

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2002-07

**Date of Issue:** August 30, 2002 (corrected opinion)

■ Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Judge-Candidate May Attend Fund-Raising Events for Candidates for Non-Judicial Office

The inquiry advises that fund raising dinners for political parties and for candidates for non-judicial office, and like events, are useful venues for meeting voters and otherwise advancing the judge's candidacy. The judge asks whether attendance at such events would constitute public endorsement of the non-judicial candidates who are the beneficiaries of those events, in contravention of Canon 5B(2) of the Code of Judicial Ethics.

Canon 5A sets forth a broad prohibition against political activity by a judge, providing that "A judge who is not a candidate for election, re-election, or retention to judicial office should not engage in any partisan political activity". Canon 5B, on the other hand, contains a broad grant of authority to engage in political activity for a judge who is a candidate, providing that, subject to certain exceptions, such a judge "may engage in partisan political activity allowed by law with respect to [the Judge's] candidacy . . . ." The exceptions include an injunction against making speeches for a political organization or candidate or publicly endorsing a candidate for non-judicial office. The Commentary explains that a judge does not publicly endorse a candidate for public office by having the judge's name on the same ticket. The term "publicly endorse" plainly has its customary meaning in the political context. It means to, by word or action, recommend or urge the election of a candidate.

The Committee, in answering a similar question under the former Canons of Judicial Ethics, declared that "a . . . judge who is a candidate for election may attend political gathering which are held on behalf of aspirants to political office, and may pay the necessary admission charges to these events if he feels it will advance his candidacy." See [Opinion Request No. 1978-02], issued May 8, 1978. The then applicable rule, former Canon XXVII, provided 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 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 or seeks his election or reelection.*

The Committee's opinion on that occasion was influenced, in part, by its earlier conclusion that the prohibition against political or partisan activity contained in former Canon XXVII did not apply to a judge who had been appointed to office and was required to stand for election at the next general election. See [Opinion Request No. 1975-08], issued July 7, 1975. However, the Committee

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Page 2 of 2

also pointed out that the Canons are not designed to impose handicaps on judges forced to compete for their seats at the polls and that the purpose of the exception in former Canon XXVII was to make it possible for incumbent judges, seeking election, to compete against their opponents without disadvantage. On another occasion, the Committee observed that the purpose of the exception in former Canon XXVII was to allow a judge, who must seek election, to advance his or her candidacy like the other candidates for elective offices and to permit legitimate political activity that directly or even indirectly furthers a judge's candidacy. *See* [Opinion Request No. 1978-07], issued January 16, 1979[9].

Nothing in Canon 5B or its Commentary undermines the continued vitality of the Committee's view of the purpose of the Canons authorizing and limiting partisan political activity by judges as candidates for election. Indeed, Canon 5B confirms that view inasmuch as it now permits a judge seeking election to engage in any partisan political activity which is allowed by law and which is reasonably related to advancing the judge's candidacy, except for the activities specifically prohibited.

Attendance at political gatherings for other candidates, whether styled as fund-raisers, dinners, receptions or meet-the-candidate events, are traditional and well-recognized means for political aspirants to advance their own election prospects.

The Committee's opinion is, in part, influenced by the nature of judicial elections in Maryland. It has long been customary in this State for judges to cross-file in the primary election and thus seek the nomination of both major political parties. Judges, in this circumstance, routinely attend events and seek the support of groups and persons having opposing interests in the general election. This practice tends to lessen the inference of partisanship that might otherwise attach to a judge's attendance at partisan political events. Similarly, it attenuates the inference of support that might otherwise arise from attendance at events for particular non-judicial candidates.

In the Committee's view, attending fund-raising events and like events for non-judicial candidates for the sole purpose of enhancing ones own election prospects does not amount to a public endorsement of such candidates. Judges who chose to attend such events should, however, be mindful of the circumstances surrounding a particular gathering and the risk that their words or actions while attending may be misinterpreted. For example, if asked to "say a few words", they should be careful not to endorse the party or candidate hosting the event.