

# ***The Supreme Court of Ohio***

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105  
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

## **OPINION 91-29**

Issued December 6, 1991

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*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 Canons 1 through 6, Ohio Code of Judicial Conduct, eff. May 1, 1997]*

**SYLLABUS:** A judge should not endorse a candidate for elective office of a bar association by allowing his or her name, with or without the designation that the individual is a judge, to be included on a list of supporters of the candidate which would be circulated to members of the bar association. Such endorsement lends the prestige of the judge's office to advance the private interests of others and creates an appearance of impropriety in violation of Canon 2 of the Code of Judicial Conduct.

**OPINION:** The question presented is whether a judge may endorse a candidate for elective office of a bar association by allowing his or her name, with or without the designation that the individual is a judge, to be included on a list of supporters of the candidate which would be circulated to members of the bar association.

Judges are permitted to participate in bar association activities. Authority for doing so is found within Canon 4A of the Code of Judicial Conduct and the commentary thereto. Canon 4A permits a judge, subject to the proper performance of his or her judicial duties, to speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice, provided that in doing so the judge does not cast doubt on his or her capacity to decide impartially any issue that may come before him or her. The commentary thereto encourages a judge to participate in these activities (concerning the law, the legal system, and the administration of justice) either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. This Board has previously advised that a judge may suggest to a bar association programs or interests the bar may wish to pursue. Ohio Sup.Ct. Bd. of Comm'rs on Grievances and Discipline, Op. 90-05 (1990).

At issue is whether the Canon 4 permission to participate in bar association activities, includes the activity of endorsing a candidate for elective office. Canon 7 contains rules which govern and for the most part prohibit political activity by judges. Canon 2 provides rules regarding avoiding impropriety and the appearance of impropriety.

"By being a judge or a candidate for judicial office, a person does not surrender his rights as a citizen; nevertheless, the fundamental need for impartiality and the appearance of impartiality of judges dictates that limits be placed on the political conduct of judges and candidates for judicial office." E. Thode, Reporter's Notes to Code of Judicial Conduct 95 (1973). As one commentator has acknowledged, "[a]lthough persons who become judges have often followed an intensely political route to the office, once on the bench, the new judge must eschew most political connections beyond voting. The only exceptions concern the narrow range of political activities allowed to candidates for elective judicial offices and political activity that fits the judicial code description of an attempt to improve the law, the legal system, or the administration of justice." C. Wolfram, Modern Legal Ethics 986 (1986).

Canon 7A contains general prohibitions on most political activity by judges. Canon 7A(1)(b) specifically includes a prohibition that an incumbent judge or a candidate for judicial office should not publicly endorse a candidate for public office. The requester asks whether the term "public office" as used in Canon 7A(1)(b) includes an elective position with a state or local bar association. The term "public office" is not defined within the Code, but the Supreme Court of Ohio has noted that "a public office is a charge or trust conferred by public authority for a public purpose, the duties of which involve in their performance the exercise of some portion of the sovereign power, whether great or small." State ex rel Bricker v. Gessner, 129 Ohio St. 290, 293-94, 195 N.E. 63, 65, (1935) [quoting 23 American and English Encyclopaedia of Law 322 (2d ed. 1903)]. The Board finds no support within the Code or elsewhere for finding an elective office in a bar association to be a "public office" within the meaning of Canon 7A(1)(b), nor for finding a bar association election to be the type of political activity to which Canon 7 is directed. Thus, the Board's analysis turns to whether an appearance of impropriety is created by a judge's endorsement of a candidate for elective office in a bar association.

In participating in bar association activities, as well as any other activity a judge must abide by the Canon 2 mandate to avoid impropriety and the appearance of impropriety in all activities. Canon 2B of the Code of Judicial Conduct specifically states that

[a] judge should not allow his [her] family, social, or other relationships to influence his [her] judicial conduct or judgment. He [she] should not lend the prestige of his [her] office to advance the private interests of others; nor should he [she] convey or permit others to convey the impression that they are in a special position to influence him [her]. He [she] should not testify voluntarily as a character witness. (Emphasis added).

In reviewing the advice of ethics committees in other states, the Board finds few opinions that address the precise issue raised. A Florida committee has advised that communication by a judge with members of the Florida bar on behalf of a candidate for its presidency would violate Canon 2B because such endorsement would lend the prestige of the office to advance the candidate's private interests. Florida Sup.Ct, Comm. on Standards of Judicial Conduct, Op. 88-11 (1988). A Texas committee considered it undesirable for a judge to sign a letter endorsing a candidate for elective office in the state bar since such conduct may be construed as lending the prestige of judicial office to advance the private interests of others. State Bar of Texas, Comm. on Judicial Ethics, Op. 31 (1978).

Serving in an elected position in a bar association primarily advances the interests of fellow members of the bar as a whole, but at the same time, obviously can advance one's private interests. Therefore, this Board's opinion is that although the endorsement of a candidate for elective office in a bar association can be considered an activity concerning the law, the legal system and the administration of justice, such endorsement by a judge lends the prestige of the judge's office to advance the private interests of others and as such creates an appearance of impropriety in violation of Canon 2 of the Code of Judicial Conduct. Whether a judge's name would be listed with or without the designation that the individual is a judge, does not influence this advice, as most members of the bar association would presumably know most judges' names with or without such designation. Nor, does the fact that the list of supporters would be circulated to only members of the bar association require a different result. The prohibition of Canon 2B is not limited to circumstances involving only the general public.

The Board's opinion is supported by the text of Canon 1 which states that "[a]n independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective." This admonition too, is not limited to circumstances involving the general public.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney's Oath of Office.**