLITICAL ACTIVITY: A CAMPAIGN EVENT FOR A JUDICIAL CANDIDATE

ISSUES

- I. May the following be listed, as a member of the host committee, on an invitation to an event and that invitation seeks or requests a campaign contribution to a judicial candidate: (a) a sitting judge, (b) a retired judge, or (c) the spouse of a judge? **Answer, (a) and (b):** The judge may not be acknowledged as a host on an invitation to an attorney or litigant currently or likely to be in the judge's court. **Answer, (c):** A judge's spouse may be a host for a fundraiser for a judicial candidate, but the judge must take steps to ensure the appearance as well as the reality of the spouse's independence and of the judge's impartiality.
- II. May a judge participate, in any fashion, in an event for a judicial candidate if there is no request for funds or contributions, and, if so, may the judge use his or her judicial title? **Answer:** The appropriateness of the judge's political activity depends on the nature of the judge's particular participation.

FACTS

The inquiring judge presents the above inquiries without any additional facts.

DISCUSSION

A judge's participation in political conduct is governed by Canon 7A(1), which provides the following:

A judge . . . shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds 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 a candidate for a judicial office and not be involved in political fund solicitations other than for himself or herself. However, as 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 . . . 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 such 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.) (The Alabama Supreme Court included these provisions in its first canons, adopted December 15, 1975.) “[T]his canon sets forth the high standards of conduct to which the 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 . . . [and] the canon mandates that judges should make every effort to refrain from political activities inappropriate to the judicial office which he holds.” Advisory Opinion 78-39.

Where Canon 7 discourages a judge from being involved in a particular political activity, such as soliciting political-fund contributions for candidates other than himself or herself, the judge’s burden is “heavy” to “endeavor at all times to refrain from political activities inappropriate to the judicial office” and to “at all times conduct himself or herself in such 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.” Advisory Opinion 06-869. Thus, judges are “to carefully consider whether their participation in any of the above described activities 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., Canon 1 and 2.” Advisory Opinion 78-39. *See also* Advisory Opinion 82-149 (“Activities inappropriate to the judicial office are activities that the Canons in their entirety seek to prohibit.”).

In addition to maintaining the dignity of the office, the judge must be extremely cautious that his conduct not in any way interfere with his judicial duties; reflect adversely on the integrity, independence, or impartiality of the judiciary; or involve or inject the prestige of his office . . . by lending the prestige of his office to advance the private interests of others or by conveying or permitting others to convey the impression that they are in a special position to influence him. *See* Advisory Opinions 06-869; 78-46; 78-39. Given the canons’ directives for a judge to avoid the appearance of impropriety, Canon 2, and to participate in establishing, maintaining, and enforcing high standards of conduct, Canon 1, a judge’s participation in fundraising activities should be evaluated by an objective, reasonable person standard. Advisory Opinion 09-899.

Advisory Opinion 09-900. *See also* Advisory Opinion 93-493 (“It must be emphasized that ‘a judge who becomes involved in any political campaign must exercise extreme caution to maintain the dignity of his office’”). (An appropriate campaign activity for a judge, in support of a judicial candidate, is permitting his or her name to be used as judge in newspaper endorsements or other media in support of the judicial candidate. Advisory Opinions 00-755; 82-162.)¹

¹In reviewing the applicable canons and law, this Commission has considered *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), and *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002).

I.
A.

Canon 7A(1) strongly discourages, but does not absolutely prohibit, a judge from being involved in soliciting political-fund contributions for candidates other than himself or herself, e.g., hosting a political fundraiser. However, because invitees for a political-fundraiser event for a judicial candidate usually include lawyers, litigants, and future litigants in the soliciting judge's court, the ultimate question becomes whether a judge, on behalf of a judicial candidate, may solicit campaign contributions from attorneys or litigants who are or likely to be in the soliciting judge's court.

The answer is no. Advisory Opinion 06-869 (a judge should not solicit funds from lawyers or litigants appearing before the judge's court)². In addition, in Advisory Opinion 78-39, the Commission concluded that, while fund solicitation on behalf of a candidate is not generally prohibited, but only strongly discouraged, it would be "virtually impossible" for a judge to solicit funds on behalf of another from lawyers who practice within the jurisdiction of the judge's court or from 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." *Cf.* Advisory Opinion 00-768 (a judge is prohibited from sending a letter to local Bar members for support of the local Legal Aid program, even if the judge does not use his or her judicial title or judicial letterhead, for such would create a question as to judge's impartiality).

Although the questions addressed in Advisory Opinions 06-869 and 78-39 were in the context of a judge's raising campaign funds for a candidate for election to a non-judicial, statewide office, the nature of the office the candidate is seeking is not relevant to the judge's prohibition against soliciting funds from lawyers and litigants. Foremost, the explicit language of Canon 7A(1)—"It is desirable that a judge . . . not be involved in political fund solicitations other than for himself or herself."—does not distinguish the type of candidate for whom a judge is strongly discouraged from seeking political funds. Compare the immediately preceding clause (i.e., "It is desirable that a judge . . . not . . . engage in campaign activities in connection with a political candidate other than a candidate for a judicial office."). *See also* Canon 7B(4)(a) (implicitly indicating a

²Advisory Opinion 06-869 includes the additional advice that a judge should not, for a non-judicial candidate, serve as a host to the candidate upon the candidate's visit to the judge's county nor, on behalf of the candidate, make telephone calls in which the judge identifies himself or herself by name or title because these two activities lend the prestige of the judicial office, and if, despite the Commission's strong discouragement, the judge submits names of possible campaign donors to another committee or helps organize fundraising events, the judge should do so only in his or her individual capacity and not identify himself or herself or allow himself or herself to be identified as a judge.

