

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-006

[Withdrawn- by Opinion 2002-8 on August 9, 2002]

SYLLABUS: Candidates for judicial office are not specifically prohibited from engaging in a public debate under the Code of Judicial Conduct. However, Canon 7B(1)(c) of the Code of Judicial Conduct only allows candidates to promise faithful and impartial performance of the duties of office. Moreover, a judicial candidate may not make pledges or promises of conduct in office, announce his views on disputed legal or political issues or misrepresent his identity, qualifications, present position, or other fact.

TO: Charles D. Lynch, Esq.

FROM: The Board of Commissioners on Grievances and Discipline of the Judiciary

DATE: May 27, 1987

We have before us your request for our opinion on whether opposing candidates for a judicial office may engage in a public debate. In your request letter you state in part:

1. Is it ever appropriate for a candidate for a judicial office to engage in a public debate with another candidate for that same office, immediately prior to a partisan primary election?
2. If it is proper for a candidate for a judicial office to engage in a public debate as indicated above what, if any, guidelines or restrictions are imposed upon the candidates or the format of the debate pursuant to the Code of Judicial Conduct or other laws of the State of Ohio?

3. Is it appropriate for a court referee who is a candidate in a partisan primary election for the position of judge in the court which he presently referees to call for a public debate or to sponsor, organize, or orchestrate such a public debate?

Your first question, regarding the propriety of a judicial candidate's public debate, is not specifically addressed in the Code of Judicial Conduct (the Code). The Code is void of any language either prohibiting or allowing candidates for judicial office to engage in a public debate. However, the Code does proscribe what information a judicial candidate may and may not disseminate during his or her campaign. Canon 7B(1)(c) of the Code of Judicial Conduct provides:

- (1) A candidate, including an incumbent judge for a judicial office: . . . (c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact.

Given these three prohibitions, it seems unlikely a judicial candidate's debate would amount to anything more than each candidate announcing his own qualifications and that he will faithfully and impartially perform the duties of the office. Furthermore, it is our understanding that in a debate each participant argues opposing points. Clearly, a debate, wherein the judicial candidates address specific legal or political issues, would violate the Code.

The premise of Canon 7B(1)(c), it has been held, is to prohibit candidates for judicial office from making pledges or promises which appeal to prejudices or special interests. Berger v. Supreme Court of Ohio, 598 F. Supp. 69, 75 (S.D. Ohio 1984). On the other hand, informed voting by the electorate, based upon the candidate's credentials is vital in a democratic society. In this regard, the ABA Committee on Ethics and Professional Responsibility has stated, "the framers of the Canons of Judicial Conduct have resolved the tensions between the political elective process and the desire to have dignified, ethical standards for the judiciary by strictly limiting the extent to which candidates for judicial office may campaign." ABA Committee of Ethics and Professional Responsibility, Informal Op. 1444 (1980).

Judges and candidates for judicial office are held to a higher standard in their campaign practices than are other candidates for political office. For, "[t]he very purpose of the judicial foundation makes inappropriate the same kind of particularized pledges and predetermined comments that mark campaigns for legislative and executive office. A judge acts on individual cases, not broad programs." Berger v. Supreme Court of Ohio, 598 F. Supp. 69, 76 (S.D. Ohio 1984).

Your second question asks what format a judicial debate should take. Again, there are no guidelines other than Canon 7B(1)(c) as discussed supra. The essence of Canon 7 is that judges should maintain the dignity appropriate to judicial office. Therefore, all aspects of a public debate by judicial candidates must maintain the dignity appropriate to judicial office. This includes the advertising for the debate; the televising and broadcasting of the debate; the time and location of the debate; the types of questions addressed in the debate and their answers; and finally, the amount of adversity reflected in the debate.

Your third question requests our opinion on whether a referee in municipal court, who is running for judge in that same court, may call for a public debate between himself and his opponent in an upcoming partisan primary election. Again, there is nothing in the Code which either permits or prohibits a debate by candidates for judicial office. The Code does, however, hold referees to the same standards as judges in upholding the integrity of the judiciary. Under the Compliance Section of the Code, anyone who is an officer of a judicial system performing judicial functions is a judge for the purposes of the Code. Code of Judicial Conduct, Compliance Section (1982). Therefore, if sponsoring, organizing or orchestrating a public debate can be accomplished in such a way as to comply with the mandatory standards set forth in the Code of Judicial Conduct as discussed herein, a judge/referee might legitimately conduct and participate in such a judicial debate.

In conclusion, it is our opinion, and you are so advised, that although public debates are not prohibited in the Code, there are several provisions in the Code, as discussed herein, which would apply to a debate and govern its participants.

This opinion is advisory in nature, is based upon the facts as presented and limited to questions arising under the Code of Judicial Conduct.

James W. Mason, Esq.
Secretary
Board of Commissioners