

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: December 19, 2017

ADVISORY OPINION 17-935

APPOINTMENT OF CIRCUIT CLERK

ISSUE

Where the judges of the circuit court must fill a vacancy in the office of the clerk of the circuit court pursuant to Art. VI, § 160(b), Ala. Const., do the Alabama Canons of Judicial Ethics prohibit the judges from appointing a candidate who has declared or intends to declare for that office in the upcoming election? **Answer:** No.

FACTS

The circuit clerk plans to retire before the end of his/her term of office. The Alabama Constitution provides, “Vacancies in the office of clerk of the circuit court shall be filled by the judge or judges of the circuit court who have jurisdiction over the county in which the office of clerk of the circuit court is located.” Art. VI, § 160(b). The office of the circuit clerk will be on the ballot in the upcoming election. Individuals declaring or intending to declare for that office are or could be under consideration for the interim appointment.

DISCUSSION

The Commission may provide advisory opinions concerning only whether action contemplated or proposed to be taken by a judge might constitute a violation of the Canons. Rule 18, Ala. R. P. Jud. Inq. Comm’n.

Canon 3B(4) requires that a judge exercise his/her power of appointment only on the basis of merit. Therefore, when exercising his/her appointment power under Art. VI, § 160(b), a judge should not consider whether the potential appointee is also seeking the office in the upcoming election.

Moreover, the following additional canons prohibit a judge’s considering the political impact of his/her selection for appointment:

- Canon 2C A judge should not allow political or other relationships to influence his/her judicial conduct or judgment.
- Canon 3 A judge should perform the duties of his/her office impartially.
- Canon 3B(1) A judge should facilitate the performance of the administrative responsibilities of other judges and court officials.
- Canon 7A(1) A judge shall endeavor at all times to refrain from political activities inappropriate to the judicial office he/she holds.

It is imperative that a judge at all times conduct him/herself in such a manner as to prevent any political considerations, entanglements, or influences from ever becoming involved in for from ever appearing to be involved in any judicial decision or in the judicial process.

In conclusion, the appointing judges should consider only the merit of the potential appointee and a concern for the proper administration of justice.

REFERENCES

Alabama Canons of Judicial Ethics, Canons 2C, 3, 3B(1), 3B(4), and 7A(1)

Ala. Const., Art. VI, § 160(b)

Rule 18, Ala. R. P. Jud. Inq. Comm'n

This opinion is advisory only and is based on the specific facts and question 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.