



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

October 25, 2012

Re: JIC Advisory Opinion 2012-20.

Dear Magistrate :

Your request for an advisory opinion was recently reviewed by the Judicial Investigation Commission. You indicated that you were invited to participate in a debate that would be held at a local school. You further state that the Prosecuting Attorney has rendered an opinion that involvement in the debate would "greatly risk violating Canon 5 [of the Code of Judicial Conduct] and [judicial] candidates should refrain from participating in such 'debates' other than to state their name, candidacy for the office and willingness to serve." You want to know if you may participate in the debate.

Mere participation in a debate is not a *per se* violation of Canon 5 of the Code of Judicial Conduct. Indeed, Canon 5C(1)(b)(i) allows a candidate for judicial office to "speak to gatherings on his or her own behalf."

A potential violation of Canon 5 depends only on what a judicial candidate says during the debate. Several provisions of Canon 5 set forth the parameters of what a candidate can and cannot say during a campaign. Canon 5A(1) states that a judge or a candidate for judicial office shall not publicly endorse or publicly oppose another candidate for public office, make speeches on behalf of a political organization or solicit funds for a political organization or candidate. Canon 5A(3)(d) states:

A candidate for a judicial office shall not:

- (i) Make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
- (ii) Make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or
- (iii) Knowingly misrepresent the identity, qualifications, present positions or other fact concerning the candidate or an opponent.

Moreover, the Commentary states that "a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views." The Commentary also notes that Section 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Canon 5A(3)(e) allows a judicial candidate to "respond to personal attacks or attacks on [his/her] record as long as the response does not violate Section 5A(3)(d)." Lastly, Canon 5C(1)(a)(2) allows a judicial candidate to identify himself or herself as a member of a political party.

Judicial candidates are strongly encouraged to follow the tenets of Canon 5 when speaking publicly at events such as debates. Candidates are also urged to have the moderator read the relevant provisions of Canon 5 to the audience so that it will know the limitations imposed on all who participate. The Commission is not unmindful of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) in reaching this conclusion. However, we have consistently stated that "[t]he current code remains in effect until the State Supreme Court modifies or amends the code." See JIC Advisory Opinions 8/19/2005 and 3/24/2008.

It is hoped that this opinion fully addresses the ethical issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Wilson", with a long horizontal flourish extending to the right.

Ronald E. Wilson, Chairperson
Judicial Investigation Commission

REW/tat