



Committee on Professional Ethics

Opinion # 491 - 9/12/78(43-78) Topic: Judges; judge-elect; political activity.

Digest: Judge-elect may not campaign on behalf of candidates for political office.

Code: Canon 9;
EC 9-1, 9-6.

QUESTION

May a judge-elect campaign on behalf of candidates for political office?

OPINION

The propriety of a judge-elect engaging in political activity is not expressly addressed by the Code of Judicial Conduct or the Code of Professional Responsibility, nor does it appear to have been the subject of any ethics committee opinion.

An individual who accepts judicial office must be prepared to surrender certain freedoms which are the constitutional right of ordinary citizens. As was explained in ABA 113 (1934):

"A judge is entitled to entertain his personal view of political questions, but should not directly nor indirectly participate in partisan political activities. It is generally accepted in a rational philosophy of life that with every benefit there is a corresponding burden. Accordingly, one who accepts judicial office must sacrifice some of the freedom in political matters that otherwise he might enjoy. When he accepts a judicial position, *ex necessitate rei*, he thereby voluntarily places certain well recognized limitations upon his activities."

See also, N.Y. State 64 (1967), ABA 312 (1964) and ABA Inf. 867 (1965).

Thus, a judge may not hold office in a political organization or contribute to a political party or organization, nor may he attend or address political gatherings, or publicly endorse a candidate for public office, except when he himself is a candidate for elective judicial office, he may engage in certain specific

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political activities on his own behalf for a limited period prior to his nomination and continuing for a limited period after election. Rules of the Administrative Board of the Judicial Conference ("Rules of the Administrative Board"), §33.7; Code of Judicial Conduct, Canon 7; Election Law, §§ 17-162; cf., Former Canons of Judicial Ethics 28 and 30. See also, N.Y. State 289 (1973), N.Y. State 91 (1968), N.Y. State 64 (1967), N.Y. State 11 (1964); ABA 312 (1964), ABA 193 (1939), ABA 111 (1934); ABA Inf. 1400 (1978), ABA Inf. 867 (1965). The restrictions apply not only to the acts mentioned, but also to conduct which creates an appearance of impropriety. Rules of the Administrative Board, §33.2; Code of Judicial Conduct, Canon 2; see also, N.Y. State 308 (1973) and N.Y. State 137 (1970). A judge, however, may support measures to improve the law, the legal system, or the administration of justice. Rules of the Administrative Board, § 33.4; Code of Judicial Conduct, Canon 7(A)(4).

In determining whether or not a successful candidate for judgeship is bound by the rules governing political activities after the date of his election, but before the commencement of the term for which he was elected, it is relevant to consider the purpose of such rules. The threefold purpose of these rules is to:

1. Avoid suspicion that the successful candidate's judgment will be warped by bias or partiality upon the assumption of his judicial office, and to prevent appeals to the cupidity of those whose support is sought;
2. Insure fairness in the election process, particularly when one candidate is an incumbent judge and the other is not;
3. Prevent the use of, or avoid the impression that the judicial candidate when elected will use, the power and prestige of his office to promote his candidacy or the success of his party.

Whether or not the candidate is an incumbent judge, the same rules should apply. To hold that a proscription which is intended to prevent the misuse of the power and prestige of judicial office and to avoid suspicion that a judge may be improperly influenced, is suspended until the judge is inducted is to ignore reality. A judge-elect possesses much of the prestige and power attached to the judgeship, albeit potential, and at the least he is vulnerable to the suspicion that he can be swayed in the judgment he will later be called upon to exercise.

As we observed in N.Y. State 289 (1973), "every Canon and guideline

should be read as being modified by the injunction that all conduct is to be compatible with and in furtherance of professional dignity and integrity." It is a principle which finds expression in Canon 9 of the Code of Professional Responsibility. It is that principle which enjoins all lawyers to "promote public confidence" in our system of justice. EC 9-1. It is that same principle which exhorts all lawyers "to strive to avoid not only professional impropriety but also the appearance of impropriety." EC 9-6.

Consistent with the foregoing Ethical Considerations, we believe that the restraints on political activities imposed upon candidates for judicial office, other than activities expressly permitted by the Code of Judicial Conduct and the Rules of the Administrative Board, continue after their election until their induction into office and thereafter throughout their tenure as judges.

For the reasons stated, the question posed is answered in the negative.
