

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

FILED

MAY 17 2012

Clerk of the Courts

IN RE: PETITION TO AMEND NEW RULE 10, RJC 4.1,  
RULES OF THE TENNESSEE SUPREME COURT

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No. M2012-01031-SC-RL2-RL - Filed: May 17, 2012

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**ORDER**

On January 4, 2012, the Court filed an order amending Rule 10, Rules of the Tennessee Supreme Court, thereby adopting a comprehensive revision of the Tennessee Code of Judicial Conduct (the ethics rules applicable to Tennessee judges). The order provided that the provisions of the revised Rule 10 would take effect on July 1, 2012.

The revision of the Code of Judicial Conduct included changes in the provisions governing political activity by Tennessee judges. In pertinent part, new Tenn. Sup. Ct. R. 10, RJC 4.1(A)(4) would generally preclude a judge from “solicit[ing] funds for, pay[ing] an assessment to, or mak[ing] a contribution to a political organization or candidate for public office, except that a judge or a judicial candidate may purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office[.]” By contrast, the current Code of Judicial Conduct permits judges who are subject to election to make campaign contributions to other candidates for public office, “in an amount up to the limitations provided in Tenn. Code Ann. § 2-10-301, et seq.” Tenn. Sup. Ct. R. 10, Canon 5C(1)(a)(iii).

Following the filing of the order on January 4, 2012, the Chief Justice received three letters asking the Court to reconsider the new proscription against judges making campaign contributions to other candidates for public office. *See* Appendix A. After considering the matters set out in the three letters, the Court has determined that it will treat the letters collectively as a petition to amend revised Tenn. Sup. Ct. R. 10, RJC 4.1. Accordingly, the Clerk is hereby directed to file the three letters collectively as a petition.

With the filing of the petition, the Court hereby solicits written comments from the bench, the bar, interested organizations, and members of the public regarding whether: (1) to retain (without change) the new Tenn. Sup. Ct. R. 10, RJC 4.1 (effective July 1, 2012), which will prohibit judges from making campaign contributions to other candidates for public office; or (2) to amend the new RJC 4.1 to continue the current campaign-contribution provisions set out in Tenn. Sup. Ct. R. 10, Canon 5C(1)(a), thereby allowing judges to make

campaign contributions to other candidates for public office on or after the effective date (July 1, 2012) of revised Tenn. Sup. Ct. R. 10. (New Tenn. Sup. Ct. R. 10, RJC 4.1 is attached, in its entirety, as Appendix B; current Tenn. Sup. Ct. R., Canon 5 is attached, in its entirety, as Appendix C).

Because revised Tenn. Sup. Ct. R. 10 will take effect on July 1, 2012, the Court is expediting its consideration of the matters raised in the petition. Consequently, written comments concerning the petition shall be submitted and *received by the Clerk* no later than June 15, 2012. Written comments should be addressed to:

Mike Catalano, Clerk  
Tennessee Appellate Courts  
100 Supreme Court Building  
401 7th Avenue North  
Nashville, TN 37219-1407

and should reference the docket number set out above.

IT IS SO ORDERED.

PER CURIAM

*APPENDIX A*

*PETITION*

Comprised of:

1. Letter to Chief Justice, dated January 30, 2012 from Hon. David R. Duggan;
2. Letter to Chief Justice, dated February 1, 2012, from Hon. John D. Wootten, Jr.; and
3. Letter to Chief Justice, dated March 23, 2012, from Hon. Daryl R. Fansler.



# *State of Tennessee*

## *Fifth Judicial District*

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865 + 273-5580  
Fax: 865 + 273-5590

David R. Duggan  
Judge

CIRCUIT COURT  
Blount County Justice Center  
948 East Lamar Alexander Parkway  
Maryville, Tennessee 37804

January 30, 2012

The Honorable Cornelia Clark,  
Chief Justice  
Tennessee Supreme Court  
401 7<sup>th</sup> Ave. N., Ste. 318  
Supreme Court Building  
Nashville, TN 37219-1407

Re: New Code of Judicial Conduct

Dear Chief Justice Clark:

Let me thank you in advance for taking the time to read this letter and for your consideration of my opinion.

I am writing concerning the new Code of Judicial Conduct, to become effective July 1, and its prohibition on judges being able to make political contributions.

