

ADVISORY OPINIONS ON JUDICIAL ETHICS

RENDERED BY THE JUDICIAL ETHICS COMMITTEE

THROUGH NOVEMBER 7, 1996

The Judicial Section of the State Bar of Texas has appointed a Committee on Judicial Ethics to render advisory opinions on the Code of Judicial Conduct. The opinions of this Committee that were handed down through November 7, 1996, are reproduced below.

JUDGE'S LETTER INCLUDED IN FOR-PROFIT PUBLICATION

OPINION NO. 192

QUESTION: A "for-profit" publisher of an excellent booklet dealing with substance abuse has asked a judge to write a letter on the judge's letterhead dealing with substance abuse to be included in the publication. The judge and law enforcement will be given free copies for distribution. May the judge write such a letter to be included in the booklet?

ANSWER: Yes, the judge may write a letter to be included in the booklet so long as the judge's letter cannot be interpreted as an endorsement of the booklet and the letter does not impact the appearance of impartiality on the part of the judge in the trial of related matters. Canon 2B specifically states that a judge should not lend the prestige of judicial office to advance the private interests of others. Further, Canon 4 permits a judge to engage in activities to improve the law, the legal system, and the administration of justice; provided that in doing so, the judge's activities must not cast doubt on the judge's capacity to decide impartially any issue that may come before the Court.

J.P. CANDIDATE REQUIRED TO COMPLY WITH CODE

J.P. CANDIDATE MAY NOT ADVERTISE "J.P. WEDDINGS"

FORMER J.P. ADVERTISING "J.P. WEDDINGS"

OPINION NO. 193

QUESTION NO. 1: May a former Justice of the Peace advertise "Justice of the Peace Weddings?"

ANSWER NO. 1: The Committee on Judicial Ethics declines to answer this question. Such question concerns legal, rather than ethical, matters and does not come within the scope of the authority of this Committee. We act only as an advisory peer group in determining the application of the Code of Judicial Conduct to undisputed factual situations; we do not address legal questions.

QUESTION NO. 2: Must a candidate for Justice of the Peace comply with the provisions of the Code of Judicial Conduct?

ANSWER NO. 2: Yes. Canon 6G(4) states that the conduct of "any other candidate for elective judicial office. . . who violates Canon 5 or other relevant provisions of the Code is subject to review by the Secretary of State, the Attorney General, or the local District Attorney for appropriate action." As contemplated by the Code, "any other candidate for elective judicial office" includes a candidate for Justice of the Peace.

QUESTION NO. 3: Is it a violation of the Code of Judicial Conduct for a candidate for Justice of the Peace who is a former Justice of the Peace to imply in his political advertising that he is a current Justice of the Peace?

ANSWER NO. 3: Yes. Canon 5(2)(ii) provides that a judge or judicial candidate shall not "knowingly or recklessly misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent."

QUESTION NO. 4: Is it a violation of the Code of Judicial Conduct for a Justice of the Peace or candidate for Justice of the Peace to advertise "Justice of the Peace Weddings" in the telephone directory?

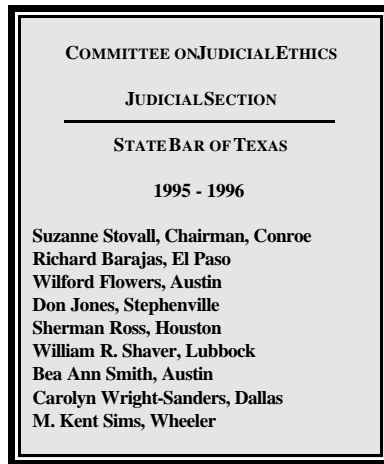
ANSWER NO. 4: Yes. As noted in the answer to Question No. 2, a candidate for Justice of the Peace is subject to the Code of Judicial Conduct. In Opinion No. 72, we determined that a "judge who advertises for performance of weddings and charges fees for weddings violates the Code of Judicial Conduct." Such conduct violates Canon 4D(1), which provides, "A judge shall refrain from financial and business dealings that . . . exploit his or her judicial position. . . ."

ACCEPTANCE OF HOLIDAY GIFTS BY JUDGE AND STAFF

OPINION NO. 194

QUESTION: Is it a violation of Canon 4(d)(4) of the Texas Code of Judicial Conduct for a judge, court coordinator, court reporter (and clerks and bailiffs) to:

1. accept holiday or seasonal gifts (assuming such to be commensurate with the occasion); or
2. attend holiday or seasonal law firm parties?



