

Supreme Court Advisory Committee on the Code of Judicial Ethics

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INVITATION TO COMMENT

SP19-09

Title

Proposed Amendment to Commentary
Following Canon 5B(4) of the Code of
Judicial Ethics

Action Requested

Review and submit comments by
December 2, 2019

Proposed by

Supreme Court Advisory Committee on the
Code of Judicial Ethics
Hon. Richard D. Fybel, Chair

Proposed Effective Date

April 1, 2020

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Date

October 1, 2019

Summary

The Supreme Court Advisory Committee on the Code of Judicial Ethics proposes amending the commentary following canon 5B(4) to add a cross-reference to Government Code section 8314. That statute prohibits elected officials from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. After receiving and reviewing comments on this proposal, the committee will make recommendations to the Supreme Court regarding the proposed amendment. The full text of the proposed amendments is attached.

Discussion

Canon 5B addresses the conduct of judges during judicial election campaigns and the appointment process. Canon 5B(4) and its commentary concern the solicitation of campaign contributions and endorsements.

The committee considered whether the canon should prohibit a judge from campaigning in a courthouse, including soliciting campaign contributions or endorsements. The California Judges Association Judicial Ethics Committee has consistently advised judges against engaging in any form of campaigning in the courthouse or using any state resources for campaign purposes.

In considering this issue, the committee noted that Government Code section 8314, subdivision (a), prohibits elected state and local public officials from using public resources for a campaign activity. "Public resources" includes buildings owned by the state as well as "state-compensated

The proposals have not been approved by the Supreme Court and are not intended to represent the views of the court. These proposals are circulated for comment purposes only.

time.” (Gov. Code, § 8314, subd. (b)(3).) There is a de minimis exception in the statute providing that “campaign activity” does not include “the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.” (Gov. Code, § 8314, subd. (b)(2).) The language of section 8314 appears to prohibit campaigning or soliciting contributions in a courthouse, but there is no case on point interpreting the statute.¹

The committee concluded that it would not be advisable to add to the canon a specific prohibition against campaigning in the courthouse. An outright ban would eviscerate the minimal use exception in section 8314. For example, such a ban would preclude a judge who is being challenged in an election from using the judge’s cellphone in chambers on a lunch break to make election-related calls. Rather than interpreting the statute (including the minimal use exception) in a canon, the committee agreed that the commentary should simply reference the statute.

¹ It is illegal for a person to receive or deliver a campaign contribution in a state office building. (Gov. Code, § 84309.)

The Advisory Committee Commentary following canon 5B(4) would be amended to read:

CANON 5

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY

* * *

A. * * *

B. Conduct During Judicial Campaigns and Appointment Process

(1) – (3) * * *

(4) In judicial elections, judges may solicit campaign contributions or endorsements for their own campaigns or for other judges and attorneys who are candidates for judicial office. Judges are permitted to solicit such contributions and endorsements from anyone, including attorneys and other judges, except that a judge shall not solicit campaign contributions or endorsements from California state court commissioners, referees, court-appointed arbitrators, hearing officers, and retired judges serving in the Assigned Judges Program, or from California state court personnel. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B.

ADVISORY COMMITTEE COMMENTARY: Canon 5B(4)

Regarding campaign contributions for a judge’s own campaign, see Canon 3E(2)(b) and accompanying Commentary addressing disclosure of campaign contributions. See also Code of Civil Procedure section 170.1, subdivision (a)(9), which provides that a judge is disqualified if the judge has received a campaign contribution exceeding \$1,500 from a party or an attorney in the proceeding. Although it is improper for a judge to receive a gift from an attorney subject to exceptions noted in Canon 4D(6), a judge’s campaign may receive attorney contributions. See also Government Code section 8314, which prohibits any elected state or local officer from using public resources, including buildings, telephones, and state-compensated time, for a campaign activity. Under section 8314, subdivision (b)(2), “campaign activity” does not include “the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.”

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C. – D. * * *