It is my opinion that this new ethics rule constitutes an unconstitutional infringement upon judges' First Amendment free speech rights. While our United States Supreme Court has upheld regulations on political speech through contribution limitations, disclaimers and disclosure requirements, it has held that government may not suppress that speech altogether, and it has held unconstitutional outright bans on free speech as opposed to regulation of that speech. The court has also noted that courts, too, are bound by the First Amendment and must decline to draw constitutional lines based on a particular speaker. The United States Supreme Court has held that, generally, the First Amendment prohibits the suppression of political speech based on the speaker's identity.

Because I consider this ban to be unconstitutional, for me the inquiry should end there. I would, however, make a few more brief points:

1. While I understand why someone making a contribution to my campaign, depending upon the size of the contribution and other factors, could call into question, for due process reasons, my ability to hear a particular case, I fail to see how my contribution to a candidate or party says anything about my ability to hear a particular case, and especially if that contribution is made to a presidential candidate of my choice, to a friend who is running for office in another state, or if I were to choose to support a candidate for office in another state because of my principles.

2. With respect to the suggestion that the new ethics rule is not about the law, but rather about what we may wish to be or become as judges, I would note that it was such an aspirational ethics rule that was at issue in *Republican Party of Minnesota v. White*, specifically, the “announce clause” in the code of judicial conduct promulgated by the Minnesota Supreme Court.

3. I believe our Supreme Court has acknowledged, through other new provisions in our Code, as the United States Supreme Court has suggested in *Caperton*, that the appropriate way to address such matters is through disqualification rules.

4. The reality is that in Tennessee trial judges are required to compete for office in contested elections. The United States Supreme Court has noted that participation of judges in election campaigns, the presence of money in those campaigns, and the fact that speakers may have influence over or access to elected officials do not by definition mean that there is corruption in the process, or that officials are corrupt. The reality is that, to a degree, those of us who must run for office are politicians and must participate in the American political process. The new rule at least potentially places us at a great disadvantage. Please consider the scenario of a well-heeled lawyer who decides that he or she wishes to become a judge. That lawyer could spend several years, under the new rule, making contributions to various office holders and candidates, and to the local majority political party, while the incumbent judge is required to stand on the sidelines. That person can build relationships through thoroughly appropriate contributions, while the judge cannot, thus placing the judge, at least potentially, at a disadvantage when that person runs against the judge in the next campaign.

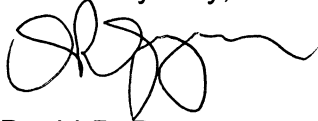
I appreciate, and support, our Supreme Court’s efforts to improve our judiciary and public confidence in our judicial system, and especially in light of the terrible occurrences that have happened in my area in recent months. I would respectfully

January 30, 2012  
Page 3

request, however, that the Supreme Court reconsider its outright ban on political contributions by judges, and prior to the time that this rule is set to take effect July 1.

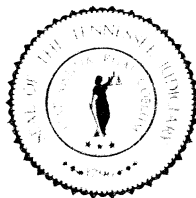
Thank you for allowing me to state my opinion, and for your consideration of the same.

Yours very truly,

A handwritten signature in black ink, appearing to read "David R. Duggan", with a long, sweeping horizontal line extending to the right.

David R. Duggan

DRD/clf



**JOHN D. WOOTTEN, JR.**

CIRCUIT JUDGE, DIVISION II  
STATE OF TENNESSEE, 15TH JUDICIAL DISTRICT  
P.O. Box 112  
200 RED BOILING SPRINGS ROAD  
LAFAYETTE, TENNESSEE 37083

LISA TAYLOR  
SECRETARY  
(615) 666-9324  
FAX (615) 666-9326

COUNTIES:  
JACKSON  
MACON  
SMITH  
TROUSDALE  
WILSON

February 1, 2012

The Honorable Cornelia Clark  
Chief Justice  
Tennessee Supreme Court  
401 7<sup>th</sup> Ave, N, Ste 318  
Supreme Court Building  
Nashville, TN 37219-1407

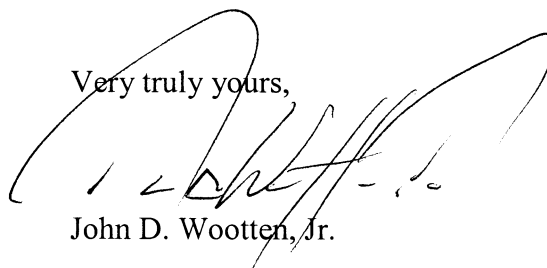
RE: New Code of Judicial Conduct

Dear Chief Justice Clark:

I have received a copy of Judge Duggan's letter regarding the new Code of Judicial Conduct, to become effective July 1. I wholeheartedly concur in his opinions and observations regarding the new codes prohibition on judges being able to make political contributions. Similarly, I would likewise request that the Supreme Court reconsider its outright ban on political contributions by judges. I urge the Court to strike this language from the new code.