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ANSWER NO. 1: Yes. A judge may only accept a gift from a friend for a special occasion and then only if the gift is fairly commensurate with the occasion and the relationship. Canon 4D(4)(b). A Judge may accept any other gift only if the donor is not a party or person whose interests have come or are likely to come before the judge. Canon 4D(4)(c). Opinion No. 44.

The Committee concludes that a holiday or seasonal gift from a lawyer or law firm where a lawyer is not a friend is prohibited. Where a friendship exists, the gift must be commensurate with the occasion and the judge must be mindful of Canon 2A and should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary. A judge should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2B. Opinion No. 39.

ANSWER NO. 2: No. A judge may attend holiday or seasonal law firm parties if the party is open to people other than judges and court personnel. Rule 4D(4)(b) and Opinion No. 39 permits a judge to accept ordinary social hospitality. The judge should act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should not convey or permit others to convey the impression that they are in a special position to influence the judge. Canon 2(A) and (B).

The answers above apply equally to the judge's staff, court officials and others subject to the judge's direction and control. Canon 3C(2) provides a judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge. See Canon 3B(2) Code of Judicial Conduct, September 1, 1974, through December 31, 1993, and Opinions 110, 112 and 140 applying Code to court personnel.

POLITICAL ADVERTISING USING "JUDGE" WHEN NOT CURRENTLY HOLDING JUDICIAL OFFICE

OPINION NO. 195

QUESTION NO. 1: Can an individual who resigned from a County Court at Law bench to run for a District Court bench, and who is currently practicing law as a civil defense attorney, use the title "Judge" in political advertisements without running afoul of Canon 5?

QUESTION NO. 2: Can an individual who resigned from a County Court at Law bench to run for a District Court bench, and who is currently practicing law as a civil defense attorney, use election materials from previous campaigns for her county bench races that say only "Vote for Judge _____"?

ANSWER: No to both questions. Canon 5(2)(ii) provides that a judge or candidate for judicial office shall not knowingly misrepresent, among other things, the present position of the candidate. A judicial candidate who is not currently an active judge and who does not currently hold a judicial office cannot therefore use the title "Judge" in any political advertisements or campaign literature, and to do so would violate Canon 5(2)(ii).

FUND RAISING PROHIBITED BY JUDGES FOR NATIONAL CENTER FOR STATE COURTS

OPINION NO. 196

QUESTION: May a judge who is director of the National Center for State Court (a nonprofit organization serving the needs of justice in state courts) sign a letter soliciting funds for the organization mailed to lawyers who appear in front of him?

If not, may a judge solicit funds for the National Center for State Courts from lawyers who are only licensed in other states and who practice in firms with no offices in Texas?

ANSWER: No. It is a violation of Canon 4C(2) of the Texas Code of Judicial Conduct for a judge to sign a letter soliciting funds for any educational, religious, charitable, fraternal or civic organization. The National Center for State Courts is among the organizations included in this prohibition.

No. The Judicial Ethics Committee is of the opinion that the Texas Code of Judicial Conduct applies to the activities of the Texas judiciary both in and out of this state.

Historically, the code has encouraged the Texas judge to participate as an officer, director, delegate, or trustee of educational, religious, charitable, fraternal, and civic organizations. At the same time, it has prohibited a judge for engaging in the direct solicitation of funds for such organizations¹, including political parties², and from being a speaker or guest of honor at such an organization's fund raising event³. At one time the Committee interpreted then Canon 4C as permitting a judge to participate in "private" fund raising activities⁴.

The Committee is of the opinion that Canon 4C(2) permitting a judge to be listed as an officer, director, delegate, or trustee on the letterhead of a corporation, implicitly allows the use of such stationary for fund raising purposes. Judges should be encouraged to participate in professional and community activities to the maximum extent permitted by the Canons.

The question presented here serves to further emphasize the conundrum faced by members of the judiciary in attempting to further the development and efficiency of the justice system without bursting the bubble in which they must exist. In the instant situation, the placing of the judge's name on the letterhead or referring to the judge as one of the supporters of the National Center, would send enough of a message without it being a direct solicitation. Signing the solicitation letter would be prohibited.

