



## COURT OF CRIMINAL APPEALS

CHAMBERS OF  
ALAN E. GLENN  
JUDGE

STATE OF TENNESSEE

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July 23, 2015

Mr. James M. Hivner  
Appellate Court Clerk  
Supreme Court Building  
401 Seventh Avenue North  
Nashville, TN 37219-1407

ADM2015-01092

Dear Mr. Hivner:

In response to the order soliciting public comments as to proposed changes to Tennessee Supreme Court Rule 10, the Code of Judicial Conduct, I wish to set out my opinions regarding the joint petition of the Tennessee Judicial Conference and the Tennessee Trial Judges Association. Although their petition presents several recommendations, I will discuss only those with which I have had experience as chair of the Tennessee Judicial Ethics Committee.

The joint committee has recommended that, from the applicability section of the CJC, the language "an administrative judge or hearing officer" be deleted from the definition of "judge." On several occasions, I have dealt with situations in which administrative hearing officers, based upon their interpretation of the CJC, contended that certain procedures of their departments regarding appeals be changed, so as to be in compliance with the CJC. Although I disagreed with the positions they were taking, the matters still had to be reviewed within the CJC because the hearing officers were made subject to its provisions. Based upon my experiences in this regard, I see that practical problems are created when rules intended for judges presiding in courtrooms are extended to hearings within the administrative branch of state government.

Additionally, the joint committee has recommended that Rule 3.7(A)(4) be amended to include in the comments a reference to an article in the Judicial Conduct Reporter, for guidance in determining which charitable "fund-raising events" are permitted for a judge's participation. For reasons which I will set out, I recommend against this addition to the comments.

The ethics rule regarding judges' attendance at fund-raising events was substantially changed in the 2012 revisions of the Tennessee Code of Judicial Conduct. Prior to 2012, the rule, then denominated as Rule 4(C), provided in the comments that "[a] judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code." However, in 2012, Rule 3.7, which replaced Rule 4(C), allows a judge to appear, speak, be recognized, be featured on the program, or permits a judicial title to be used at a fund-raising event of certain described entities or organizations which "serves a fund-raising purpose . . . if the event concerns the law, the legal system or the administration of justice."

The problem with including the article recommended by the joint committee is that many, if not the majority, of the ethics opinions cited in the article predate the extensive 2012 revisions to the CJC. Pre-2012 opinions of the Tennessee Judicial Ethics Committee can no longer be relied upon, and the same is true of those from other states, which further have differing judicial ethics codes. Judges who seek guidance as to whether their participation in a particular event is allowed are able to obtain a prompt response to the matter. Thus, I see no utility in referring to outdated ethics opinions, even from Tennessee, and oppose this addition to the CJC.

As to the proposed changes to Rule 4.1(A)(3) regarding judges endorsing or opposing other judges, I wish to provide some background. From, I believe, 1997 until the 2012 changes to the CJC, now deleted Rule 5(D) permitted judges subject to retention elections to publicly endorse or oppose judges for retention or appointment to the court of which the endorsing judge was a member. This provision was deleted in the 2012 version, but I recommend, for reasons which I will explain, that judges again be allowed to endorse or oppose other judicial candidates.

Prior to the 2014 elections, I received several telephone inquiries from incumbent judges, seeking reelection, as to whether they could appear with other judges in joint newspaper and television advertisements, saying, "Vote for the Incumbent \_\_\_\_\_ County Judges." My opinion was that such an advertisement was permitted, for it did not amount to an endorsement. Likewise, my response to similar questions was that, although traveling together and jointly appearing at campaign functions, judicial candidates were not endorsing each other, which was prohibited by Rule 4.1(A)(3). I recommend that judicial candidates again be allowed to endorse or oppose other judicial candidates. An open question is whether judges could do so only for their own courts or for those seeking election to courts at other levels.

I also support a change to Rule 4.5, to make explicit that a person may not simultaneously be a candidate for an elected judicial and a non-judicial position. During the 2014 election season, I received two calls from county officials telling me that two

different lawyers were doing exactly this. I believe that the CJC should be amended to prohibit this practice.

I appreciate having the opportunity to respond to the recommendations of the joint committee.

Yours truly,

A handwritten signature in cursive script, appearing to read "Alan E. Glenn".

Alan E. Glenn

AEG/jcr