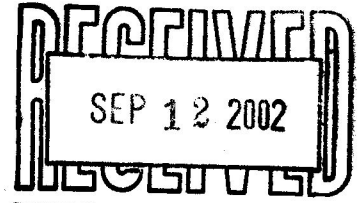


JUDICIAL ETHICS COMMITTEE  
Advisory Opinion 02-5  
Issued: 09/10/2002



**Issue**

Whether a sitting Judge of Probate may seek the office of State Senator without resigning his position.

**Statement of Facts**

Counsel for a sitting Judge of Probate wrote the Committee as follows: "I write to seek an Advisory Committee Opinion from the Committee on Judicial Ethics on the Judge's right to be a candidate for the State Senate." A further request was made by Counsel that if the Committee were to address the issue, whether he could have permission to brief the issue in more detail. Additionally, Counsel cited 4 M.R.S.A. § 312, as well as Article IX § 2 of the Constitution of Maine and suggested that Canon 5(A)(3) of the Maine Code of Judicial Conduct appeared to be in conflict with the Maine statute and the Constitutional provision.

**Discussion**

In view of the time elements involved, the Committee has determined that it will address the issue without the benefit of briefs.

As cited by Counsel, the applicable section of Canon 5 is 5(A)(3), which provides: "A judge shall resign from judicial office upon becoming a candidate for any elective office except that a judge of probate may be a candidate for re-election while holding that office, provided the judge complies with the provisions of Section C of this Canon." Section C of Canon 5 is entitled "Political Conduct of Candidates for Election as Judge of Probate."

In Mitchell v. Judicial Ethics Committee, 2000 Me. 83; 749 A.2d 1282 (May 12, 2000), the Law Court set forth the area in which the Judicial Ethics Committee shall operate. The Court

went on to hold that the Superior Court in Mr. Mitchell's appeal did not have jurisdiction because the Supreme Judicial Court has exclusive original jurisdiction over all judicial disciplinary matters.

In Judicial Ethics Committee Advisory Opinion No. 98-2, issued May 1998, a question somewhat similar to that asked by Counsel is addressed; namely, "Since the passage of 4 M.R.S.A. § 312, do Canons 5(A)(1)(f) or 5(C)(3) have any further validity?" After discussing the issue, the Committee stated, "It is not the role of this Committee to give an Advisory Opinion on the constitutionality of a statutory enactment. Instead, the Committee will only caution Probate Judges that the constitutional issues exist. The prudent judge will have to seriously consider this issue before taking actions that will violate the Canons."

In Judicial Ethics Committee Advisory Opinion No. 97-1, issued June 26, 1997, the Committee addressed a potential conflict between the Canons and an existing statute. We quote: "The charge of this Committee does not include interpretation of criminal laws. The Committee cautioned, however, judges need to consider the administrative and statutory criteria affecting receipt of gifts before engaging in relevant forms of conduct."

This Committee's charge when it was established by an Order of the Supreme Judicial Court, effective November 15, 1993, is to interpret the Canons as they are written and are in full force and effect.

### **Conclusion**

Accordingly, it is the position of the Committee that from the facts presented, applying the existing Canons of Ethics, namely 5(A)(3), the Probate Judge should resign his judicial office upon becoming a candidate for election to the State Senate. He does not fall within the exception; i.e., he is not a candidate for re-election as Judge of Probate.

In keeping with the foregoing precedent, we are not considering any contention that Canon 5(A)(3) conflicts with the statute or with the Constitution.