

**SUPREME COURT OF APPEALS
STATE OF WEST VIRGINIA**

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MEMORANDUM

From: Kirk Brandfass, General Administrative Counsel

KB

Date: October 17, 2012

Re: Election Activity Issues

In light of the approaching election, and recognizing the need for personnel in the judiciary to make ethical decisions concerning political activity, I believe that the following information will provide some helpful guidance for avoiding any activity that might discredit or compromise the judiciary.

Several provisions of the Code of Judicial Conduct set out, directly or indirectly, impermissible or permissible activity. Canon 5 is the most direct and specific. In the Code of Judicial Conduct, Canon 5 is entitled "A judge or judicial candidate shall refrain from inappropriate political activity." As set out in the "terminology" section of Canon 6, "candidate" is defined as "a person seeking selection for or retention in judicial office by election or appointment."

Canon 5A(1) provides that, except as otherwise authorized in other specified provisions of Canon 5, a judge or a candidate [for a judicial office] **shall not**:

- (a) act as a leader or hold an office in a political organization;
- (b) publicly endorse or publicly oppose another candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) publicly display any campaign paraphernalia in any area where judicial activities are conducted or knowingly permit any such display, or
- (e) solicit funds for a political organization or candidate.

By its very terms, Canon 5 applies to judges or judicial candidates. However, Canon 5A(3)(b), which applies to a candidate for a judicial office, extends certain restrictions on political activity **to court employees** by providing that "a candidate for a judicial office shall **prohibit** employees and officials who serve at the pleasure of the candidate, and shall **discourage** other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon."

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The Code of Judicial Conduct also deals with specific activities in which a judge or candidate *may* be involved. Canon 5C(1) provides that a judge or judicial candidate, except as prohibited by law, may:

- (a) at any time,
 - (i) purchase tickets for and attend political gatherings;
 - (ii) identify himself or herself as a member of a political party and
 - (iii) contribute to a political organization and may
- (b) when a candidate for election,
 - (i) speak to gatherings on his or her own behalf;
 - (ii) appear in newspaper, television, and other media advertisements supporting his or her candidacy; and
 - (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

You may access synopses of Judicial Investigative Commission advisory opinions regarding political activity at the following Internet address:

<http://www.courtsww.gov/legal-community/judicial-investigaion.html>

You may access the Code of Judicial Conduct at the following Internet address:

<http://www.courtsww.gov/legal-community/court-rules/judicial-conduct/judicial-conduct.html>

In addition to Canon 5, it is important, perhaps especially with respect to election activity, for *judicial officers* to note the Canon 3B(7) prohibition against *ex parte* communications along with Canon 3C(2) and (5) regarding judicial officers' administrative responsibilities with respect to staff. All of the provisions of the Canons apply expressly to all sitting justices, judges and magistrates. Certain provisions apply to senior-status judges, family court judges, juvenile referees and mental hygiene commissioners (see Canon 6).

Questions about the ethical propriety of specific political activity should be directed to counsel for the Judiciary Investigation Commission at 304-558-0169. It would be advisable for *other personnel* to consult also with their supervising judge. Since Canon 3C(2) requires supervising judges to require other personnel to adhere to the standards of fidelity and diligence that apply to a judge, judges may wish to contact the Judicial Investigation Commission concerning issues relating to political activity of personnel under their supervision.