COURT COORDINATOR COLLECTING FEES AS NOTARY PUBLIC

OPINION NO. 197

¹See Opinion 10 (1976) prohibiting a judge from soliciting funds for the National Conference of Metropolitan Judges, citing then Canon 5B(2).

²See Opinion 154 (1993) prohibiting a judge from chairing a political fund raising committee.

³See Opinion 41 (1979) prohibiting a judge from being a singer, speaker or guest of honor at a fund raising event.

⁴See Opinion 58 (1982) permitting fund raising for the Texas Center for the Judiciary, Inc.

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QUESTION: May a court coordinator who has qualified as a notary public at her own expense, not reimbursable, notarize papers for the public at a fee as long as the instrument notarized does not pertain to any case in her court?

ANSWER: No. Although the activity is an accommodation, once a fee is charged, a business activity is being conducted out of the judge's office and is a violation of Canon 2, Section B.

A much better practice would be for the county to pay for the cost of qualifying the staff member as a notary and notarization be done at no charge.

JUDGE AS SUBJECT OF A ROAST AT A FUND RAISER

OPINION NO. 198

QUESTION: Can a sitting state district judge be the subject of a local League of Women Voters annual fund raising "roast" of an elected official?

ANSWER: No. Under Canon 1, a judge should maintain the high standards and integrity of the office, which could be undermined by being the subject of a "roast." Under Canon 4C, a judge should not participate in public fund raising activities. Although under Canon 5B(2) a judge may be a speaker or a guest of honor, the conflict with other Canons would require a "no" answer to this question.

FUND RAISING BY JUDGES FOR TEXAS CENTER FOR THE JUDICIARY, INC.

OPINION NO. 199

QUESTION NO. 1: May a judge solicit contributions to the Texas Center for the Judiciary, a not for profit organization dedicated to the education of judges, from individuals, businesses or foundations promoting judicial education or similar endeavors?

ANSWER NO. 1: No. In 1982 we issued Opinion No. 52 holding that a judge may solicit funds for the Texas Center for the Judiciary from foundations and other donors not likely to come before the court without violating the letter or the spirit of the Code of Judicial Conduct. Since that time the letter of the code has changed; Canon 4C(2) now squarely prohibits a judge from soliciting funds for any educational, religious, charitable, fraternal or civic organization without excepting organizations devoted to the improvement of the law. No longer is there any language that could justify a distinction between public fund raising and solicitations directed to private foundations. While it might seem appropriate for a judge to be able to solicit funds for an organization that promotes judicial education, the Code as presently drafted does not permit any direct fund raising by Texas judges, as we noted recently in Opinion No. 196 concerning solicitation of funds for the National Center for State Courts.

QUESTION NO. 2: May a judge introduce the executive director of

the Texas Center for the Judiciary to foundations, businesses, or individuals expressing an interest in supporting the Center?

ANSWER NO. 2: Yes. As we noted in Opinion No. 196, Canon 4C(2) permits judges to be listed as an officer, director or trustee of a civic or charitable organization, and implicitly allows stationary bearing their names in such positions to be used for fund raising purposes, so long as the judge does not sign the solicitation letter. Allowing a judge to make an introduction of the executive director to a potential donor serves a similar function: it informs the donor that the judge is associated with and sponsors the Texas Center for the Judiciary. The judge must not participate in or be present during the executive director's fund raising efforts as this would constitute direct solicitation.

QUESTION NO. 3: May the executive director of the Texas Center for the Judiciary solicit contributions or sponsorships from vendors of legal materials, such as West Publishing?

ANSWER NO. 3: Because the Code of Judicial Conduct only governs the activities of judges, the Committee expresses no opinion regarding the actions of the executive director of the Texas Center for the Judiciary. The solicitation efforts of the Center directly reflect upon judges, but the executive director's activities are subject to review by the organization's board of directors and not this Committee.

MASTER MAY NOT PRACTICE IN COURT SERVED

OPINION NO. 200

QUESTION: May a master who is appointed by the county judge but serves at the will of the probate judge and hears mental health proceedings in the absence of the probate judge, practice in that probate court? The Mental Health and Retardation Code statute authorizing the appointment of the master (§574.0085) specifically states that the master shall comply with the Code of Judicial Conduct in the same manner as the county judge.

