



Committee on Professional Ethics

Opinion #250 - 5/24/72 (30-72) Topic: Judges; Partisan Politics;
Agreement to accept nomination
of one party only

Digest: Improper for candidate for
judicial office to agree with
political organization, as a
condition to designation by its
party, not to accept nomination
of another political party.

Code*: EC 8-6; Canon 8
Canons of Judicial Ethics: 28, 30.

QUESTION

Is it ethical for a prospective candidate for judicial office to enter into an agreement that the local county committee of a political party requires as a condition to the party's designation or nomination of a candidate for a judicial office in the following substance:

I, John Doe, as a candidate seeking the designation or nomination of the "Anonymous Party", hereby agree pursuant to the bylaws of the "Anonymous" County Committee, that I will refuse to accept the designation or nomination of any other political party or independent party or body.

OPINION

The Judge is the keystone of the structure of our legal system and it is essential that the public have confidence in the manner of his selection if it is to look to the Courts for the promotion of justice. The Code of Professional Responsibility and the Canons of Judicial Ethics are directed toward the creation and maintenance of a judiciary which is not only competent but clearly free of bias. In particular, they would divorce the Bench from all political activity, except to a certain limited extent in the case of a campaign for judicial office.

EC 8-6 provides, in pertinent part:

"It is the duty of lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges."

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Canon 8 of the Code of Professional Responsibility provides that:

"A lawyer should assist in improving the legal system."

The Canons of Judicial Ethics provide, in part:

"2. Courts exist to promote justice, and thus to serve the public interest...."

* * * *

"28. Partisan Politics

"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."

* * * *

"30. Candidacy for Office

"A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination...."

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Canon 28 of the Canons of Judicial Ethics permits only specifically designated exceptions to the prohibition of political activity on the part of candidates for judicial office, whether they be incumbents or original candidates. These exceptions do not include an agreement by the candidate to refuse nomination by any other political party as a condition to receiving nomination by a particular political party. The salutary rule restricting the partisan political activities of a candidate for judicial office should not be relaxed except as expressly provided in the Canons. See, N.Y. State 137 (1970) and opinions cited therein. See also, Canon 7 of the February 1972 Final Draft of the proposed new Code of Judicial Conduct.

An agreement to refuse all other party nominations which a political organization would exact as the price for its designation of a candidate for the judiciary strikes at the very heart of the efforts which have been exerted by the Bench and Bar for many years for the selection of only the best qualified candidates for judgeships. One of the most effective means of accomplishing this end has been the bipartisan nomination of qualified candidates and particularly of those incumbents who have established by their records that they are deserving of re-election.

This Committee does not pass upon questions of law and hence does not cite provisions of the Election Law, Judiciary Law, or other statutes and regulations having the effect of law. However, attention is called to the opinion in Matter of Donovan v. Board of Elections of Nassau County, 29 N.Y. 2d 725, 726 (1971), where the precise agreement herein considered was involved. The Court of Appeals, although holding that no violation of the Election Law or other statutory provision had been shown by the petitioner sufficient to invalidate the primary election of which he complained, stated the principle that:

"....political organization leaders ought not exact a promise of party loyalty from candidates for judicial office as a condition of support, and such candidates should not make these promises in exchange for support."

A candidate for judicial office, whether or not an incumbent, who pledges that if nominated or designated by a particular political party he will refuse a nomination or designation by any other party, notwithstanding its desire also to name him, would engage in the promotion of partisan political interests in a manner which would violate the Code of Professional Responsibility and the Canons of Judicial Ethics.