judicial candidate should not personally, directly solicit campaign contributions and public support from lawyers).³

A judge's participation in any kind of fundraising presents two dangers, neither of which dissipates because the judge is fundraising for a judicial candidate: (1) the prestige of the judicial office will be used for the solicitation of funds, and (2) the person solicited will feel obligated to respond favorably if the soliciting judge is in a position of influence or control. *See* Advisory Opinion 09-900. As a host to a fundraising event, a judge would be soliciting and encouraging contributions, and the judge's invitation would significantly impact an attorney's or litigant's decision to attend the fundraiser and make a contribution. *Cf. id.* (in advising a judge should not serve as an auctioneer for a fundraising auction sponsored by a club affiliated with a political party, the Commission noted its concern that, not only could the judge's participation encourage attendance, the attendees reasonably could feel obligated to bid because of the auctioneer's judicial position of influence and authority and also feel positioned to receive future judicial favor for bidding in the auction). The danger of coercion would be prominent here because of the reporting requirements of Alabama's campaign-finance law, i.e., the soliciting judge obviously could readily determine who contributed. Compare Advisory Opinion 00-755, where, in advising that a judge may endorse a judicial candidate in a newspaper advertisement titled, "A Personal Message from Probate Judge ---" and include the request, "I respectfully ask all my friends and supporters to vote for ---," the Commission noted the absence of any concern that the reader either would feel he or she could influence the judge by acting on the judge's recommendation or would feel pressured to so act. Moreover, because attorneys and litigants would be aware of the soliciting judge's official position without any reference to the judge as "Judge" or "Honorable," the dangers implicit in fundraising could not be avoided. *See* Advisory Opinion 09-900.

Thus, the Commission advises the inquiring judge that she may not be listed as a host for a political fundraiser for a judicial candidate on an invitation to a lawyer, litigant, or likely future litigant appearing in the judge's court. Implicit in this advice is the Commission's conclusion that an objective, reasonable person would conclude that the inclusion of a judge as one of the hosts to a political fundraiser for a judicial candidate constitutes the judge's personal solicitation of a campaign contribution.

³ Canon 7B(4)(a) states:

A candidate is strongly discouraged from personally soliciting campaign contributions. It is highly recommended that a candidate establish committees of responsible persons to solicit and accept campaign contributions, to manage the expenditure of funds for the candidate's campaign, and to obtain public statements of support for his or her candidacy. Such committees may solicit and accept campaign contributions and public support from lawyers.

B.

Whether a retired judge may host a political fundraiser for a judicial candidate depends upon whether he or she, as a retired judge, serves in an active-duty status. If the judge is in active-duty status, he or she must comply with the pertinent canons, including Canon 7. Section D(2) and (3), “Compliance with the Canons of Judicial Ethics” Section, Alabama Canons of Judicial Ethics. *See, e.g.*, Advisory Opinion 93-497. A retired judge, not serving in active-duty status, is not required to comply with any of the canons. Section D(1).

C.

The Alabama Canons of Judicial Ethics do not prohibit the independent political activities of a judge’s spouse. Advisory Opinion 82-146. Despite the fact, however, that a judge’s spouse is an independent person with the right to support any candidate, the judge has an obligation to take steps to ensure the appearance as well as the reality of the spouse’s independence and of the judge’s impartiality. *Cf.* Advisory Opinion 07-881 (observed in the context of charitable fundraising activities of a judge’s spouse). For example, a judge should not permit his spouse to use his name in referring to herself, *e.g.*, Ms. John Doe. *Id.* While the judge may engage in the campaign activities in connection with a judicial candidate, the judge may not be identified with or associated with the spouse’s solicitation of campaign contributions for that candidate from attorneys or litigants who appear before the judge or ever likely to be before the judge. *See* Canon 7A(1). *Cf.* Advisory Opinion 07-881 (the judge should not attend any charitable fundraising event that is part of a \$50 million campaign for which the judge’s spouse is one of three chairpersons and the campaign’s chief executive where his attendance could be reasonably construed as lending the prestige of his judicial office to support the campaign, impairing his impartiality, or possibly coercing donations from donors who may include lawyers or possible litigants who could come before the judge in the future).⁴

II.

Without a specific factual context, the Commission cannot address the remaining questions of whether a judge may participate, in any fashion, in an event for a judicial candidate if there is no request for funds or contributions, and, if so, may the judge use his or her judicial title. However, the Commission has already advised a judge may attend a \$50-per-person dinner for a candidate, Advisory Opinion 82-144, and may endorse a judicial candidate, Advisory Opinion 00-755.

REFERENCES

Advisory Opinions 09-900; 09-899; 07-881; 06-869; 00-768; 00-755; 93-497; 93-493; 82-162; 82-149; 82-146; 82-144; 78-46; 78-39.

⁴ This opinion does not address the question whether a judge’s spouse may host a campaign fundraiser in the judge’s residence.

Alabama Canons of Judicial Ethics, Canons 1; 2; 7; 7A(1); 7B(4)(a); and Sections D(1), (2), and (3), “Compliance with the Canons of Judicial Ethics” Section.

Republican Party of Minnesota v. White, 536 U.S. 765 (2002).

Weaver v. Bonner, 309 F. 3d 1312 (11th Cir. 2002).

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 18 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.