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COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
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JUDICIAL ETHICS OPINION JE-39

Formal

QUESTION: May a judge be a member of a political club?

ANSWER: No.

REFERENCES: Kentucky Constitution Sec. 117; SCR 4.300, Canon 7A; U.S. Advisory Opinion 19.

OPINION: (October 1982):

Article 117 of the Kentucky Constitution provides for the election of judges "on a nonpartisan basis as provided by law." The applicable law governing such elections is to be found in SCR 4.300, Canon 7, which governs the political activities of judges and judicial candidates.

It should be noted that SCR 4.300, the Code of Judicial Conduct, was adopted nearly verbatim from the American Bar Association Code of Judicial Conduct. Canon 7 of that Code is necessarily general in its requirements because it applies to all types of judicial elections - partisan and nonpartisan as well as the so-called Missouri type of election in which a judge runs against his record. We respectfully suggest to the Supreme Court of Kentucky that our Canon 7 be amended to make it more relevant to the nonpartisan process which is mandated by our constitution.

In carrying out the constitutional mandate for nonpartisan elections, we believe that every effort should be made to keep partisan politics out of judicial races, and that Canon 7 should be interpreted in such a way as to further that objective. Although Canon 7 does not explicitly forbid membership in a political club, we think that its various provisions, taken together and read in light of the constitutional provision above quoted, clearly contemplates a ban on such membership.

Thus, Canon 7A(1)(c) states that a judge or a candidate for judicial office should not "solicit funds for or pay an assessment or make a contribution to a political organization or candidate...." We hold that the payment of dues to a political club, no matter how small the amount, constitutes an assessment or contribution to a political organization and is therefore forbidden by the express language of Canon 7A(1)(c) above quoted.

Again, Canon 7A(2) reads in part as follows:

... A judge or candidate ... may not identify himself as a member of a political party in any form of advertising, or when speaking to a gathering on his own behalf. **If not initiated by the judge or candidate ... and only in answer to a direct question, he may identify himself as a member of a particular political party.** (Emphasis added)

This language is unambiguous in its ban on public identification of his political affiliation by a judge or judicial candidate, except under the circumstances stated. It is safe to assume that no person would become a member of a Democratic or Republican club unless he were a member of that political party, and membership in such a club is thus tantamount to announcing one's party affiliation. Although joining a political club is not, strictly speaking, a "form of advertising," nevertheless a judge or candidate who joins such a club is, in effect, announcing his party affiliation. Since such an announcement is not "in answer to a direct question," we hold that it is prohibited by Canon 7A(2).

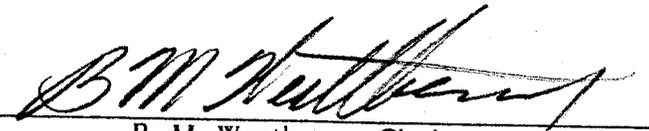
In accord with our holding is Opinion 19 of the Advisory Committee of the Judicial Conference of the United States. There the judge advised the committee "that the club is most active politically but that his participation is limited to taking lunch at the club on an average of once a year." In spite of his infrequent appearances at the club, the Advisory Committee held that the judge should resign his membership. The following rationale is found in that opinion:

While here the judge asking for our opinion does not actively participate in the club's activities, the club itself is active politically and thus his membership could be considered as giving the appearance of partisan activities.

Our decision here is not to be taken as a prohibition of appearances at political gatherings on behalf of one's candidacy. Such appearances are specifically permitted by Canon 7A(2), and may be easily distinguished from membership in a political club. Campaign appearances at political gatherings do not equate with membership in the party any more than appearances before labor unions, social clubs and business groups can be said to amount to membership in those groups. Rather, such appearances merely serve as a forum for the candidate.

We recognize that our ruling here may be regarded by some as an infringement of a judge's or candidate's rights of freedom of speech and association. *Morial v. Judiciary Commission of Louisiana*, 565 F.2d 295 (5th Cir. 1977), cert. den. 435 U.S. 1013 (1978), upholding a resign-to-run requirement, addressed those constitutional issues and found an overriding state interest in an independent judiciary. And it is commonly said that a judge or judicial candidate voluntarily relinquishes certain rights when he becomes a judge or candidate. We find the following language in ABA Formal Ethics Opinion 113:

It is generally accepted in a rational philosophy of life that with every benefit there is a corresponding burden. Accordingly, one who accepts judicial office must sacrifice some of the freedom in political matters that otherwise he might enjoy. When he accepts a judicial position, ex necessitate rei, he thereby voluntarily places certain well recognized limitations upon his activities.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary