

Judicial Ethics Committee Advisory Opinion 22-01

March 29, 2022

QUESTION:

The Judicial Ethics Committee has been asked for an opinion concerning whether a judge or judicial candidate is permitted under the Code of Judicial Conduct (the “Code”) to personally solicit and accept campaign contributions now that the Governor has signed SB 2010 / HB 1708 into law.

ANSWER:

Yes. The judge or judicial candidate may do so. Two things are directly and specifically responsive to the question submitted: (1) SB 2010 / HB 1708 (the “statute”) which amends Title 2, Chapter 10, Part 3 by stating, “Notwithstanding any law to the contrary, a judicial candidate¹ may personally solicit and accept campaign contributions” and (2) Rule 4.1(A)(8) of the Code of Judicial Conduct (the “Code”), which states that “*Except as permitted by law* or by RJC 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not: personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4.” (emphasis added). While the statute and the wording of Rule 4.1(A)(8) now allows a judge or judicial candidate to personally solicit and receive campaign contributions, we note that other sections of the Code may be implicated by the solicitation or receipt of campaign contributions. Consequently, we recommend that judges and judicial candidates be mindful of the Code as a whole when deciding whether or how he or she should personally solicit and accept contributions.

DISCUSSION

As noted above, the legislature passed and the Governor signed into law an amendment to Title 2, Chapter 10, Part 3, which now permits judges and judicial candidates to personally solicit campaign contributions. Prior to the passage of the statute, the Code, specifically RJC 4.1(A)(8), prohibited the personal solicitation and acceptance of campaign funds by a judge or judicial candidate. However, as noted, the Code did so with the caveat of “[e]xcept as permitted by law.” Thus, the passage of the statute removes the specific prohibition against personal solicitation and acceptance of campaign contributions found in RJC 4.1(A)(8).

¹ While the statute only uses the term judicial candidate, based on the definition of candidate in Tenn. Code Ann. § 2-10-102(3), the statute applies to both sitting judges running for re-election, as well as any individual seeking election to a judicial office, as does the Code. See Tenn. Code Ann. § 2-10-102(3) (“Candidate’ means an individual who has made a formal announcement of candidacy or who is qualified under the law of this state to seek nomination for election or elections to public office . . .”) and RJC Terminology (“Judicial candidate’ means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment.”)

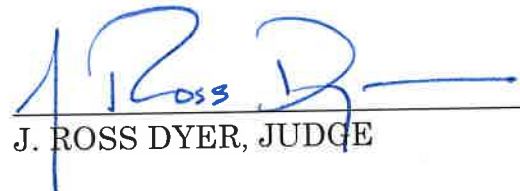
Still, we encourage judges and judicial candidates to be mindful of other sections of the Code that could be indirectly implicated by a judge or judicial candidate personally soliciting or accepting campaign contributions. The Preamble of the Code states:

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

The Code also requires a judge to “act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” RJC 1.2. “A judge shall not be swayed by partisan interests, public clamor or fear of criticism” and “shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.” RJC 2.4. Further, “a judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned. . . .” RJC 2.11.

While not an exhaustive list, the foregoing Code sections may be indirectly implicated by the statute, and they provide a foundation for judges and judicial candidates to consider when determining whether or how to personally solicit or accept campaign contributions.

FOR THE COMMITTEE:


J. ROSS DYER, JUDGE

CONCUR:

Judge Angelita Blackshear Dalton
Judge Tammy Harrington
Judge Deana Hood
Judge Timothy E. Irwin
Judge Betty Thomas Moore
Judge Jerry Stokes (concurring in part)