

Supreme Court Advisory Committee on the Code of Judicial Ethics

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INVITATION TO COMMENT

SP19-08

Title

Proposed Amendments to Commentary
Following Canon 5A of the Code of Judicial
Ethics

Action Requested

Review and submit comments by
December 2, 2019

Proposed by

Supreme Court Advisory Committee on the
Code of Judicial Ethics
Hon. Richard D. Fybel, Chair

Proposed Effective Date

April 1, 2020

Contact

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Date

October 1, 2019

Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics proposes amendments to the commentary following canon 5A. The canon prohibits a judge from publicly endorsing or opposing a candidate for nonjudicial office. The commentary states that a judge, however, may publicly endorse a judicial candidate because judges are uniquely qualified to assess a judicial candidate's suitability for judicial office. The proposed amendment would also allow a judge to publicly oppose a judicial candidate. After receiving and reviewing comments on this proposal, the committee will make recommendations to the Supreme Court regarding the proposed amendments. The full text of the proposed amendments is attached.

Discussion

Canon 5A(2) provides that a judge may not "publicly endorse or publicly oppose a candidate for nonjudicial office." The commentary states:

Under this canon, a judge may publicly endorse a candidate for judicial office. Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

Thus, canon 5A(2), in referring to nonjudicial office, prohibits public endorsement and opposition. The commentary, in referring to judicial office, mentions endorsement but not opposition.

The committee concluded that the commentary should be amended to include a reference to publicly opposing a judicial candidate. The reason judges are permitted to endorse judicial candidates is that judges are knowledgeable about the characteristics of a competent judge. If judges are qualified to publicly endorse judicial candidates based on their knowledge of desirable qualities of a competent judge, they should be allowed to publicly oppose a candidate they deem unsuitable for judicial office. Permitting judges to publicly oppose judicial candidates is logical given that judges have a stake in the quality of the judiciary. The committee agreed that if a judge believes a candidate is not well-suited for judicial office, the judge should be able to say so publicly.

The Advisory Committee Commentary following canon 5A would be amended to read:

CANON 5

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

* * *

A. Political Organizations

Judges and candidates for judicial office shall not

(1) * * *

(2) make speeches for a political organization or candidate for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or

(3) * * *

ADVISORY COMMITTEE COMMENTARY: Canon 5A

* * *

Under this canon, a judge may publicly endorse or oppose a candidate for judicial office. Such ~~endorsements~~ positions are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.

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