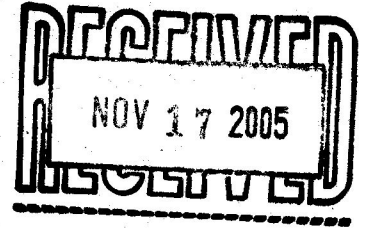


JUDICIAL ETHICS COMMITTEE
Advisory Opinion 05-5
Issued: November 14, 2005



Issue

May a Maine Probate Judge act as State Chairman of a political committee formed by and in support of a candidate for Governor in the upcoming primaries.

A related question posed by another Maine Probate Judge inquires as to what restrictions there may be, if any, on the Judge's right to participate in a primary election where the Judge proposes to be a candidate for re-election as a Probate Judge.

Statement of Facts

The first inquiring Judge has been asked to serve as State Chairman of a political organization that will be active in support of a candidate seeking the nomination for Governor in the upcoming primary election. The Judge will not be up for re-election during this campaign cycle, as the Judge's present term will terminate on December 31, 2008.

The second inquiring Judge desires to be active in the same campaign, but proposes to announce for re-election as Probate Judge.

The Code

Canon 5 of the Maine Code of Judicial Conduct is set forth in full as Exhibit A.

II. General Provisions of the Code of Judicial Conduct is set forth in full as Exhibit B.

Discussion

First, addressing Canon 5(A) Political Conduct of Incumbent Judges, which includes judges of probate, and reviewing the applicability provision; namely, Part II Section 1B(1)(b), we find that a probate judge is not required to comply with Canon 5(A)(1)(a)-(d) at any time; however, a probate judge shall not solicit funds for, pay an assessment to or make a contribution to a political

organization or candidate, or purchase tickets for political party dinners or other functions, or engage in any other political activity except as authorized under any other section of the code

In short, one is to read Canon 5(A)(1)(a)-(d) as if it does not exist, at any time with regard to a probate judge.

Thus, in answer to the inquiry as to whether a non-candidate Probate Judge may act as State Chairman of a political committee of a candidate for Governor, the answer is it is not prohibited by the Canons. Whether the Judge should or should not accept the position is left to the Judge's sound discretion.

Addressing the questions propounded by the second Probate Judge as to what restrictions there may be, if any, in that Judge's right to participate in a primary where the Judge proposes to be a candidate for re-election as a Probate Judge, we have to address Canon 5(C) Political Conduct of Candidates for Election as Judge of Probate. As we can see, Canon 5(C)(1) provides that a candidate for election or re-election as judge of probate shall comply with the applicable provisions of subsection A(1), and at this point we find that the only applicable prohibitions are found in Canon 5(A)(1)(e)-(f).

In addition, a candidate for election or re-election as a judge of probate must also conform to the provisions of Canon 5(B), except as provided in Canon 5(C)(2)-(4).

Conclusion

The non-candidate Judge of Probate is only restricted to the prohibition that the Judge will not solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political dinners or other functions, but may, as suggested by the inquiry, serve as State Chairman of a political committee formed by and in support of a candidate for Governor in the upcoming primary, as it is not prohibited.

A Probate Judge who has here indicated that the Judge intends to be a candidate for re-election as Judge of Probate must follow the provisions of Canon 5(C) Political Conduct of Candidate for Election as Judge of Probate. In addition to the other restrictions in Canon 5(C), the Judge may not solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions, but may do the specific authorized activity set forth in detail under Canon 5(C).

The Committee believes that its proper function is to respond to general inquiries as to the applicability of the Judicial Canons, and cannot anticipate or respond to various issues that may arise. Candidates should consult their respective Counsel, and we call your attention to the last sentence of Canon 5(D).

CANON 5

A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity**A. Political Conduct of Incumbent Judges.**

(1) A judge shall not:

(a) act as a leader or hold an office in a political organization;

(b) publicly endorse or publicly oppose a candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings;

(e) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or

(f) engage in any other political activity except as authorized under any other section of this Code or on behalf of measures to improve the law, the legal system, or the administration of justice.

(2) A judge who is a candidate for reappointment, or for appointment to another judicial or non-judicial office, shall also comply with the provisions of section B of this Canon.

(3) 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 reelection while holding that office, provided that the judge complies with the provisions of section C of this Canon.

B. Political Conduct of Candidates Seeking Appointment to Judicial Office.

A candidate for appointment to judicial office:

(1) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary.

(2) shall not:

(a) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(b) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(c) knowingly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent.

C. Political Conduct of Candidates for Election as Judge of Probate.

(1) A candidate for election or reelection as judge of probate shall comply with the applicable provisions of subsection A(1) and the provisions of section B of this Canon, except as provided in subsections C(2)-(4) of this Canon.

