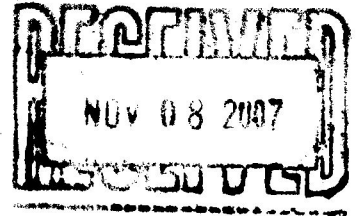


JUDICIAL ETHICS COMMITTEE  
Advisory Opinion 07-4  
Issued: November 5, 2007



**Issue**

May a Judge of the Superior Court violate any of the Canons of Judicial Conduct in view of the following facts.

**Statement of Facts**

The Judge, prior to his appointment to the Superior Court, was active in a variety of town activities and various committees. The Judge has withdrawn from all town activities. The Judge and his wife, prior to his appointment, have regularly counted ballots in the town of his residence.

The position of ballot counter is a volunteer position without pay. The nominee, however, takes an oath to count and report the count honestly. The counting occurs in the open in a large room, with 10 to 30 counters, depending on the size of the election.

The Judge has been asked several times to count ballots following his appointment and qualification, and has declined. The Judge has inquired whether or not he should continue to decline.

**Discussion**

The inquiry leads the Committee to review Canon 4(C) Governmental Civil or Charitable Activities. The pertinent portion of Canon 4, namely Canon 4(C)(2), provides as follows:

A judge shall not accept appointment to any office that judges are prohibited to hold by Article VI, Section 5, of the Maine Constitution - -

Article VI, Section 5 of the Constitution of Maine provides as follows:

No justice of the Supreme Judicial Court or any other court shall hold office under the United States or any other state nor under this state, except as justice of the peace or as a member of the Judicial Council.

### **Conclusion**

In the view of the Committee, the proposed nomination is not to the office of Justice of the Peace or as a member of a Judicial Council. It appears to the Committee that the position of ballot counter, requiring an oath, is an office under this State and the Canon cited above prohibits the Judge from accepting the proposed appointment.

In conclusion, the Committee is of the opinion that the Superior Court Judge is prohibited from accepting the proposed office of ballot counter, and should decline.