

**FLORIDA SUPREME COURT
JUDICIAL ETHICS ADVISORY COMMITTEE**

Opinion Number: 2016 - 05 (Election)

Date of Issue: April 18, 2016

ISSUE

May an incumbent judicial candidate up for election include a political office holder in the judge's committee of interested persons who is also an incumbent up for election this cycle?

ANSWER: No.

FACTS

The inquiring judge is up for reelection this cycle. The judge has formed a committee of responsible persons ("Campaign Committee") pursuant to Florida Code of Judicial Conduct, Canon 7C(1). One member of the Campaign Committee is a partisan public office holder who is also up for reelection this cycle. The inquiring judge asks whether this official may serve on the judge's Campaign Committee if the office holder is identified only as "Esq." and the office holder's political office is not mentioned on the judge's campaign letterhead.

DISCUSSION

Judicial candidates may not accept an endorsement from a non-judicial candidate running for office in the same election cycle. *See Fla. JEAC Op. 10-14.* Accepting "an endorsement from another candidate running for office would impermissibly create the appearance that the judicial candidate was running as part of a slate" in violation of Canon 7A(1)(b). *Id.*

The question for this Committee is whether a partisan public office holder serving on the judge's Campaign Committee is an "endorsement." If it is, the office holder cannot serve on the Campaign Committee because the official is seeking reelection this election cycle.¹

¹ Our opinion would be different if the office holder does not garner opposition. *See Fla. JEAC Ops. 12-18 and 12-21.*

We conclude that serving on the judge’s Campaign Committee is—both from the perspective of the committee member and of the general public—an endorsement of the judicial candidate. It is difficult to imagine that any person would agree to serve on the judge’s Campaign Committee who is not endorsing the judge for reelection. The very point of establishing a committee of responsible persons is “to secure and manage the expenditure of funds for the candidate’s campaign and to obtain public statements of support for his or her candidacy.” Fla. Code Jud. Conduct, Canon 7C(1). It would strain credulity for a member of the judge’s Campaign Committee to claim not to have endorsed the judge while soliciting funds and support on behalf of the judge. More importantly, members of the general public will reasonably assume that all members of the judge’s Campaign Committee endorse the judge. In short, the very act of agreeing to serve on a committee of responsible persons constitutes an implicit, if not explicit, endorsement of the judge for whom the committee has been formed to support.

The intentional omission of the person’s public office and partisan affiliation does not dissuade us from our opinion. We have previously noted that “the party affiliation of prominent persons may be a matter of common knowledge even if those persons have never sought political office.” Fla. JEAC Op. 06-21. The truth of this observation is magnified further where, as here, the person has already been elected—and is seeking reelection—to public office.

CONCLUSION

For the foregoing reasons, we conclude that a public office holder who is up for reelection may not serve on the judge’s Campaign Committee because doing so implicates “two election-related activities that must be avoided at all costs. The first is partisanship and the second is involvement in the political races of others.” Fla. JEAC Op. 06-21.

REFERENCES

Fla. Code of Jud. Conduct, Canons 7A(1)(b), 7C(1).

Fla. JEAC Ops. 12-21, 12-18, 10-14, and 06-21.

The Judicial Ethics Advisory Committee is expressly charged with rendering advisory opinions interpreting the application of the Code of Judicial Conduct to specific circumstances confronting or affecting a judge or judicial candidate.

Its opinions are advisory to the inquiring party, to the Judicial Qualifications Commission, and to the judiciary at large. Conduct that is consistent with an advisory opinion issued by the Committee may be evidence of good faith on the part of the judge, but the Judicial Qualifications Commission is not bound by the interpretive opinions by the Committee. However, in reviewing the recommendations of the Judicial Qualifications Commission for discipline, the Florida Supreme Court will consider conduct in accordance with a Committee opinion as evidence of good faith. *See Petition of the Committee on Standards of Conduct Governing Judges*, 698 So. 2d 834 (Fla. 1997).

The Committee expresses no view on whether any proposed conduct of an inquiring judge is consistent with substantive law which governs any proceeding over which the inquiring judge may preside. The Committee only has authority to interpret the Code of Judicial Conduct, and therefore its opinions deal only with whether the proposed conduct violates a provision of that Code.

Participating Members: Judge Roberto Arias, Judge Nina Ashenafi-Richardson, Dean Bunch, Esquire, Judge Lisa Davidson, Judge Miguel de la O, Judge James A. Edwards, Judge Jack Espinosa, Jr., Judge Barbara Lagoa, Judge Spencer D. Levine, Judge K. Douglas Henderson, Patricia E. Lowry, Esquire, Judge Michael Raiden.

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