(2) A candidate for election or reelection as judge of probate may, while a candidate,

(a) speak to gatherings on his or her own behalf;

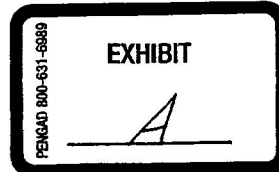
(b) appear in newspaper, television and other media advertisements supporting his or her candidacy;

(c) distribute pamphlets and other promotional campaign literature supporting his or her candidacy; and

(d) publicly endorse or publicly oppose any candidate for public office.

(3) A candidate for election or reelection as judge of probate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(4) Except as prohibited by law, a candidate for election or reelection as judge of probate may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

D. Applicability. A successful candidate, whether or not an incumbent, or an unsuccessful candidate who is an incumbent, is subject to judicial discipline for conduct in the course of seeking appointment or election that violates the provisions of this Canon 5; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for conduct in the course of seeking appointment or election that violates the provisions of this Canon 5. A lawyer who is a candidate for judicial office is subject to Maine Bar Rule 3.2(c).

PART II. GENERAL PROVISIONS

SECTION 1. APPLICABILITY

A. In General. Every justice, judge, active retired justice, and active retired judge of the Supreme Judicial, Superior, District, and Administrative courts shall comply with all provisions of this Code. Every judge of probate shall comply with this Code except as provided in subsection B(1) below.

B. Judges of Probate. A judge of probate

(1) is not required to comply

(a) except while serving as a judge, or as to matters pending in the judge's court, with Canons 3B(9) and 4C(1); and

(b) at any time with Canons 4D(3), 4E(1), 4F, 4G, 4H, and 5A(1)(a)-(d).

(2) shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

C. Candidates for Judicial Office. This Code is applicable to candidates for judicial office in accordance with Canon 5D, provided that a successful candidate for judicial office shall comply with all provisions of this Code between the time of confirmation of appointment or certification of election and swearing in.

SECTION 2. EFFECTIVE DATE;
TIME FOR COMPLIANCE

This Code takes effect on September 1, 1993. All persons to whom this Code is applicable on that date, and all persons to whom this Code thereafter becomes applicable, shall comply immediately with all provisions of this Code except Canons 2C, 4D(1), 4D(3), and 4E and should comply with those provisions as soon as reasonably possible and shall do so in any event within the period of one year.

SECTION 3. DEFINITIONS

A. Appropriate Authority. "Appropriate authority" denotes an authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

B. Candidate. A candidate is a person seeking appointment, reappointment, election, or reelection to public office. A person becomes a candidate for appointment or reappointment to office when the nominating or appointing authority either requests a formal submission of credentials by the person or announces that the person is under consideration or has been nominated for office. A person becomes a candidate for election or reelection to public office as soon as he or she makes a public announcement of candidacy, files nomination papers, or authorizes solicitation or acceptance of contributions or support.

C. Court Personnel. "Court personnel" denotes employees of the Judicial Department or the several counties while engaged in support of a judge in the performance of judicial duties, but does not include the lawyers in a proceeding before a judge.

D. De Minimis. "De minimis" denotes an interest too trivial to raise reasonable question as to a judge's impartiality.

E. Economic Interest. "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in any organization as permitted by Canon 4C(3), or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

F. Election. This term includes primary, general, and special elections.

G. Fiduciary. "Fiduciary" includes such relationships as personal representative, executor, administrator, trustee, and guardian.

H. Honorarium. "Honorarium" denotes a payment of money or any thing of value for an appearance, speech, or article, not including reimbursement or payment for actual and necessary expenses for travel, food, and lodging incident upon an appearance or speech.

I. Income. "Income" includes but is not limited to compensation for services rendered (other than

amounts paid by the state of Maine for performance of judicial duties), dividends, interest, rent, royalties, capital gains, and amounts received from a trade or business, trust, estate, pension (other than amounts paid under a plan administered by a state or by the federal government), or other financial arrangement. "Income" does not include honoraria, gifts, bequests, favors, reimbursement or payment of expenses, or payments of alimony, child support, or separate maintenance.

J. Knowingly, Knowledge, Known, or Knows. "Knowingly," "knowledge," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

K. Law. "Law" denotes court rules as well as statutes, administrative rules and regulations, constitutional provisions, and decisional law.

L. Member of the Judge's Family. "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative by blood or marriage or a person with whom the judge maintains a close personal relationship.

M. Nonpublic Information. "Nonpublic information" denotes information that is made confidential or is impounded by law or court order.

N. Political Organization. "Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.

O. Require. The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons while they are subject to the judge's direction and control.

P. Third Degree of Relationship. The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

SECTION 4. TITLE

This Code may be known and cited as the Maine Code of Judicial Conduct.

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