

JUDICIAL INQUIRY COMMISSION

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ADVISORY OPINION 23-959

POLITICAL ACTIVITY: SERVICE ON CAMPAIGN HOST COMMITTEES FOR JUDICIAL CANDIDATES

DISCUSSION

Judges' political activity is governed, generally, by Canon 7. Canon 7A(1) provides:

ISSUES

Is a judge prohibited by the Canons of Judicial Ethics from serving as a member of a host committee for a candidate's campaign for judicial office?

Answer: No, but it is discouraged.

Is a judge prohibited by the Canons of Judicial Ethics from being listed as a host on a mass-mailed invitation to a political fundraiser for a judicial candidate?

Answer: No, but it is discouraged.

FACTS

The Commission has been asked to reconsider its advice in Advisory Opinion 12-914. In that opinion, the Commission advised that a judge may not be listed as a host for a political fundraiser for a candidate for judicial office on an invitation sent to a lawyer or litigant who appears in the judge's courtroom or who is likely to appear in the judge's courtroom.

More recently, the Commission issued Advisory Opinion 22-951 which advised that a judge is not discouraged by Canon 7 from engaging in activities in connection with a candidate for judicial office.

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 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.) There are three types of political activity that, although not prohibited, are specifically discouraged by Canon 7A(1): (1) involvement in the internal workings of a political organization; (2) engaging in campaign activities in connection with a political candidate, except for a candidate for judicial office; and (3) involvement in political fund solicitations other than for the judge's own campaign.¹ The two opinions that the Commission is now asked to reconcile address the second and third activities specifically mentioned in Canon 7A(1).

In Advisory Opinion 22-951, the Commission addressed whether a judge could publicly support non-incumbent candidates for a judicial office in any judicial race, including by making contributions to the candidate's campaign. The Commission advised that the Canons

neither prohibited nor discouraged the judge from engaging in such activity because such activity was in connection with a candidate for judicial office. *Id.* Thus, the activity would fall squarely within Canon 7A(1)'s exception to the admonishment against engaging in campaign activities in connection with a political candidate—*i.e.*, Canon 7A(1)'s second activity.

However, this exception is not without limits. The other admonishments in Canon 7A(1) remain applicable to a judge's political activity as does Canon 7, which provides, "A judge or a judicial candidate shall refrain from political activity inappropriate to the judicial office." *See also* Canon 7A(1) ("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 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.") Moreover, a judge is still required to comply with all other Canons. *See* Advisory Opinion 78-39; *see also* Advisory Opinion 22-951.

¹ Personal solicitation of contributions for the judge's own campaign by the judge is strongly discouraged by Canon 7B(4).

Advisory Opinion 12-914, on the other hand, addresses Canon 7A(1)'s third activity—involvement in political fund solicitations other than for the judge. In that opinion, the Commission advised that a judge may not be listed as a host for a political fundraiser for a judicial candidate on an invitation to a lawyer or litigant who appears in the judge's court or is likely to appear in the judge's court. *Id.*

In reaching this conclusion, the Commission observed that the explicit language of Canon 7A(1)'s admonishment against political fund solicitation does not contain an exception for candidates for judicial office as does the immediately preceding clause of that Canon. *Id.* Further, the Commission recognized two dangers which are inherent in a judge's solicitation of funds: (1) that "the prestige of the judicial office will be used to solicit funds" and (2) the danger of coercion—*i.e.*, that "the person solicited will feel obligated to respond favorably if the soliciting judge is in a position of influence or control." *Id.* Additionally, the Commission explained:

[I]t 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."

Id. (quoting Canon 7A(1)). The Commission further concluded "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." *Id.*

By comparing the reasoning of the two opinions, it is apparent that the conclusions in each of them rely on different clauses in Canon 7A(1). Therefore, the two opinions do not conflict with each other. While a judge is neither prohibited nor discouraged from engaging in political activities in connection with a candidate for judicial office, Advisory Opinion 22-951, a judge, still, is discouraged from being involved in political fund solicitation other than for the judge. Advisory Opinion 12-914.

However, in reconsidering the Commission's advice in Advisory Opinion 12-914, it is the opinion of the Commission that a judge is not prohibited from being listed as a host on an invitation to a political fundraiser for a judicial candidate, including invitations that are sent to lawyers or litigants. A judge is

discouraged, but not prohibited, by Canon 7A(1) from engaging in political fund solicitation on behalf of another candidate.

