

## JUDICIAL ETHICS COMMITTEE

### ADVISORY OPINION NO. 00-01

The following formal request for an ethics opinion has been made:

**Question:** May a candidate who seeks **appointment** to a judicial office, following a vacancy of that office, form a committee to solicit or accept funds for his or her candidacy for election to that same office?

The question has been raised based upon the Commentary to Canon 5(C)(2) which notes that Canon 5(C)(2)(a) “permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept financial contribution.” (emphasis added). The obvious concern being that a person seeking judicial appointment would be at a disadvantage over the person who foregoes pursuit of the appointment, choosing rather to become a candidate in an election.

This question is controlled by the provisions of Canon 5(B), “Candidates Seeking Appointment to Judicial Office,” and Canon 5(C), “Candidates Subject to Election.” Moreover, we note that this question falls within the purview of this Committee because Canon 5 applies equally to incumbent judges and judicial candidates. See Canon 5(E) (successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct).

Canon 5(B), governing candidates seeking **appointment** to judicial office, provides, in pertinent part:

A candidate for appointment to judicial office or a judge seeking appointment to governmental office **shall not** solicit or accept funds, **personally** or **through a committee** or otherwise, to support his or her candidacy [for appointment].

See Canon 5(B)(1) (emphasis added). Canon 5(C) governs candidates seeking **election** to judicial office. Unlike a candidate for appointment, a candidate for election **may**

establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums,

and other means . . . . Such **committees may solicit and accept campaign contributions**, manage the expenditure of funds for the candidate's campaign, and may also obtain public statements of support for his or her candidacy. . . .A candidate's committees may solicit contributions for the candidate's campaign no earlier than 180 days before an election . . . and no later than 90 days after the last election in which the candidate participates during the election year.

See Canon 5(C)(2)(a) (emphasis added).

Notwithstanding the prohibition of candidates obtaining contributions in furtherance of judicial appointment, we acknowledge that a candidate for judicial appointment typically will become a candidate for judicial election.<sup>1</sup> To interpret the applicable judicial canons to prohibit a candidate for appointment from forming committees to solicit contributions for the foreseeable election campaign would place the judicial appointee at an unfair disadvantage and on unequal footings with those candidates not seeking appointment. Accordingly, a person seeking a judicial office may be both a candidate for appointment and a candidate for election.<sup>2</sup> If a candidate for judicial appointment is also, by definition, a candidate for judicial election, he or she may, under Canon 5(C)(2)(a), form a committee to solicit and accept contributions limited to use in the candidate's election campaign. Any contributions accepted **may not** be used in furtherance of the person's candidacy for judicial appointment. See

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<sup>1</sup>The Tennessee Code dictates this result:

(a) . . .[W]hen a vacancy occurs in the office of a state trial court judge . . . , the Governor shall fill the vacancy by appointment . . . .

(b) The term of a judge appointed under this section shall expire on August 31 after the next regular August election recurring more than thirty . . . days after the vacancy occurs.

. . .

(e) At the next regular August election . . . , the electorate shall elect a candidate to fill the remainder of the unexpired term or a complete term . . . .

Tenn. Code Ann. § 17-4-118 (1994).

<sup>2</sup>In this regard, a candidate for judicial appointment may not be considered a candidate for judicial election until he or she :

has made a formal announcement of candidacy [for election] or who is qualified under the law of this state to seek nomination for election or elections to public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate [for election], or has given consent for a campaign committee to receive contributions or make expenditures with a view to bringing about the individual's nomination for election or election to state public office.

See Tenn. Code Ann. § 2-10-102(2) (Supp. 1999).

Canon 5(B)(1).

FOR THE COMMITTEE:

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DAVID G. HAYES, Judge

Date: 03/13/00\_\_\_\_\_

CONCUR:  
FRIERSON  
PEETE  
WAGGONER  
BLACKBURN