I remain,

Very truly yours,



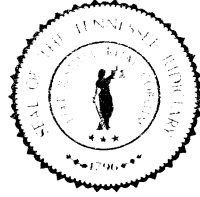
John D. Wootten, Jr.

JDWjr:lt

cc: Judge David R. Duggan  
Chancellor Jerri S. Bryant  
Chancellor Daryl R. Fansler  
Chancellor Telford E. Forgety, Jr.

Judge Tammy M. Harrington  
Judge William R. Brewer, Jr.  
Judge Michael A. Gallegos  
Judge Robert L. Headrick





*State of Tennessee*  
*Chancery Court*

SIXTH JUDICIAL DISTRICT  
CITY-COUNTY BUILDING  
400 MAIN AVENUE, SUITE 125  
KNOXVILLE, TENNESSEE 37902

DARYL R. FANSLER  
CHANCELLOR

TELEPHONE: (865) 215-2560  
TELECOPIER: (865) 215-2920

March 23, 2012

Honorable Cornelia A. Clark  
Chief Justice Tennessee Supreme Court  
401 7<sup>th</sup> Avenue N, Suite 318  
Supreme Court Building  
Nashville, TN 37219-1407

Dear Justice Clark:

I appreciate you taking the time last week to discuss with me Canon Four of the new Rules of Judicial Conduct. As I told you, I have not had one trial judge express support for Rule 4.1(A)(4). Most of us have difficulty in appreciating the difference between a political contribution directly to a candidate and the purchase of a ticket for some other event sponsored by the candidate. Additionally, there are several problems with restricting contributions to the purchase of tickets.

First, ticketed events and dinners are not the preferred method of soliciting campaign contributions in most areas of the state. While it is true that someone running for President, Governor, or United States Senator might resort to expensive events, local candidates and candidates for the General Assembly typically do not. When they do, they are generally rather expensive. While a judge might want to contribute to a candidate, he or she might not want to pay a \$500 or \$1,000 contribution for a ticketed event. So, one either buys a ticket or does not contribute at all.

Furthermore, a judge might want to contribute to several candidates and would be willing to do so by making small contributions to each. However, that same judge might be precluded from contributing to any unless each candidate had a "ticketed" fundraiser with a low ticket price.

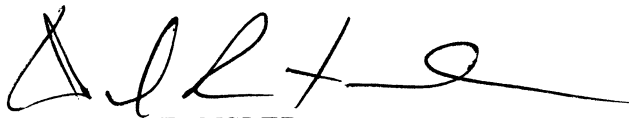
Honorable Cornelia A. Clark  
March 23, 2012  
Page 2

Last, I think most members of the Conference and of the Trial Judges Association fail to see why there is any distinction between a direct contribution of any amount and the purchase of tickets for a dinner or event. When a candidate discloses campaign contributions, there is no distinction made between ticketed events and direct contributions. The only difference is that those who purchase tickets at the expensive fundraisers are going to be disclosed as having contributed much more to that particular candidate.

I would urge you and the Court to reconsider Rule 4.1(A)(4). As I have said in the past, I think that trial judges particularly were satisfied with the rule as it existed before concerning our campaign activities and contributions.

I would be happy to discuss this further with you or any member of the Court. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'D.R. Fansler', written in a cursive style.

DARYL R. FANSLER  
Chancellor, 6<sup>th</sup> Judicial District

DRF/jmw

*APPENDIX B*

*(Tenn. Sup. Ct. R. 10, RJC 4.1, effective 7/1/12)*

**Rule 4.1 Political and Campaign Activities of Judges and Judicial Candidates  
in General**

**(A) Except as permitted by law, or by RJC 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:**

- (1) act as a leader in, or hold an office in, a political organization;**
- (2) make speeches on behalf of a political organization;**
- (3) publicly endorse or oppose a candidate for any public office;**
- (4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate for public office, except that a judge or a judicial candidate may purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;**
- (5) [intentionally omitted];**
- (6) [intentionally omitted];**
- (7) [intentionally omitted];**
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4;**
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;**
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;**
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;**
- (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;  
or**

**(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.**

**(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).**

#### COMMENT

##### *General Considerations*

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

##### *Participation in Political Activities*

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. *See* Rule 1.3. These Rules do not prohibit judges and judicial candidates from campaigning on their own behalf.

