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JUDICIAL ETHICS OPINION JE-130

FORMAL

April 8, 2022

As Corrected July 18, 2022

The Judicial Ethics Committee received several questions from a Judicial Candidate earlier this year. The questions and the responses given are as follows:

QUESTION 1: May a judicial campaign committee solicit contributions from political action committees?

ANSWER 1: The Judicial Ethics Committee is not aware of any statute prohibiting a judicial candidate's campaign committee from accepting money from a Political Action Committee. Case law indicates accepting money from Political Action Committees is permissible so long as the contribution falls within statutory limits. *Dean v. Bondurant*, 193 S.W.3d 744, 751 (Ky. 2006) (citing *Adair v. State, Dept. of Educ.*, 474 Mich. 1027, 709 N.W.2d 567, 579-581 (2006), permitting PAC contributions to judicial campaigns.) The Kentucky Revised Statutes prohibit ANY candidate, judicial or otherwise, from making a promise of anything of value or making any commitment to vote for or against anything in return for campaign donations. KRS 121.055.

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QUESTION 2: May a judicial campaign committee solicit endorsements from elected partisan officials?

ANSWER 2: No. **New Code, Canon 4, Rule 4.1(A)(7)**; Judicial Ethics Opinion JE-66; *Winter v. Wolnitzek*, 834 F.3d 681, 691-692 (6th Cir. 2016),

QUESTION 3(a): May a judicial campaign committee advertise endorsements from elected partisan officials?

ANSWER 3(a): No. **New Code, Canon 4, Rule 4.1(A)(7)**; Judicial Ethics Opinion JE-66; *Winter v. Wolnitzek*, 834 F.3d 681, 691-692 (6th Cir. 2016). Listing partisan officials as endorsers of a judicial candidate renders hollow Kentucky's Constitutional requirement of nonpartisan campaigns. **New Code, Canon 4, Rule 4.1, COMMENT** [10].

QUESTION 3(b): Is it permissible if the officials are listed as holding their partisan office titles?

ANSWER 3(b): No. **New Code, Canon 4, Rule 4.1(A)(7)**; Judicial Ethics Opinion JE-66, *Winter v. Wolnitzek*, 834 F.3d 681, 691-692 (6th Cir. 2016). Listing partisan officials as endorsers of a judicial candidate renders hollow Kentucky's Constitutional requirement of nonpartisan campaigns. **New Code, Canon 4, Rule 4.1, COMMENT** [10].

QUESTION 3(c): Is it permissible to simply list the individual's names so long as the corresponding partisan office is not listed?

ANSWER 3(c): Kentucky's Judicial elections are nonpartisan by Constitutional mandate, KY.CONST. Section 117, and previous Kentucky authority has barred judicial candidates from listing current partisan officials as endorsers of their campaign without creating an exception for accepting an endorsement so long the official's title was not attached. Judicial Ethics Opinion JE-66.

QUESTION 4: May a judicial campaign committee's advertising include symbols closely associated with a political party in its advertising (i.e., democratic – donkey & republican – elephant)?

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ANSWER 4: No. Both federal and state case law have held previously that a judicial candidate may “announce” during his or her campaign his or her membership in a partisan political party. *Winter v. Wolnitzek*, 834 F.3d 681, 688-689 (6th Cir. 2016); *Winter v. Wolnitzek*, 482 S.W.3d 768 (Ky. 2016). Nowhere in this case law, however, does it state that a judicial candidate is free to “render hollow” Kentucky’s Constitutional requirement that judicial campaigns be nonpartisan. KY. CONST. Section 117; **New Code, Rule 4, Rule 4.1, COMMENT [10]**.

QUESTION 5(a): May a judicial candidate’s campaign committee advertise a candidate’s policy positions without stating how the candidate would commit to ruling if faced with the issue on the bench?

ANSWER 5(a): Yes. The United States Supreme Court has clearly stated that a judicial candidate may announce his or her legal and political views so long as that judicial candidate does not commit to ruling a particular way. *Republican Party of Minnesota v. White*, 535 U.S. 923, 122 S.Ct. 1229, 152 L.Ed.2d 205 (2002). The **New Code** also states this rule. **Canon 4, Rule Rule 4.1(A)(13)**.

QUESTION 5(b): May a judicial campaign committee state that a former legislator turned judicial candidate sponsored legislation on a major policy during their tenure as a legislator?

ANSWER 5(b): Once an individual becomes a judicial candidate, that individual is bound by the same rules that bind all judicial candidates. SCR 3.130(8.2)(b). Without knowing what legislation the candidate refers to, it is impossible to say more.

QUESTION 6: May a judicial campaign committee advise voters of the political party the candidate belongs to in a mass advertisement such as on its logos or through a direct statement by the candidate?

ANSWER 6: Judicial Candidates have been permitted to announce their political affiliation in mass mailings to supporters or potential supporters since the Sixth Circuit case of *Carey v. Wolnitzek*, 614 F.3d 189 (6th Cir.

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2010). The Kentucky Supreme Court recognized this fact in the case of *Winter v. Wolnitzek*, 482 S.W.3d 768 (Ky. 2016). A judicial candidate may announce his or her political affiliation in a mass mailing, but a candidate may not claim to be the official nominee of a political party and he or she may not make claims or statements that render hollow Kentucky's Constitutional requirement that judicial elections be nonpartisan. KY.CONST. Section 117; **New Code, Canon 4, Rule 4.1, COMMENT [10]**.

SECTION I.

