
E-73-4 Ethical guidelines for attorney-judicial candidate

Your staff counsel has indicated that your office has had several inquiries concerning the rules or ethical prohibitions for attorneys who are candidates for judicial office.

There appears to be no guidelines set forth in the Code of Professional Responsibility for attorneys other than the provision in Canon 8 which prohibits a lawyer from making false or misleading statements concerning a judge.

However, the Wisconsin Code of Judicial Ethics in Rules 8, 12, and 13 contains the guidelines for sitting judges who are candidates for judicial office.

The committee is confronted with the problem as to whether it may extend the provisions of the Code of Judicial Ethics to nonjudicial officers who are candidates for a judicial position.

There is precedent for such extension, in that American Bar Association Formal Ethics Opinion 312 sets forth guidelines for judicial candidates on the basis of the now supplanted Canons 28 and 30, of the old Canons of Judicial Ethics. In that opinion the ABA Committee held: "This holding, of course, is of significance in that it tends to place both the incumbent judge and the aspiring judge on the same footing so far as the canons are concerned and to impose the stricter burden imposed by the Canons of Judicial Ethics upon both candidates rather than the lesser burden imposed only by the Canons of Professional Ethics." The ethics rules applicable to sitting judges would be extended to lawyer candidates for judge on the fairness doctrine.

This committee has adopted the reasoning of ABA Opinion 312 in 1971 in extending the judicial testimonial opinion to judicial candidates. The rule announced in the October 26, 1970, committee opinion made it improper for lawyers to participate in testimonial dinners or like affairs for sitting judges who were judicial candidates, unless the function was sponsored by a bar association. It was extended to apply to testimonials for a lawyer-candidate for the office of judge under the concept of the fairness doctrine, in Advisory Opinion E-71-1 of this committee.

It is concluded that this committee shall adopt an advisory opinion extending the Wisconsin Code of Judicial Ethics Rules 8, 12, and 13 relating to the conduct of judicial candidates to include attorneys who are seeking judicial office. The committee further commends the guidelines set forth in ABA Formal Opinion 312 to all candidates for judicial office.