[4A] A judge's or a judicial candidate's attendance at a dinner or other event sponsored by a political organization or a candidate for public office does not, by itself, constitute a public endorsement of a candidate for purposes of (A)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

[6A] Paragraph (A)(4) prohibits judges and judicial candidates from soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate for public office, but the rule expressly allows judges and judicial candidates to purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office. Paragraph (A)(4) does not prohibit a judge or judicial candidate from making contributions to his or her own election campaign.

[6B] RJC 4.1(A)(10) prohibits a judge from using court staff in a campaign for judicial office. The rule does not preclude voluntary involvement of court staff in campaign activities during non-working hours.

#### *Statements and Comments Made during a Campaign for Judicial Office*

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience,

qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

*Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office*

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in RJC 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. *See* RJC 2.11.

## *APPENDIX C*

*(current Tenn. Sup. Ct. R. 10, Canon 5,  
effective until July 1, 2012)*

*(The asterisks contained in Canon 5 below denote terms which are  
defined in the “Terminology” section of current Tenn. Sup. Ct. R. 10.)*

*CANON 5. A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity*

### **A. General Requirements.**

(1) Except as provided by 5B(2), 5C, and 5D, a judge or a candidate\* for election or appointment to judicial office shall not:

(a) act as a leader or hold an office in a political organization\*;

(b) publicly endorse or publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) solicit funds for or pay an assessment to a political organization or a political candidate; or

(e) make a contribution to a political candidate.

**Commentary.** – A judge or candidate for judicial office retains the right to participate in the political process as a voter. Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public. The prohibition on publicly endorsing or opposing other candidates for public office also prohibits publicly endorsing or publicly opposing candidates for judicial office except as provided in 5D. Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not “an office in a political organization.” Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.



(2) A judge shall resign from judicial office upon becoming a candidate\* for a nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law\* to do so.

(3) A candidate\* for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

**Commentary.** – Although a judicial candidate must encourage members of his or her family to adhere to the same standard of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate\*, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court; or

(iii) knowingly\* misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or an opponent;

**Commentary.** – A judge's obligation to avoid prejudgment is well established. Under the First Amendment and in light of the voters' right to have

information about an elective candidate's views, judicial ethics rules may not prohibit judicial candidates from announcing their views on disputed legal and political issues. Canon 5(A)(3)(d) does not proscribe a candidate's public expression of personal views on disputed issues. To ensure that voters understand a judge's duty to uphold the Constitution and laws of Tennessee where the law differs from the candidate's personal beliefs, however, candidates are encouraged to emphasize their duty to uphold the law regardless of personal views. Some speech restrictions are indispensable to maintaining the integrity, impartiality, and independence of the judiciary. The state has a compelling interest in enforcing these restrictions. Thus, under Canon 5(A)(3)(d) it remains improper for a judicial candidate to make pledges, promises or commitments regarding pending or impending cases, specific classes of cases, specific litigants or classes of litigants, or specific positions of law, that would reasonably lead to the conclusion that the candidate has prejudged a decision or ruling in cases that would fall within the scope of the pledge, promise or commitment. To fall within the proscription of this rule the statement by the candidate must pertain to matters likely to come before the court on which the candidate would serve, if elected. Statements by a candidate that would have this effect are inconsistent with the obligation of all judges to perform impartially the adjudicative duties of office. Candidates for judicial office often receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations seeking to learn their views on disputed or controversial legal or political issues. Canon 5(A)(3)(d) does not generally prohibit candidates from responding to this kind of inquiry, but candidates should proceed with caution if they choose to respond. Depending on the wording of the questions and the format provided for answering, a candidate's responses might constitute pledges, promises or commitments to perform the adjudicative duties of office other than in an impartial way. In order to avoid violating Canon 5(A)(3)(d), therefore, candidates who choose to respond should make clear their commitment to keeping an open mind while on the bench, regardless of their own personal views. Additionally, judicial candidates must keep in mind that, in stating their position as to an issue, they may later be required to disqualify themselves pursuant to Canon 3(E)(1) should that issue subsequently arise in a proceeding before them and, because of the position taken by the judge while a candidate, the judge's impartiality might reasonably be questioned. Canon 5(A)(3)(d) does not prohibit a candidate for judicial office from making public statements concerning improvements to the legal system or to the administration of justice.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

