



Indiana Judicial Nominating Commission Indiana Commission on Judicial Qualifications

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ADVISORY OPINION

Code of Judicial Conduct
Canon 7

#2-91

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

The issue is whether Canon 7 of the Code of Judicial Conduct is violated when a judge's photograph appears in a non-judicial candidate's campaign brochure.

ANALYSIS

The circumstances giving rise to this opinion involve a prosecutorial candidate's campaign brochure, on the face of which appears a photograph of a judge and the candidate. The judge is in his robe on the bench and the candidate is in front of the bench, holding open a law book, and apparently trying a case. There is no written statement of endorsement from the judge, and he has indicated to the Commission that he considered himself merely a "prop" for the advertisement. The judge in this situation serves on a court to which he was elected.

The question is whether the judge's mere appearance in the campaign literature constituted an improper political endorsement or other improper political activity. Canon 7 of the Code of Judicial Conduct is, "A Judge Should Refrain From Political Activity Inappropriate to His Judicial Office." The text goes on to provide in part, "A judge or a candidate for election to judicial office should not...publicly endorse a candidate for public office....A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice."

The rule against political endorsements applies even to elected judges, who obtain their positions through the political process and, unlike appointed judges, may attend, political gatherings and identify themselves with and

contribute to political organizations. Their campaign activities, nonetheless, must remain reasonably related to their own election interests only, and they may not endorse other candidates. See In re Roger W. Gloss, cited in Judicial Discipline and Disability Digest, July 1986 Supplement, page 233.

The Commission members believe that the judge's appearance in the photograph, even absent actual statements of support, constituted an endorsement; the simple fact of his appearance on the brochure, to any one of the voters who might recognize him as the actual judge, will appear to reflect the judge's good opinion of the candidate's merits. A judge should not even appear to endorse another candidate. Id.

The Commission members recognize however, that, a judge's own political realities may necessitate joining a party ticket and appearing in its literature with other candidates. Joint campaigning consistent generally with the Code does not constitute an improper endorsement. See Maryland Judicial Ethics Commission, Opinion 109 (1986). See also commentary to the 1990 Model Code of Judicial Conduct which states, "A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket." American Bar Association, Model Code of Judicial Conduct (1990). The following language from Patrick McFadden, Electing Justice: Law and Ethics of Judicial Election Campaigns (1990), is useful in considering what types of joint campaigning reflect the genuine necessities of a candidate's own campaign and which approach improper endorsements. "When a...candidate sponsors an activity or written product, the inclusion of other candidates...is likely to be viewed as an impermissible endorsement....When, on the other hand, the activities or materials are sponsored by third persons - ticket-makers, slate-makers, endorsing organizations - the inclusion of both the judicial candidate and the other candidates is unlikely to be viewed as an impermissible endorsement." Id. at 96.

CONCLUSION

A judge should not appear in a political candidate's campaign materials or in any way endorse a candidate for public office. However, an elected judge is permitted to join a party ticket and campaign jointly, consistent with the Code of Judicial Conduct.