



Opinion No. 98-2
Issued: May, 1998

JUDICIAL ETHICS COMMITTEE

Question: Since the passage of 4 M.R.S.A. § 312, do Canons 5(A)(1)(e) or (f); or 5(C)(3) have any further validity?

Answer: Section 312 of Title 4 of the Maine Revised Statutes, as enacted in 1994 by P.L. 1993, ch. 695, §1, reads:

§ 312. Political activities of judges of probate

As a candidate for the elective office of judge of probate or as an elected judge, a person seeking or holding the office of judge of probate may engage in any political activity that would be lawful for a candidate for any other elected county office or for an incumbent elected county official. Any such judge may hold any other elected office or offices not made incompatible by the Constitution of Maine.

Canon 5(A)(1)(e) prohibits incumbent judges from soliciting funds for a political organization or candidate, paying an assessment or contributing to a political organization or candidate or purchasing tickets for political party functions. Canon 5(A)(1)(f) prohibits incumbent judges from engaging in any other political activity except as otherwise authorized by the Code or on behalf of the improvement of the law, the legal system or the administration of justice. Both of these provisions are applicable to candidates for election or reelection as judges of probate. Canon 5(C)(1). Canon 5(C)(3) prohibits candidates for election or reelection from personally soliciting campaign contributions or publicly stated support, but it allows the candidates to establish committees for such purposes.

Section 312 of Title 4 appears to eliminate the applicability of Canon 5(A)(1)(e) and (f) to candidates for election or reelection to the office of probate judge, and it makes Canon 5(C)(3) ineffective. However, there is an issue as to whether the Legislative Branch could constitutionally regulate the conduct of judges. The regulation of the conduct of judges has been, traditionally, the role of the Judicial Branch. Section 312 may violate the separation of powers provisions of the Maine Constitution. Art. III, §§ 1 and 2.

It is not the role of this committee to give an advisory opinion on the constitutionality of a statutory enactment. Instead, this committee will only caution probate judges that the constitutional issue exists. The prudent judge will have to seriously consider this issue before taking actions that will violate the Canons.