As noted above, in Advisory Opinion 12-914, the Commission discussed two dangers presented by a judge's solicitation of funds that necessitated a prohibition on a judge being listed as a host on an invitation to a political fundraiser to a lawyer or litigant. First, there is a danger that the prestige of the judicial office would be used to solicit funds for the judicial candidate's campaign. This danger is simply avoided by ensuring that any reference to the judge's title or position is not used on the invitation or in connection with the fundraiser. *See* Advisory Opinion 06-869 (“[I]f the judge chooses to engage in these two activities[—submitting names of potential donors and organizing fundraising events—], he should do so in his individual capacity, and not identify himself or allow himself to be identified as a judge.”). *Contra id.* (“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.”); *see also* Advisory Opinion 12-914 (“[B]ecause 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.”).

The second danger that the Commission recognized in Advisory

Opinion 12-914 was that the person solicited might “feel obligated to respond favorably to the soliciting judge if that judge is in a position of influence or control.” The Commission further explained, “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.” *See also* Advisory Opinion 09-900. Additionally, the Commission noted that the danger of coercion was prominent because of the reporting requirements in Alabama's campaign finance law which requires a candidate to report the names of contributors to the candidate's campaign and requires the Alabama Secretary of State to maintain a searchable database of those reports on its website. Ala. Code § 17-5-8 (Westlaw, current through the end of the 2023 First Special, Regular, and Second Special Sessions).

The Commission agrees that circumstances exist which would create an appearance that the judge's conduct would allow political considerations, entanglements, or influences to become involved in or appear to become involved in a judicial decision or in the judicial process. *See Salvagio v. State*, 274 So. 3d 310, 316 (Ala. Crim. App. 2018) (circuit court judge created “an apparent prejudice or bias” against contemnor when she asked the contemnor while he was on the

witness stand and under oath about contributions that he had made to her political opponent). However, there are circumstances in which a judge, although discouraged from doing so, may engage in political activity without allowing political considerations, entanglements, or influence from becoming involved or appearing to become involved in a judicial decision or in the judicial process.

Allowing a judge's name to be listed as a host on a mass invitation to a political fundraiser for a judicial candidate is an example of the latter. As stated above, the danger that the prestige of the judge's judicial office would be used for political fund solicitation could be easily avoided by removing all references to the hosting judge's title or position from the invitation. As for the danger of coercion if the judge is in a position of power or influence, this danger is significantly less prominent where the judge's name, without reference to his or her judicial title, is included on an invitation that is sent out to a mass group as opposed to a direct, in-person solicitation by the judge. *Compare* Advisory Opinion 00-755 (a probate judge is not prohibited from endorsing a candidate for judicial office in an advertisement to be placed in the local newspaper) *with* Advisory Opinion 09-900 (a judge may not serve as an auctioneer for the fundraiser auction of a local women's club that is affiliated with a political party). This is true even though the identity of campaign contributors is

required to be reported to and made publicly available by the Alabama Secretary of State. The mere fact that this information is reported does not, by itself, suggest that political considerations, entanglements, or influences are involved in or appear to be involved in a judicial decision or in the judicial process. Accordingly, Part I.A. of Advisory Opinion 12-914 is overruled.

Nevertheless, a judge's participation in political fund solicitation for candidates other than himself or herself is still discouraged under Canon 7A(1) regardless of the office the candidate may be seeking—*i.e.*, judicial and non-judicial. In offering this advice, the Commission emphasizes the third sentence of Canon 7A(1):

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.*

(Emphasis added.) Accordingly, the Commission advises that judges should refrain from participating on host committees for *another judicial candidate's campaign*, even though they are not prohibited from doing so

by the Canons. Moreover, the Commission's advice should not be understood as concluding that a judge's service on a judicial candidate's campaign host committee can never be prohibited under Canon 7A(1). The paramount consideration is always that a judge "uphold the independence and integrity of the judiciary" by not allowing "political considerations, entanglements, and influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process." Canons 1 and 7A(1). This determination ultimately depends on the particular facts surrounding the judge's service on the judicial candidate's campaign host committee, including the size and identity of the other members on the host committee and the number and identity of recipients who are sent invitations. Judges are encouraged to contact the Commission for specific advice on whether their decision to join a host committee for a judicial candidate might be prohibited under the Canons. Furthermore, judges should ensure that, while engaging in political activities in connection with candidates for judicial office, they remain in compliance with all applicable statutes and rules.

REFERENCES

Alabama Canons of Judicial Ethics 1, 7, 7A(1), and 7B(4).

Ala. Code § 17-5-8 (Westlaw, current through the end of the 2023 First

Special, Regular, and Second Special Sessions).

Alabama JIC Advisory Opinions 78-39, 00-755, 06-869, 09-900, 12-914, and 22-951.

Salvagio v. State, 274 So. 3d 310 (Ala. Crim. App. 2018)

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 Alabama 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; email: jic@jic.alabama.gov.