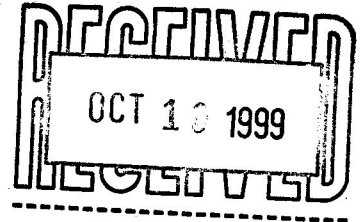


JUDICIAL ETHICS COMMITTEE
Advisory Opinion No. 99-2
Issued: October 18, 1999



Issue: A judge of probate has been invited to serve as a moderator or "facilitator" of a periodic cable television program. The program would be sponsored by a public, non-partisan organization. Members of the state legislature would appear as panelists on the program. Under the program's format, those panelists would discuss matters of public interest and entertain questions from viewers who could call in and participate. In this way, constituents and other viewers would have the opportunity to communicate with the legislators. As the moderator, the judge would not endorse a legislator or candidate for legislative office. Does the Maine Code of Judicial Conduct permit the judge of probate to participate in this program as the moderator?

Discussion: Canon 5A(1) provides:

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 to 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.

Of these provisions, judges of probate are exempted from Canons 5A(1) (a) - (d). Maine Code of Judicial Conduct Part II,

Section I(B) (1) (b).¹ See generally Maine Judicial Ethics Committee Opinion No. 98-5 (1998).

The Committee regards the television program as a form of "political activity." The program is designed to provide a forum for discussion of legislative, policy and political matters among legislators and citizens. Further, even if the moderator refrains from endorsing an individual legislative candidate, and even if the moderator takes no position on the issues at hand, the moderator nevertheless is "engage[d]" in that process. Typically, the role of the moderator is to introduce the participants, identify topics for examination, ask questions and, more generally, preside over the discussion and debate. This clearly is a participatory role in a political activity.

Such activity is proscribed by Canon 5A(1) (f) unless it is authorized elsewhere in the Code. The only provision that arguably permits probate judges to engage in such activity is Canon 5A(1) (d). See generally Maine Judicial Ethics Committee Opinion No. 98-5 (1998). That rule prohibits judges from attending "political gatherings." Its proscription, however, is inapplicable to judges of probate. Thus, probate judges may attend such gatherings. *Id.* Although the term "gathering" is not defined in the Code, the Committee construes it to be an occasion such as a political convention, a political rally, a political fundraising event (subject to the limitations found in Canon 5C(3)), or another similar function. The television program as described is qualitatively different from those events, which have the common element of partisan activity. Further, the Advisory Committee's Note to Part II, Section 1 explains that Canons 5A(1) (a) - (d) are inapplicable to probate judges because of "their part-time status and their need to engage in certain political activities

¹Canon 5C identifies several forms of political activity in which candidates for election or reelection as judge of probate may engage. The provisions of Canon 5C are not raised here because there is no suggestion that the inquiring judge is such a candidate.

consistent with the political nature of the office." The activity proposed here does not flow from the elective nature of the judge's office. Rather, it represents an avocational activity unrelated to the political process in which the judge must engage to maintain that office.

For these reasons, we conclude that the Canons do not permit the judge of probate to serve as the moderator of the televised program.