



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

403 WAPPING STREET
FRANKFORT, KENTUCKY 40601

ANTHONY M. WILHOIT
Court of Appeals

JOSEPH H. ECKERT
Circuit Court

B.M. WESTBERRY, CHAIRMAN
Attorney

THOMAS J. KNOPF
District Court

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-38

Formal

Question #1: May a judicial candidate's campaign committee advertise the fact that his candidacy has been endorsed by labor unions, fraternal groups, etc?

Answer: Yes.

Question #2: May a judicial candidate express an opinion on the use of computers or other means of making the courts more efficient? May he comment on the pros and cons of court rules or proposed rules? May he comment on such things as the effects of plea bargaining on the court system?

Answer: He must avoid any statements which could be interpreted as a pledge of judicial conduct or which appeal to prejudices or special interests.

Question #3: May a judicial candidate advertise on television and radio?

Answer: Yes.

References: SCR 4.300, Code of Judicial Conduct, Canon 7; American Bar Association Committee on Ethics and Professional Responsibility Informal Opinion 1444; In re Baker, 218 Kan. 209, 542 P.2d 701 (1975); Thode, Reporter's Notes to Code of Judicial Conduct (Amer. Bar Assn. 1973).

Opinion: (May 1982):

Question #1:

Canon 7B(2) of the Code of Judicial Conduct states that the campaign committee of a judicial candidate may "obtain public statements of support for his candidacy." We think that the use of the word "public" in this context means that statements of support may be made public by the campaign committee through advertisements, for they could not otherwise be considered "public" statements of

support. Such advertisements should, of course, be couched in language which would "maintain the dignity appropriate to judicial office" required by Canon 7B(1)(a). Publicity should not be given to an endorsement by an incumbent judge, since such an endorsement is prohibited by Canon 7A(1)(b) as interpreted by our Judicial Ethics Opinion JE-2.

Question #2

The second question is governed by Canon 7B(1)(c) which reads as follows:

[A candidate] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other facts.

The American Bar Association Committee on Ethics and Professional Responsibility, in its Informal Opinion 1444, addressed the question of whether a candidate could use as his slogan, "A strict sentencing philosophy." In condemning the proposed slogan, the Committee said:

It is our view that use of the proposed slogan relating to a strict sentencing philosophy is barred by Canon 7B(1)(c) of the Code of Judicial Conduct. It can be viewed by the voters as both a campaign pledge of judicial conduct and also an announcement of your position on sentencing which is a disputed legal and political issue.

A similar statement may be found in *In re Baker*, 218 Kan. 209, 542 P.2d 701 (1975), involving the legitimacy of attacks on the fitness of the respondent's opponent. In discussing the philosophy behind Canon 7, the court pointed out at p. 701 of 542 P.2d:

It is those pledges and promises which appeal to prejudices or special interest which are prohibited. On the other hand, a pledge of increased efficiency such as was made here is aimed at the legitimate interests of the entire electorate; it is one of those pledges permitted as being for the "faithful performance" of a judge's duties.

Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Association 1973) has this to say at 98:

What kind of campaign may the candidate for judicial office conduct? He cannot campaign on a platform of partiality

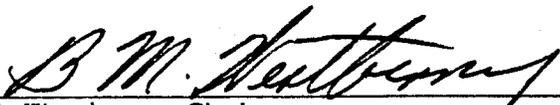
for specific persons or groups, nor can he commit himself in advance on disputed legal issues, nor should he misrepresent himself in any way The Committee was also of the opinion that a candidate should not base his campaign on his view of the solutions to disputed political issues. He can campaign on the basis of his ability, experience, and record.

The Canon and the decisions cited herein do not draw any distinction between substantive and procedural matters, nor do we think any such distinction should be drawn. Rather, the appropriate distinction is between statements on disputed legal or political issues on the one hand, and statements addressed to general improvement of the legal system on the other hand. For example, a statement that a particular rule of court should be changed could be interpreted as a pledge to take action on changing it, and would thus be prohibited by Canon 7B(1)(c). But a pledge to work for increased efficiency of the judicial system by the use of computers is not likely to be considered a "disputed legal or political issue," and would therefore be acceptable. Plea bargaining is, of course, a highly controversial issue which the judicial candidate would be wise to avoid. Any statement on this or other controversial issues would run the risk of being interpreted as a campaign pledge of future judicial conduct.

In short, the judicial candidate must always bear in mind that he should avoid any statements which could be interpreted as a pledge of future judicial conduct or which appeal to special interests or prejudices.

Question #3:

The third question on the use of radio and television in judicial campaigns does not present a question of judicial ethics. Judicial candidates are, of course, allowed to campaign and to advertise. If they could not use the accepted media of communication, they could not wage an effective campaign.



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