ANSWER: No. Since the master is actually sitting for the probate judge, Canon 6B(3) clearly states that such person may not practice law in the court in which he or she serves.

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RAISING MONEY FOR TEXAS ASSOCIATION OF DISTRICT JUDGES

OPINION No. 201

QUESTION NO. 1: May a committee of the Texas Association of District Judges send a letter to the members of the association or those eligible for membership in the association soliciting \$100.00? The funds would be spent to hire a lobbyist to assist the efforts of the association before the Legislature.

QUESTION NO. 2: May a committee of the Texas Association of District Judges send a letter explaining the aims of various groups that are forming to raise money to assist the judiciary in explaining their desires to the Legislature?

QUESTION NO. 3: May a committee of the Texas Association of District Judges send a letter accompanying correspondence from another group formed to raise money to assist the judiciary in explaining their desires to the Legislature?

ANSWER NO. 1: Yes. Canon 4C(2) prohibits a judge from soliciting funds for any "education, religious, charitable, fraternal or civic organization." It is the opinion of the Committee that the Code of Judicial Conduct does not prohibit such activity so long as the letter is restricted to members of the Texas Association of District Judges or those eligible for membership in the association.

ANSWER NO. 2: No. Such implicit recognition of the "various groups" would "lend the prestige of judicial office to advance the private interests" of the groups, in violation of Canon 2B.

ANSWER NO. 3: No. Given the resolution to Question No. 2, any letter accompanying the correspondence of another group would violate both the letter and spirit of the Code of Judicial Conduct.

PART-TIME MUNICIPAL JUDGE ON ZONING BOARD

OPINION No. 202

QUESTION: May a home rule city Municipal Court Relief judge, appointed by the city council, also serve on the City's Zoning Board of Adjustment, a wholly voluntary and uncompensated position also appointed by the city council?

ANSWER: Yes. Canon 6C(1)(b) exempts Municipal Court judges from the requirements of Canon 4H.

Canon 4H provides that a judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice.

JUDGE'S ENDORSEMENT OF LAWYER REFERRAL SERVICE

OPINION No. 203

QUESTION NO. 1: May a judge permit brochures in her courtroom and other public areas in the courthouse that announce the availability of a county bar sponsored lawyer referral service? The referral service is a non profit organization open to all qualified lawyers and complies with American Bar Association guidelines, State Bar guidelines, and state statutory requirements. The referral service in question screens questions to determine if legal representation is needed, informs callers if they qualify for pro bono legal services, makes a referral to the next name on a rotating list of attorneys who have agreed to provide an initial consultation for a nominal fee in their given areas of expertise, and maintains a list of attorneys available to provide legal services at a reduced fee in certain legal matters.

ANSWER NO. 1: Yes. Canon 4-B permits a judge to participate in extra-judicial activities concerning the law, the legal system, and the administration of justice. Access to our courts is usually not meaningful without the assistance of lawyers. Many members of the public do not know how to find a lawyer, especially one they can afford. A judge who advertises the existence of a lawyer referral service is promoting meaningful access to our legal system for all persons, regardless of their economic condition.

Even though the lawyers selected through this referral program will charge a fee to their clients, the judge is not promoting the individual lawyer but is assisting the public to locate a lawyer who professes familiarity with the legal issues, maintains malpractice insurance and agrees to charge only a modest consultation fee, and perhaps a reduced fee to clients of modest means. By informing the public of this bar sponsored service, the judge is improving the administration of justice, as permitted under the Code, not misusing the influence of her office.

QUESTION NO. 2: May a judge appear in a televised public service announcement and recommend that unrepresented parties contact the county bar sponsored lawyer referral service to find a lawyer before going to court?

ANSWER NO. 2: Yes. Canon 4B would allow the judge to inform the public that it is wise to have legal representation in court. Because the judge is not recommending any individual lawyer, but a lawyer referral service that is open to all lawyers who maintain malpractice insurance, announce their areas of expertise, and agree to a nominal consultation fee, the judge is not lending the influence of her office to specific lawyers but is using the influence of her office to advise the public of the desirability of obtaining a lawyer before appearing in court and informing those without other resources of one service that might help them find appropriate legal representation. Because a lawyer selected through such a referral service is never identified there is no danger that lawyers on such a list would be in a position to influence the judge who endorses the lawyer referral service.