**B. Candidates Seeking Appointment to Judicial or Other Governmental Office.**

(1) 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. Provided, however, if a candidate for judicial appointment is also, by definition, a candidate subject to election\*, such candidate may, as provided under Canon 5(C)(2)(a), form a committee to solicit and accept contributions limited to use in the election campaign of the candidate. Any contributions accepted shall not be used in furtherance of the person's candidacy for appointment.

(2) A candidate\* for appointment to judicial office or a judge seeking appointment to governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations and from individuals; and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to his or her qualifications for the office;

(b) A non-judge candidate\* for appointment to judicial office may, in addition, unless otherwise prohibited by law\*:

(i) retain an office in a political organization\*,

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other functions.

**Commentary.** – Section 5B(2) provides a limited exception to the restrictions imposed by Section 5A(1). Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support. Although under Section 5B(2), non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings, and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

### **C. Judges and Candidates Subject to Election.**

(1) A judge or a candidate\* subject to election\* may, except as prohibited by law\*:

(a) at any time

(i) purchase tickets for and attend political gatherings, subject to the limitations in (a)(iii);

(ii) identify himself or herself as a member of a political party;  
and

(iii) contribute to a political organization\* or a political candidate in an amount up to the limitations provided in Tenn. Code Ann. § 2-10-301, et seq.;

(b) when a candidate for election

(i) speak to gatherings on his or her own behalf;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(iii) distribute pamphlets and other promotional campaign information supporting his or her candidacy.

**Commentary.** – Section 5C(1) provides a limited exception to the restrictions of 5A(1) and permits judges subject to election at any time to be involved in limited political activity. Note that by definition of “election”, see Terminology, Section 5C is equally applicable to judges subject to partisan, non-partisan, and retention elections. Section 5C(1)(a)(iii) allows a judge or

a candidate to contribute to a political organization or candidate in an amount not to exceed the contribution limits provided in Tenn. Code Ann. § 2-10-301 et seq. This limitation includes the purchase of tickets set out in Section 5(C)(1)(a)(i).

(2) (a) A candidate\* shall not personally solicit or accept campaign contributions. A candidate may personally solicit publicly stated support and establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. 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. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers. A candidate's committees may solicit and accept contributions for the candidate's campaign no earlier than 180 days before an election (see Commentary below) and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(b) Candidates for judicial office must comply with all requirements of state law with regard to campaign finances, including but not limited to, all statutes relating to financial disclosure and campaign contribution limits.

**Commentary.** – Section 5C(2)(a) permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept financial contributions. At the start of the campaign, the candidate must instruct the campaign committees to solicit or accept only those contributions authorized by Tennessee law. More specifically, Tenn. Code Ann. § 2-10-301 et seq., sets the campaign contribution limits applicable to judicial candidates. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E. It is possible for some judicial offices to be subject to a primary and general election. It is possible for some counties to have a partisan primary for a particular office whereas another county might only have a non-partisan general election for the same office. It is also conceivable that the decision as to whether or not to hold a primary might not be made until within the 180-day period before the primary. Therefore, for the sake of uniformity, the 180-day period for all judicial offices that can possibly be subject to a primary election, whether or not there actually is a primary, shall begin to run from the date the primary would be held. Section 5C(2)(a) was amended in 2001 to specify that a campaign committee

cannot accept contributions outside the time limits established for solicitation of contributions. This amendment was made for the purpose of clarification in light of Judicial Ethics Committee Opinion #01-01. Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Except as prohibited by law\*, a candidate\* for judicial office in a election\* may permit the candidate's name: (a) to be listed on election materials along with the names of other candidates for elective public office and (b) to appear in promotions of the ticket.

**Commentary.** – Section 5C(3) provides a limited exception to the restrictions imposed by Section 5A(1).

**D. Judges Subject to Retention Elections.** A judge, subject to retention election, may, at any time, publicly endorse or oppose a judge standing for retention or a candidate for appointment to the court of which the judge is a member.

**E. Applicability.** Canon 5 generally applies to all incumbent judges and judicial candidates\*. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to the Rules of Professional Conduct.