

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 87-030

[Withdrawn- by Opinion 2002-8 on August 9, 2002]

SYLLABUS: A candidate for judicial office may not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issues; or misrepresent his or her identity, qualifications, present position or other fact. In this regard, a judicial candidate may not promise to treat a certain classification of criminal offenses in a certain way if elected, nor announce a specific sentencing policy for criminal cases.

TO: Philip J. Croyle, Esq.

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

DATE: June 22, 1987

We have before us your request for our informal advisory opinion on whether candidates campaigning for judicial office may, under the Code of Judicial Conduct (the Code), announce their specific policies on the handling of certain types of cases if elected or re-elected. In your request letter you ask the following:

Under the Code of Judicial Conduct, Canon 7B, may a judicial candidate promise to treat a certain classification of criminal offense in a certain way if elected, such as promising no plea bargaining in D.W.I. cases or announce a specific sentencing policy in D.W.I. cases?

May a sitting judge running for election promise to continue to treat certain classifications of offense in a certain way if elected or re-elected, such as continuing to not accept plea bargaining in D.W.I. cases or continue to sentence in a particular manner in D.W.I. cases or any other certain classification of offenses?

May statements to this effect as indicated above and in the accompanying articles be reasonably construed as stating an opinion or view of "Court Administration" or be appropriate statements on issues under the strictures of Canon 7B?

Regarding your first question, we believe that a candidate for judicial office may not promise to handle certain crimes in a specific way if elected, including promising not to plea bargain in D.W.I. cases. Under Canon 7B(1)(c) of the Code, candidates for judicial office may only pledge or promise the faithful and impartial performance of the duties of office. Code of Judicial Conduct Canon 7B(1)(c) (1982). Additionally, judicial candidates may not announce their views on disputed legal or political issues. Id.

The Reporter's Notes to the Code of Judicial Conduct also states:

[a candidate] cannot campaign on a platform of partiality for specific persons or groups, nor can he commit himself in advance on disputed legal issues He can campaign on the basis of his ability, experience, and record.

E. W. Thode , Reporter's Notes to Code of Judicial Conduct 98 (1973). Furthermore, all candidates for judicial office must comply with the campaign restrictions of the Code which make "inappropriate the same kind of particularized pledges and predetermined commitments that mark campaigns for legislative and executive offices." Berger v. Supreme Court of Ohio, 598 F. Supp. 69, 76 (S.D. Ohio 1984). The court in Berger also held that Ohio's regulation under Canon 7B(1)(c) "is necessary to achieve a compelling state interest . . . in assuring . . . that judicial campaigns are run in a manner so as not to damage the actual and perceived integrity of state judges . . ." Id. at 75.

The ABA Committee on Ethics and Professional Responsibility has held that use of the campaign slogan, "A strict sentencing philosophy . . ." by a candidate for judicial office is barred by Canon 7B(1)(c) of the Code. ABA Comm. on Ethics and Professional Responsibility, Informal Op. 1444 (1980). The Committee's opinion states that such a slogan "can be viewed by the voters as both a campaign pledge of judicial conduct and also an announcement of [the candidate's] position on sentencing which is a disputed legal and political issue." *Id.* at 1445.

In this regard, we believe that promising not to plea bargain in D.W.I. cases, as well as announcing a specific sentencing policy in D.W.I. cases, falls within the proscription of announcing views on disputed legal or political issues. Clearly, judicial candidates taking a stance on specific types of cases is prohibited under Canon 7B(1)(c) of the Code. Code of Judicial Conduct Canon 7B(1)(c) (1982).

Addressing your second question, all judicial candidates, including incumbents, are bound by Canon 7 of the Code. E. W. Thode Reporter's Notes to Code of Judicial Conduct 95 (1973). Therefore, an incumbent candidate running for judicial office may not promise to continue to handle certain classifications of offenses in a particular way if re-elected, such as not accepting plea bargaining in D.W.I. cases or continuing to sentence in a particular manner in D.W.I. cases.

The answer to your third question is simply no; specific statements on the handling of certain types of cases cannot reasonably be construed as stating an opinion or view of court administration. In addition, as stated above, taking a stance on the handling of particular types of cases is not appropriate under the strictures of Canon 7B of the Code of Judicial Conduct.

In conclusion, it is our opinion, and you are so advised, that a candidate for judicial office, including the incumbent, may not promise to treat certain classifications of criminal offenses in a certain way if elected, nor announce a specific sentencing policy for criminal cases.

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

James. W. Mason, Esq.
Secretary
Board of Commissioners
on Grievances & Discipline
of the Judiciary