The Judicial Ethics Committee is not aware of any statute that prohibits a judicial candidate from accepting money from a Political Action Committee. Additionally, Kentucky Supreme Court case law indicates that accepting money from a Political Action Committee is permissible so long as the contribution falls within statutory limits. *Dean v. Bondurant*, 193 S.W.3d 744, 751 (Ky. 2006), (citing *Adair v. State Dept. of Educ.*, 474 Mich. 1027, 709 N.W.2d 567-581 (2006), permitting PAC contributions to Judicial campaigns.) Soliciting money from any person, natural or otherwise, however, is prohibited if such support is obtained by promising anything of value or committing the candidate to take any particular action once that candidate is elected. KRS 122.055.

SECTION II.

The **New Code** specifically prohibits a judicial candidate's campaign committee from seeking, accepting or using an endorsement from a partisan political official. **Rule 4.1(A)(7)**; Judicial Ethics Opinion JE-66, Question 1; *Winter v. Wolnitzek*, 834 F.3d 681, 691-692 (6th Cir. 2016). As stated in JE-66, an endorsement from a public official for a judicial candidate is essentially an endorsement from the judicial candidate for that public official. The Sixth Circuit recognized in *Winter v. Wolnitzek* that endorsements are most often made on a *quid pro quo* basis and Kentucky has a compelling interest in keeping its judicial candidates from being unable to (and being perceived as being unable to) be fair and impartial in a case that involved one official who had endorsed the judge and one who had not. By keeping its judicial candidates "above the partisan fray" and out of the world in which political favors are exchanged, Kentucky furthers its Constitutional mandate of nonpartisan campaigns, KY.CONST. Section 117, in addition to its compelling interest in preserving the integrity and impartiality as well as the appearance of same in its judicial officers. *Id.* at 691-692.

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SECTION III

A judicial candidate may not advertise the endorsement or endorsements made by partisan public officials. The reason is that judicial elections are nonpartisan according to KY. CONST. Section 117. The **New Code, Canon 4, Rule 4.1, COMMENT** [10] provides that the endorsement of a judicial candidate by a partisan public official is almost the same as that judicial candidate campaigning as the official nominee of a particular party. Kentucky case law holds that a judicial candidate may not campaign as the official nominee of a partisan party. *Winter v. Wolnitzek*, 482 S.W.3d 768 (Ky. 2016). While a judicial candidate may “announce” his membership in a particular party, *Republican Party of Minnesota v. White*, 535 U.S. 923, 122 S.Ct. 1229, 152 L.Ed.2d 205 (2002); *Winter v. Wolnitzek*, 834 F.3d 681, 688-689 (6th Cir. 2016); judicial candidates are not permitted to “render hollow” Kentucky’s Constitutional commitment to nonpartisan judicial campaigns. KY.CONST. Section 117; **New Code, Canon 4, Rule 4.1, COMMENT** [10]. Advertising the endorsement of a partisan public official would interject an impermissible partisan character into a judicial election and cross this line. It makes no difference if the public official is listed with the title of his office or not. Past Kentucky authority has not made an exception on this basis. Judicial Ethics Opinion JE-66, Question 1. Rather the distinction is made according to whether the public official is presently holding public office or not. Past public officials may be listed as endorsing a judicial candidate along with the title of their former office. Judicial Ethics Opinion JE-113.

This same reasoning requires that a judicial candidate not employ partisan symbols in his or her campaign literature such as the “elephant” for the Republican party or the “donkey” for the Democratic party. Using such symbols interjects an impermissible partisan character into a judicial campaign to the extent that it “renders hollow” the intended nonpartisan rule. **New Code, Canon 4, Rule 4.1, COMMENT** [10]. Judicial Candidates are, however, permitted to identify their partisan affiliation in mass mailings to potential supporters. *Carey v. Wolnitzek*, 614 F.3d 189 (6th Cir. 2010); *Winter v. Wolnitzek*, 482 S.W. 3d 768 (Ky. 2016).

SECTION IV

It is well established that a judicial candidate may announce his or her personal beliefs regarding various legal and political issues so long as the candidate does not commit to rule in a particular way should the question come before him or her in court. **New Code, Canon 4, Rule 4.1(A)(13)**. The United States Supreme Court imposed this requirement in the case of *Republican Party of Minnesota v. White*, 535 U.S. 923, 122 S.Ct. 1229, 152 L.Ed.2d 205 (2002). To the extent a judicial candidate would be permitted to advertise as part of his or her campaign that the candidate had supported a particular piece of legislation is difficult to say without

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knowing what legislation the candidate refers to. The fact that a judicial candidate, as a legislator, had supported certain legislation, would be a matter of public record. At the same time, once an individual becomes a judicial candidate, he or she is bound by the same rules that bind all judicial candidates. SCR 3.130(8.2)(b).

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and the scope of the Canons of Judicial Ethics and legal authority interpreting the Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Additionally, all judges and judicial candidates need to know that they have the right to obtain review by the Kentucky Supreme Court of any formal opinion issued by the Judicial Ethics Committee on motion filed in compliance with SCR 4.130(4) and all Formal and informal opinions issued by the Judicial Ethics Committee are subject to review by the Kentucky Supreme Court on its own motion at any time. SCR 4.130(4).

Very truly yours,

/S/ Irv Maze

Chair and Judge,
Court of Appeals
The Ethics Committee of the
Kentucky Judiciary

Cc: The Honorable C. Rene' Williams, Judge, Circuit Court
The Honorable Jeffrey Scott Lawless, Judge, District Court
Donald H. Combs, Esq. and Vice Chair
Jean Collier, Executive Secretary