

## **AJS Comments on January 2005 Partial Draft of Revisions to ABA Model Code of Judicial Conduct**

Submitted to the ABA Joint Commission to  
Evaluate the Model Code of Judicial Conduct  
March 2005

- As the Joint Commission probably realizes, it is difficult for AJS to comment on the partial draft of Canon 5 without the proposed commentary. AJS trusts, for example, that the commentary will include the comments from the current model that “a candidate should emphasize in any public statement the candidate’s duty to uphold the law regardless of his or her personal views” and a candidate may make “pledges or promises respecting improvements in court administration.” AJS is also concerned that the commentary will be expected to do too much because some basic rules are being left out of the black letter text.
- The current proposed organization only contains “shall not” and “may” provisions, which does not allow for any explication of the affirmative action required of judges and candidates. Particularly, AJS believes the text of the canon should provide that a candidate 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, shall prohibit employees and officials who serve at the pleasure of the candidate, 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, and shall be responsible for reviewing and approving the content of his or her statements, advertisement, and other campaign materials. Leaving these principles to be explained in commentary or defined in terminology undermines their importance and risks candidates overlooking them.
- AJS understands that it has been proposed that the Joint Commission draft distinct versions of the Canon 5 for partisan states, non-partisan states, appointive/retention states, and appointive states. AJS believes that such an effort would be helpful.
- AJS is still considering some of the issues raised by the proposed draft and other developments regarding judicial selection. Below are some initial suggestions within the current organization.

## Canon 5

**A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN REFRAIN FROM POLITICAL ACTIVITY THAT IS INCONSISTENT WITH THE IMPARTIALITY, INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.**

### **Rule 5.01. Restrictions on Political Activity of Judges who are Not Candidates.**

JUDGES who are not currently CANDIDATES for judicial office may participate in the political process as a voter and engage in political activity on behalf of measures to improve the law, the legal system, or the administration of justice but shall not engage in any other political activity including but not limited to:

- (a) acting as a leader or holding an office in a POLITICAL ORGANIZATION;
- (~~b~~e) publicly endorseing or opposeing a CANDIDATE for public office;
- (~~c~~e) soliciting funds for, paying an assessment to, makeing a contribution to, or purchaseing tickets for dinners or other events sponsored by, a POLITICAL ORGANIZATION or a CANDIDATE for public office.
- (d) attending meetings or other events sponsored by a POLITICAL ORGANIZATION or a CANDIDATE for public office;
- (~~e~~b) publicly speaking in support of or in opposition to ~~against~~ a POLITICAL ORGANIZATION;

Comments:

### **Rule 5.02 Restrictions on Political Activity of Candidates for Judicial Office.**

Except as otherwise provided in Rules 5.03-5.06, a candidate for judicial office, including an incumbent judge and a candidate for appointive judicial office, should maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall not, directly or indirectly:

- (a) act as a leader or hold an office in a POLITICAL ORGANIZATION;
- (~~b~~f) publicly endorse or oppose a CANDIDATE for public office;
- (~~c~~g) solicit funds for, pay an assessment to, make a contribution to, or purchase tickets for dinners or other events sponsored by, a POLITICAL ORGANIZATION or a CANDIDATE for public office;
- (~~d~~b) KNOWINGLY or with reckless disregard for the truth make any FALSE OR MISLEADING statement ~~regarding any CANDIDATE for judicial office;~~
- (~~e~~e) in the course of advancing his or her candidacy, make any comment that might reasonably be expected to affect the outcome or impair the fairness of a proceeding while it is pending or impending in any court;
- (~~f~~e) with respect to 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 the office;

- (ge) in the course of advancing his or her candidacy, manifest bias or prejudice, based upon a person's race, gender religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status;
- (h) personally solicit or accept campaign contributions;
- (i) use or permit the use of campaign contributions for the private benefit of the CANDIDATE or others; and
- (j) authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing.

Comments:

#### Rule 5.03. Permitted Political Activity of Candidates for Judicial Office in Partisan Public Elections.

Notwithstanding the restrictions set forth in Rule 5.02, a candidate for judicial office in a partisan public election may:

- (a) establish a campaign committee pursuant to the provisions of Rule 5.06;
- (b) speak to gatherings on his or her own behalf;
- (c) attend meetings or other events sponsored by a political organization;
- (d) publicly identify himself or herself as a member or candidate of a political organization;
- (e) purchase tickets necessary for the candidate and a guest to attend ~~for~~ events sponsored by a political organization;
- (f) appear in media advertisements and distribute campaign literature supporting his or her candidacy;
- (g) publicly endorse or publicly oppose other candidates for the same court judicial-office in a public election in which the candidate is running.

Comments:

#### 5.04. Prohibited and Permitted Political Activity of Candidates for Judicial Office in Non-Partisan Public Elections and Retention Elections.

- (a) In addition to the restrictions set forth in Rule 5.02, a candidate for judicial office in a non-partisan public election or a retention election shall not, directly or indirectly:
  - (1) publicly speak in support of or ~~against~~ in opposition to a political organization;
  - (2) attend meetings or other events sponsored by a political organization or a candidate for public office.
- (b) Notwithstanding the restrictions set forth in Rules 5.02 and 5.04(a), a candidate for judicial office in non-partisan public elections and retention elections may:

- (1) establish a campaign committee pursuant to the provisions of Rule 5.06;
- (2) speak to gatherings on his or her own behalf;
- (3) publicly endorse or publicly oppose other candidates for the same [court judicial office](#) in a public election in which the candidate is running;
- (4) appear in media advertisements and distribute campaign literature supporting his or her candidacy.

Comments:

#### Rule 5.065. Campaign Committees.

(a) Candidates for judicial office subject to public elections may establish campaign committees to conduct campaigns for the candidate, subject to the regulations contained in this Rule. The candidate is responsible for insuring that the committee complies with these regulations, and with other applicable law.

(b) Campaign committees may solicit and accept reasonable campaign contributions, not to exceed, in the aggregate, [\$ \_\_\_ ] from any individual, or [\$ \_\_\_ ] from any entity or organization. Such committees may also manage the campaign, including the expenditure of funds.

(c) A campaign committee shall not solicit or accept contributions for a candidate's current campaign more than [one year] prior to a scheduled election, nor more than [90] days after the last election in which the candidate participated.

(d) In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, campaign committees established by a candidate for judicial office shall file with [name of appropriate regulatory authority] a report stating the name, address, occupation and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding [\$ \_\_\_ ]. The report must be filed within [ \_\_\_ ] days following an election, or within such other period as is required by law.

[\(e\) The campaign committee for a judicial candidate shall comply with laws regarding divesting unused campaign funds or, even in the absence of a statutory requirement, shall divest any unused campaign funds by pro rate refund to campaign contributors not later than six months after any judicial election in which a judge or judicial candidate participated as a contestant.](#)

Comments:

#### Rule 5.056. Activity of Candidates for Appointive Judicial Office.

Notwithstanding the restrictions set forth in Rule 5.02, a candidate for appointment to judicial office [shall not engage in any political activity to secure the appointment but may:](#)

- (a) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency;

(b) seek support or endorsement for the appointment any individual or organization.

Comments:

Rule 5.07. Activity of Judges Who Become Candidates for Non-Judicial Office.

(a) Upon becoming a candidate for a non-judicial elective office, a judge shall resign from judicial office, 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.

(b) Upon becoming a candidate for a non-judicial appointive office, a judge is not required to resign from judicial office, and is permitted to engage in the activity permitted by Rule 5.05.

Comments: