

Maryland Judicial Ethics Committee

Opinion Request Number: 1983-04

Date of Issue: October 28, 1983

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Judge May Not Apply to Central Committee for Appointment to Vacancy in Legislative Position Without First Resigning Judicial Position

A judge inquires as to the propriety of his seeking appointment to a vacancy which is about to occur in the State Senate.

Pursuant to Article III, Sec. 13(a) of the Constitution of Maryland, the vacancy is to be filled by the person whose name is submitted to the Governor by the county Central Committee of the political party of the vacating Senator. That appointee “shall be of the same political party as the person whose office is to be filled.”* Prior to making its selection, the county Central Committee holds a public meeting, at which time the interested applicants make their presentations. Comment on the applicants by other members of the public is also permitted.

Canon XXVII of the Canons of Judicial Ethics provides in pertinent part as follows:

“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 a party leader, nor engage generally in partisan activities.” (Emphasis supplied.)

When a judge presents himself to the Central Committee for consideration for appointment to the position of State Senator, which is clearly a political office, he is necessarily engaging in “partisan activities.” Furthermore, in seeking to advance his candidacy for appointment to this political position, it is almost inevitable that the applicant will be called upon to express political positions. Such activity is tantamount to making “political speeches,” which is expressly prohibited by Canon XXVII.

Attention is also directed to Canon XXIX, which provides, in part, as follows:

“While holding a judicial position he should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.” (Emphasis supplied.)

Canon XXIX is not by its terms applicable in this situation, since the selection process by the

* Wording prior to ratification of Chapter 649, Acts of 1986.

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Central Committee is not a “party primary” or a “general election.” Nevertheless, the stated danger that it seeks to prevent also exists here, namely, the impression that the judge “is using the power or prestige of his judicial position to promote his own candidacy”

We must conclude that it is inappropriate for a judge to have the Central Committee consider his name for appointment to the legislative vacancy without first resigning from his judicial position.