

Maryland Judicial Ethics Committee

Opinion Request Number: 1974-03

Date of Issue: April 25, 1974

O Published Opinion **G** Unpublished Opinion **G** Unpublished Letter of Advice

Judges in United Campaign for Reelection May Work for Election of Each Other

In your letter of April 3, 1974, you have requested on behalf of yourself and your colleagues an advisory opinion with respect to the propriety of several judges who are engaged in a united campaign for retention in office speaking and working for the election of each other. In your previous letter of March 20, 1974, you identified your colleagues as [appellate and trial judges] who, with you, have been recently appointed by the Governor to your present positions and under the Maryland Constitution must stand for election in the 1974 General Election.

Canon XXVII provides as follows:

Partisan Politics

“While entitled to entertain his personal views 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 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.”

Chief Judge Hall Hammond in a directive to the Maryland Judiciary July 21, 1971, emphasized “the impropriety of a judge ... engaging in any political or partisan activity except to the extent necessary to obtain or retain his or her judicial office as an immediate candidate through an elective process.” In previous opinions this Committee has advised that a judge who must stand for election became an immediate candidate upon qualification following his appointment and that it is not improper for judges who are immediate candidates to attend or speak at political gatherings or make contributions to the campaign funds of the party which has nominated them or to permit the use of their photographs in robes by newspapers, or in campaign literature and other publicity circulated in their behalf provided the photographs are of individuals and not a group.

On the other hand, in response to a request from a judge who was not an immediate candidate for election the Committee advised that Canon XXVII does preclude a judge from publicly endorsing the candidacy of a judicial colleague and from making contributions in support of his colleague’s campaign. This conclusion was compelled by the clear requirement that a judge who is not an

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Published Opinion Unpublished Opinion Unpublished Letter of Advice
Page 2 of 2

immediate candidate may not engage in any political activity. The issue presented by your inquiry is whether Canon XXVII also forbids such activity by a judge who is an immediate candidate for election. In our opinion it does not.

The clear intent of the canon is to prohibit, to the fullest extent possible, any political activity by any judge while at the same time to permit the judge who must stand for election or re-election to engage in political activity to the extent necessary for retention or obtention of judicial office. Although the first paragraph of the canon expressly forbids “public endorsement of candidates for political office” and the final paragraph, which sets forth the exception for judges who are immediate candidates, does not specifically permit public endorsement of fellow judicial candidates, we feel that public endorsement by one judicial candidate of another falls within the permissive exception rather than the proscriptive general rule.

The evil which the canon seeks to avoid is “the inevitable ... suspicion of being warped by political bias [which] will attach to a judge who becomes the active promoter of the interests of one political party as against another.” It is difficult to perceive how endorsement by one judicial candidate of another or any similar cooperative effort within the bounds of Rule 9 and Canon XXIX would give rise to suspicion of political bias. Furthermore, it has long been the custom where more than one judge in a jurisdiction is seeking election or re-election to judicial office to conduct a combined campaign usually as “sitting judges”. The propriety of the sitting judge principle has been recognized by the Court of Appeals. Smith v. Higinbotham, 187 Md. 115 [1946]. There is no evidence that the Maryland Judicial Conference which proposed the Canons of Ethics or the Court of Appeals which promulgated Rule 1231 incorporating the Canons intended to proscribe this long standing practice. Of course, as you suggest, public endorsement of political candidates for other than judicial offices would be improper.