

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #136 - 4/9/70 (15-70)

Topic: Letterheads;
Deceased partner's name.

Digest: Propriety of letterhead of
firm in containing name of
deceased partner.

Code*: DR 2-102

QUESTION

A partner of a law firm recently died. May his name be continued on the firm letterhead with his years of association with the firm?

OPINION

DR 2-102 states:

(A) A lawyer or law firm shall not use...letterheads... except that the following may be used if they are in dignified form:

(4) A letterhead of a lawyer identifying him by name and as a lawyer, and giving his addresses, telephone numbers, the name of his law firm, associates and any information permitted under DR 2-105. A letterhead of a law firm may also give the names of members and associates, and names and dates relating to deceased and retired members.

There is no ethical objection to the proposed letterhead.

Opinion #137 - 5/28/70 (5-69)

Topic: Judges - Partisan Politics

Digest: Incumbent judges may not purchase tickets to political-social functions nor may they belong to political clubs.

Judicial Canons: 4, 13, 24, 25 and 28

Code*: Canon 8
EC 8-6

QUESTION

The following questions have been asked relating to judges who were appointed or elected to office as candidates of political parties:

1. The propriety of an incumbent judge's purchasing tickets to a political social function, e.g., a dinner-dance.
2. The propriety of an incumbent judge's being a member of, though not an officer or director, or attending meetings of, a "political club."

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OPINION

Judicial Canon 28 provides:

"While entitled to entertain his personal view of political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party as against another. He should avoid making political speeches, making or soliciting payment of assessments or contributions to party funds, the public endorsement of candidates for political office and participation in party conventions.

"He should neither accept nor retain a place on any party committee nor act as a party leader, nor engage generally in partisan activities.

"Where, however, it is necessary for judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the judge from attending or speaking at political gatherings, or from making contributions to the campaign funds of the party that has nominated him and seeks his election or re-election."

Rule 4 of the Rules of the Administrative Board of the Judicial Conference of the State of New York provides:

"No judge or justice during the term of his office shall hold any office in a political party or organization or contribute to or take part in any political campaign except for judicial office."

Judicial Canon 4 provides in pertinent part:

"A judge's official conduct should be free from impropriety . . . and his personal behavior, not only upon the bench and in his performance of judicial duties, but also in his everyday life, should be beyond reproach."

Judicial Canon 13 provides in pertinent part:

"A judge . . . should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor."

Judicial Canon 24 provides in pertinent part:

"A judge should not accept inconsistent duties . . . which will in any way interfere or appear to interfere with his devotion to the expeditious and proper administration of his official functions."

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Judicial Canon 25 provides in pertinent part:

"A judge should avoid giving ground for any reasonable suspicion that he is utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute . . . to the success of private business ventures."

Section 447(6) of the Election Law makes it a misdemeanor for any person to request a political subscription or contribution from an officer or employees of the State or any of its political subdivisions. Clearly an incumbent judge is such an officer or employee.

Section 454 of the Election Law provides that no "candidate for a judicial office shall, directly or indirectly, make any contribution . . . nor shall any contribution be solicited of him" except that "a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section" 439 of the Election Law. The latter section referred to contemplates actual and necessary expenses connected with an election campaign.

It should be noted that political clubs which exist principally in the metropolitan New York area are the foundation of the party political organization. Parties have clubs in various election districts. The club is an informal group that gets together, pays dues, maintains a club house (usually of one or two rooms) where the members meet and handle affairs of patronage and service to their members and the voters in their district. They designate the member of the party's County Committee for their district, participate in the selection of candidates, and at election conduct a grass roots campaign to get out the vote for the party's candidates. The clubs are the gears, pistons, drive shaft and brakes of the political machine.

In N.Y. State 91 (1968) we expressed the view that judges should not make financial contributions to political parties unless such contributions fall within the exception of Rule 4. ABA Informal Decision 774 held that the philosophy of Canon 28 as amended prohibits judges from contributing money to political parties for campaigns in which the judge was not a candidate for election or re-election.

In N.Y. State 64 (1967) we expressed the view that a judge may not hold office in a political club. We see no distinction between holding office in a political club and being a member of a political club. A political club by its very nature is continuously engaged in partisan politics.

ABA Informal Opinion 867 held that it would be improper for a judge to attend a political dinner meeting which has for its purpose the advancement of a candidate and for fund raising purposes. We cannot distinguish between a dinner meeting, a dinner dance or other political social function.

In an Opinion dated January 23, 1963, we expressed the view that in every particular a judge's conduct should be above reproach. It is essential, therefore, that not only the actuality but the appearance of bias be avoided by one who holds judicial office. We held in that Opinion that it would be improper for a judge during his term to serve as the president, member of the board of directors or official delegate of a political club.

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ABA Inf. C-486 (1961) held that an incumbent judge cannot contribute funds to a political party except during the year of his nomination. Similarly, ABA 113 (1934) held that a judge may not actively support a political candidate. ABA 193 (1939) prohibits a judge from making political speeches, from publicly endorsing candidates for public office and from engaging generally in partisan politics. ABA 289 (1955) holds that a judge should not make contributions to party funds or campaign for party candidates unless the judge himself is running for re-election on that party's ticket in the next election. For similar holdings, see ABA 312 (1964) and ABA Inf. 719 (1964); 773 (1964); 774 (1964); 817 (1965); 818 (1965); and 867 (1965).

The Code states under ethical considerations on Canon 8 in pertinent part (EC 8-6):

". . . Lawyers should . . . strive to have elected or appointed [Judges and administrative officers having adjudicatory powers] only those who are willing to forego pursuits, whether or business, political or other nature, that may interfere with the free and fair consideration of questions presented for adjudication."

Drinker, Legal Ethics 279 (1953) states that Canon 28 of the Canons of Judicial Ethics condemns all participation in political campaigns and discussions, including speeches, endorsements of candidates and contributions except when the judge is running for election or re-election.

The Committee is of the opinion that the public should be reassured that incumbent judges do not, and of equal importance, do not appear to, engage in partisan politics.

Unless the judiciary has the confidence of the public, the high esteem in which the Bench should be held will be tarnished beyond recall. In balancing the interest of those concerned, we find no contravening interest which would permit incumbent members of the judiciary to participate directly or indirectly in partisan politics. We do, however, recognize the exception set forth in the third paragraph of Canon 28 with respect to an incumbent judge who is, in fact, running for re-election (or election if he was initially appointed). This exception, however, has been and should be construed to be applicable only to the election in which the judge is running for re-election (or election if he was initially appointed). The purpose of the Judicial Canons and Rule 4 of the Rules of the Administrative Board of the Judicial Conference of the State of New York is to avoid even a suspicion that an incumbent judge permits political considerations to affect his decisions and such canons and rule are directed primarily at the suspicion which may arise when he performs judicial service and at the same time engages in political activities.

A memorandum issued in March 1970 by the Presiding Justice of the Appellate Division, Fourth Department, directed to the Justice

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and Judges in that Department takes the position that any judge other than a candidate for judicial office in connection with his own campaign "who take an active part in campaigns or political activities by way of endorsing candidates, contributing or soliciting funds, making appearances or speeches in public or before political gatherings attending meetings or dinners or in any way lending their personal support and the prestige of their office to any political party incur the risk of public disenchantment with the entire judicial system." That memorandum further states: "Such conduct on the part of any member of the judiciary is a threat to the effectiveness of judicial office and will require appropriate action by this court." See also a similar directive from the Appellate Division, Third Department dated March 9, 1970

Accordingly, it is the opinion of the Committee that incumbent judges may not purchase tickets to political social functions (except in the years they run for election or re-election) nor may they belong to political clubs.

DISSENTING OPINION

One member of the Committee has filed the following dissenting opinion:

DISSENTING OPINION: Neither Judicial Canon #28 nor Rule 4 of the Rules of the Administrative Board of the Judicial Conference of the State of New York can be interpreted so as to prohibit an incumbent Judge from purchasing a ticket to a political social function nor from membership in (as distinguished from being an officer, director, or attending meeting of) a "political club". While there are quite properly many restrictions upon the political activity of an incumbent Judge (see ABA Informal C-486) the majority opinion imposes new and additional restrictions.

So long as a Judge must be re-elected to office as the candidate of a political party it is simply not practicable for him to completely divorce himself from all connections with politics. Any further limitations upon the political activity of incumbent Judges will have the practical effect of limiting the Judge to a single term in office.

The majority opinion suggests that an incumbent Judge must completely divorce himself from any type of political activity. ABA Judicial Canon #28 was amended in 1950 by the addition of the following paragraph:

"Where, however, it is necessary for Judges to be nominated and elected as candidates of a political party, nothing herein contained shall prevent the Judge from attending or speaking at political gatherings, or from making contributions to the campaign