
1/73 Lawyers in judicial campaigns

We have had a number of inquires concerning the ethical propriety of attorneys participating in campaigns to assist in the nomination and election of trial and appellate court judges in this state. Further, they have asked that if such conduct is permissible, what activities may an attorney engage in during the course of such election campaigns.

First, it is abundantly clear from research of professional ethics materials that lawyers not only have a right, but are charged with the responsibility to inform members of the lay public as to a judicial candidate's qualifications and make such appraisal known to the voters in a proper and dignified manner. Both the old Canons of Professional Ethics and the present Code of Professional Responsibility address this subject. Old Canon 2 was the prior reference, and EC 8-6 sets forth the current ethical position of the Bar.

The Professional Ethics opinions are in accord with the above Canons.

Formal Opinion 189, American Bar Association Committee on Professional Ethics, states that an attorney may endorse a candidate for judicial office and solicit endorsements from other attorneys when prompted by a belief in the superior qualifications of such candidate for judicial service and not by personal or selfish motives.

ABA Informal Opinion 948 states that it is not improper for a bar association to conduct a poll wherein bar members are asked to express an opinion as to whether an incumbent judge is qualified to hold office.

In *Axel v. State Bar*, 21 Wis. 2d 661, the Supreme Court ruled that an integrated State Bar may poll its members to determine whether a United State District Judge, nominated by the President of the United States, was qualified to hold office.

ABA Informal Opinion 817 states that a judicial candidate may announce that he has the support of X number of former local bar association presidents or that he is endorsed by X number of lawyers whose names are listed. It noted that the judge should approach only a few lawyers and that his campaign committee should contact the others.

ABA Informal Opinion 744 is an excellent summary of the steps a lawyer may take in campaigning for a judge in a non-partisan election where there is no public screening committee, as in a Missouri Plan. It has plentiful citations to the old Canons of Professional Ethics and the prior ABA Canons of Judicial Ethics, which precepts have been embodied in the recently adopted codes which supplanted them.

Disciplinary Rules 8-102(A) and (B) prohibit lawyers from knowingly making false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office, or otherwise making false accusations against a judge or adjudicatory officer.

Judicial candidates must observe Wisconsin Code of Judicial Ethics Rules 12 and 13 which briefly set forth the caveats for candidates and their supporters. The State Bar Professional Ethics Committee is formulating an opinion which will extend the provisions of Rules 12 and 13 to lawyer candidates for judicial positions.

One caveat should be added for Wisconsin Lawyers. The State Bar Professional Ethics Committee in advisory opinions in October, 1970, and February, 1971, concluded that it is improper for an attorney to organize alone or with other individual attorneys or lay persons or groups, a testimonial dinner or event for a sitting judge or judicial candidate seeking office. The opinion held that it is unethical for an attorney to purchase tickets for, attend, or contribute to such testimonial unless the affair is organized by the bar association.

The above opinion is helpful in that it cites ABA Formal Opinion 312 regarding political activities in which judges and lawyers are permitted to engage, and other guidelines recommended in judicial campaigns, ABA Formal Opinion 312 and Informal Opinion 744 are appended to this paper for guidance.

Probably no question is raised more often than the matter of financial support to a judicial campaign.

Lawyers are acutely aware of the ethical prohibition of giving or lending anything of value to a judge, official or employee of a tribunal, spelled out in DR 7-110, and the similar prohibition against a judge or similar official from accepting such gifts set out in the Code of Judicial Ethics.

However, the Wisconsin Supreme Court has clarified the matter of election campaign contributions in Code of Judicial Ethics Rule 8. After noting the above

prohibitions, the Court in a footnote states “This section does not prohibit reasonable financial contributions to a voluntary campaign committee in behalf of a judicial candidate. The non-partisan elective process as now constituted is an expensive one and until other means of conducting and financing judicial elections are devised, this rule should be so construed.”

Likewise, ABA Formal Opinion 226 gave the same permission to lawyers to contribute monetarily to such judicial campaigns, even where a lawyer was likely to appear before the jurist. The ABA Committee also suggested that contributions be made to a campaign committee rather than the candidate.

The above material is a summary of the principal ethics code provisions and ethics opinions relating to the subject of attorney participation in judicial election campaigns. There is no attempt herein to set forth the legal responsibilities which a lawyer must assume in his involvement in such campaigns.