

ALASKA BAR ASSOCIATION
ETHICS OPINION 88-5

Letter regarding judge standing for retention election

The Ethics Committee has been requested by a member of the judiciary to give an opinion as to the propriety of writing a letter to local newspapers supporting the retention of a judge who is being considered by the voters for retention or rejection. The letter to the news media would not be on judicial stationary, and would not identify the writer as a sitting judge. It is the opinion of the Committee that the letter would violate Canon 7(A) of the Code of Judicial Conduct.^{1/}

Canon 2(B) of the Code of Judicial Conduct states, in part:

[A judge] should not lend the prestige of his office to advance the private interests of others...

Canon 7(A) of the Code of Judicial Conduct states, in part:

(1) A judge or candidate for election to judicial office should not:...(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office...

^{1/}The Alaska Bar Association Ethics Committee will issue opinions on the propriety of conduct under the Code of Judicial Conduct at the request of a judicial officer, whether that judicial officer is an attorney or a non-attorney. The judges who are attorneys have the right to request ethics opinions regarding their own conduct in the same manner that attorneys may request opinions. The principal difference is that the attorneys are guided and governed by the Code of Professional Responsibility, while the judiciary is guided by the Code of Judicial Conduct. Additionally, as a practical matter, the Ethics Committee is unaware of any other agency in the State of Alaska which will issue advisory opinions intended to assist the judiciary. It makes no practical sense to opine as to the Code of Judicial Conduct at the request of judges who are attorneys, and refuse to do so at the request of judicial officers who are not attorneys. Accordingly, opinions as to the Code of Judicial Conduct may be sought by both attorney and non-attorney judicial officers.

(4) 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.

It is the Committee's opinion that a judge who writes a letter in support of a judicial candidate, which letter is not on judicial stationery and does not identify the writer as a sitting judge, would violate Canon 7(A) of the Code of Judicial Conduct. Such a letter would constitute a public endorsement of a candidate for public office within the terms of Canon 7(A).

The basic purpose of the Code of Judicial Conduct is to disfavor activities of judges which would tend to reduce public confidence in the integrity and impartiality of the judiciary. Accordingly, because of their offices, judges are asked to accept restrictions on their public conduct that do not apply to other citizens. (Alaska Bar Association Ethics Opinion No. 85-1; American Bar Association Informal Opinions No. 85-1513 and 1468.) A judge's involvement in the retention election of another judge, particularly where the judge's position is contrary to the recommendation of the Alaska Judicial Council, could tend to reduce public confidence in the judiciary.

As a practical matter, the amount of information available for the public to become informed as to the performance of sitting judges is limited. The Alaska Judicial Council conducts a poll, and publishes the results and its recommendations. In Alaska, unlike recently in California and Texas, there has been very little campaigning or the dissemination of public information in judicial retention elections.

One of the appropriate sources of information regarding the performance of a judge would seem to be from other members of the judiciary. Such public endorsements, however, are prohibited by Canon 7(A). Other sources of information helpful to the voters are the attorneys and litigants who have appeared before the judge who is a candidate for retention election. These potential sources of information helpful to the voters should not be prevented from disseminating this information.

In this regard, attorneys need to be aware of DR8-102 of the Alaska Code of Professional Responsibility, which states:

DR8-102. Statements Concerning Judges and Other Adjudicatory Officers.

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

Submitted by the Alaska Bar Association Ethics Committee this 20th day of October, 1988.

Adopted by the Board of Governors this 22nd day of October, 1988.

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