

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OPINION 90-24

December 14, 1990

Withdrawn by Adv. Op. 2018-04

[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]

[Not Current- subsequent rule amendments to Canon 7, Ohio Code of Judicial Conduct]

SYLLABUS: There is nothing in Ohio's Code of Judicial Conduct which prohibits a judge from making a political donation. Thus, referees, who are considered judges for purposes of compliance with the Code of Judicial Conduct, are permitted to make donations to political parties. Referees may not directly or indirectly donate to any judge of the same court or for whom they serve. There are no distinctions between full-time and part-time referees for the purpose of compliance with Canon 7 (B) (2) of the Code of Judicial Conduct.

OPINION: We have before us your request for an advisory opinion regarding an interpretation of the Code of Judicial Conduct referring to the campaign conduct of referees. You request an advisory opinion on the following questions:

1. Is a referee permitted to make any political donation?
2. Is a referee permitted to make a donation to a political party?
3. Is a referee permitted to make a donation to a candidate for a political office other than that of his/her judge, including a candidate for another judgeship for whom the referee does not work?
4. Is there any differentiation between a part-time referee and a full-time referee as to making political contributions?

In responding to these questions we must examine the Code of Judicial Conduct. Referees are officers of the judicial system performing judicial functions and therefore are considered judges for the purposes of compliance with the Code of Judicial Conduct. Code of Judicial Conduct, Compliance Section (1990).

Canon 7(A) (3) provides that an incumbent judge, or a candidate for judicial office, may identify himself or herself as a member of a political party. He or she may speak to such political gatherings on his or her own behalf when he or she is a candidate for election or reelection.

The June 1990 Ohio amendments to Canon 7 deleted the requirement that a candidate for judicial office may not contribute to his or her political party in the year in which he or she is a candidate for election or re-election. This deletion leaves nothing in Ohio's Code of Judicial Conduct which precludes a judge or his or her campaign committee from making contributions to his or her political party.

In response to the third question, we refer to Op. 88-017 in which this Board found that, unlike the ABA's code, Ohio's Code of Judicial Conduct does not preclude a judge or judicial candidate from making political contributions to other candidates for public office. The ABA version of Canon 7 specifically states that a judge or a candidate for election to judicial office should not make a contribution to a political organization or candidate. ABA Code of Judicial Conduct, Canon 7 (A) (1) (c). Since Ohio modeled its code after the ABA's Code, but did not include the restrictions on judges or judicial candidates making contributions to other candidates, this Board in Op. 88-017 concluded that such contributions are permitted under Ohio's Code of Judicial Conduct. Thus, it is the opinion of the Board in response to the first two questions that since referees are considered judges for the purpose of complying with the Code, referees are permitted to make political donations including a donation to a political party.

In further response to the third question, we need to look at other restrictions. We note that in the absence of more restrictive provisions contained in a state's version of the Code of Judicial Conduct or election law, the general rule is that any person or group may donate a reasonable amount of money, a sum that does not give the appearance of influencing the judge or of impropriety. Ohio follows this general rule to an extent. In Op. 88-017 this Board concluded that judges in Ohio are not precluded from making contributions from their personal account or campaign committees to other candidates. That opinion cautioned judges against publicly endorsing the other candidate and from the lending of the prestige of his or her office to advance the private interest of others.

However, the Ohio Code of Judicial Conduct contains more restrictive provisions than the general rule set forth in the ABA Code of Judicial Conduct. The ABA Code of Judicial Conduct simply states that the committees are not prohibited from soliciting campaign contributions and public support from lawyers. In contrast the Ohio Code of Judicial Conduct limits the persons who are eligible to contribute to a campaign for judicial office. Canon 7 (B) (2) of the Ohio Code of Judicial Conduct provides, that an incumbent judge or a candidate for judicial office should not himself or herself solicit or accept campaign funds, but he or she may establish a committee to obtain support for his or her candidacy. The committee should not, directly or indirectly solicit or receive any assessment, subscription, or contribution for any political or personal purpose whatsoever from any employee, appointee of the court, or anyone who does business with the court, but may solicit campaign contributions from lawyers. Code of Judicial Conduct Canon 7 (B) (2) (1990). Under the commentary to Canon 7 (B) (2), appointees of the court include officials such as referees.

It is clear from the language of Canon 7 (B) (2) in Ohio that a referee may not directly or indirectly contribute to his/her own judge. Also, 7 (B) (1) (b) provides that an incumbent judge, or a candidate for judicial office should discourage public officials, appointees, or employees subject to his or her direction or control from soliciting or accepting campaign fund contributions for him or her. In applying this to the third inquiry about whether the referee can make a contribution for a candidate for another judgeship for whom the referee does not work, we broadly interpret the language to prohibit such a contribution if it is the same or a connected court. The code expressly states, "appointee of the court." if Ohio had intended for Canon 7 (B) (2) of the Judicial Code to restrict referee contributions only to the judges they worked for, it is likely the language would have read, "appointee of the judge." Since the Ohio Judicial Code states "appointees of the court", we interpret the restriction to extend to all other judges of the same court, including those for whom a referee does not directly work. This interpretation serves to strengthen the underlying philosophy that protects court employees from needing to contribute to the judges for whom they work. This provision of the Ohio Code of Judicial Conduct does not restrict the referee from contributing to a judge or candidate of an unconnected court.

The final question refers to part-time referees. A part-time referee is one who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time referee. Code of Judicial Conduct, Compliance Sec. (1990). The Compliance Section makes no distinction between full-time and part-time referees or the issue of political contributions. It is therefore concluded that part-time referees must comply with Canon 7, as if they were full-time referees.

In conclusion, it is our opinion, and you are so advised that:

1. Referees are not precluded under the Code of Judicial Conduct from making any political contribution or donation to a political party.
2. A referee is permitted to make a donation to a candidate for public office with the exception that a referee may not make a donation to his or her appointing judge or any other judge of the same court. This restriction does not extend to judges or candidates of unconnected courts.
3. There is no differentiation between a part-time and a full-time referee when determining the ability to donate.

This is an informal, non-binding advisory opinion, based upon the facts as presented and limited to questions arising under the Code of Judicial Conduct.