

Campaign Ethics, Disqualification, and Extra-Judicial Private Practice Activities

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Presented by The Ethics Committee

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Campaign Ethics: Applicability

Presented by
Honorable Michael F. Magistrali

Source:

- Canon 5, Code of Probate Judicial Conduct

“A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.”

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- Does Canon 5 Apply to Me?
 - Just Say Yes!

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- Canon 5, Section A(1), (3): All Judges, including retiring judges, and judicial candidates
 - Canon 5, Section A(2), (4) and (5): Judicial Candidates
 - Canon 5, Section B: Incumbent Judges

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- “Judicial candidate:” A person seeking election for, or retention in, Judicial office
 - Candidacy commences with:
 - Public announcement
 - Declaration or filing with election or appointment authority
 - Authorization of solicitation or acceptance of contributions or support

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- Tangentially: Family members, i.e., spouse, child grandchild, parent, grandparent, or other relative or person with a close familial relationship
 - Employees and officials who serve at the pleasure of the judicial candidate
 - “Other persons”

Campaigning and Advertising, Political Party Activities, and Endorsements

**Presented by
Honorable Matthew J. Jalowiec**

- A **successful candidate** is subject to **judicial** discipline **after** becoming a judge, whether or not a judge during the campaign
- An **unsuccessful candidate** is not subject to **judicial** discipline, but, if an attorney, may be subject to a grievance
- An **unsuccessful incumbent judge** is subject to judicial discipline until he / she no longer holds office. If an attorney, may be subject to a grievance

Campaigning and Advertising



- Section 5A(2)(a) requires that a judicial candidate maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary. A judicial candidate is also required to encourage members of his or her family to adhere to same standards of political conduct in their support of the judicial candidate.
- Section 5A(3)(b) permits a judge or judicial candidate, except as prohibited by law, to display a political picture, sticker, badge, or button supporting his or her candidacy only, but any such display is prohibited:
 - While performing any judicial function; and
 - In any probate court facilities.

- Section 5A(3)(h) permits a judge or judicial candidate to:
 - Speak to gatherings on his or her own behalf
 - Appear in newspaper, television, and other media advertisements supporting his or her candidacy and
 - Distribute pamphlets and other promotional campaign literature supporting his or her candidacy



- Section 5A(5) permits a judge or judicial candidate's name to be listed on election materials along with other candidates for public office and to appear in promotion of the ticket. This permits a judge or judicial candidate to appear in photographs or displays with other candidates of his or her own political party, but only during his or her own election campaign.



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- Commentary: Section 5A(3) permits judges subject to election to be involved in limited political activity at any time. Caution is urged, however. Note that the general rule, set forth in Section 5B, prohibits a judge from engaging in political activity except as specifically authorized by the Code.

Political Party Activities



- Canon 5 Prohibitions

- Section 5A(1)(a) prohibits a judge or judicial candidate from becoming an *officer* of a political organization or political party. Section 5A(3)(d) does, however, permit a judge or judicial candidate to be a *member* of a political organization or town committee.
- Section 5A(1)(a) also prohibits a judge or judicial candidate from making a speech on behalf of a political organization or political party.

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- Section 5A(1)(d) prohibits a judge or judicial candidate from being involved in the organization or reorganization of a political organization or political party
 - Section 5A(1)(e) prohibits a judge or judicial candidate from taking any part in managing the political campaign of another candidate for public office



- Canon 5 Permissive Provisions
 - Section 5A(3)(a)(i) permits a judge or judicial candidate to purchase tickets for and attend a political gathering
 - Section 5A(3)(a)(ii) permits a judge or judicial candidate to identify himself or herself as a member of a political party
 - Section 5A(3)(d) permits a judge or judicial candidate to be a member of and participant in a political organization or town committee

- Section 5A(3)(e) permits a judge or judicial candidate to attend a political convention, rally, fundraiser, or other political gathering
- Section 5A(3)(f) permits a judge or judicial candidate to sign a political petition
- Section 5A(3)(g) permits a judge or judicial candidate to make a financial contribution to a political organization, political party, committee for an individual candidate, or a committee for a judicial candidate

Endorsements

- Section 5A(1)(b) prohibits a judge or judicial candidate from publicly endorsing or publicly opposing another candidate for political office (except in her or his own campaign)
- Commentary: Prohibition against endorsing a candidate applies equally to endorsement by a retiring judge of a judicial candidate running to be the judge's successor
- Section 5A(1)(b) creates a narrow exception permitting a judge or judicial candidate to offer general comment in keeping with the dignity of the office in reference to other candidates on the ticket

- Section 5A(1)(j) prohibits a judge or judicial candidate from placing a sign or sticker supporting another candidate on his or her real or personal property. A co-owner of such property is permitted to place signs on the property, but judicial candidates should inform co-owners that doing so may create an appearance of impropriety.



- Section 5A(1)(e) prohibits a judge or judicial candidate from taking any part in managing the political campaign of a candidate for public office or political party office. This section does not prevent a judge from assisting members of a political party in political campaigns, so long as such assistance is consistent with maintaining the dignity of the office of judge.
- Cautionary note: A judge's name should not be used in any manner that would indicate that the judge is assisting or endorsing a particular candidate.

Fundraising Activities, Election / Polling Activities, and Public Comment

Presented by
Honorable John J. McGrath, Jr.

Fundraising

- Canon 5

“A judge or judicial candidate shall refrain from inappropriate political activity,” section A(1)(c)

- Except as otherwise authorized, a judge or judicial candidate shall not “directly: solicit, receive, collect, handle, disburse or account for assessments, contributions or other funds for a political purpose
- *Restriction applies to both incumbents and to sitting judges. These restrictions are not limited to the probate election, primary or general, but appear to encompass all political campaigns, including those for other offices.*

- Permitted activities include:
 - Assisting with fundraisers
 - Being a member of a fundraising committee provided the judge's name is not used
 - Can a judge's name appear on a list of donors?
 - Establishing a finance committee for the candidate's own campaign
 - Establishing a campaign committee

- Permitted activities include:
 - Permitting the committee to accept “reasonable campaign contributions”
 - Making donations to a Town Committee

The commentary to section 4, Canon 5 of the code identifies a duty upon the candidate to “instruct his or her campaign committee to solicit or accept only contributions that are “reasonable” under the circumstances”

- Additional Restrictions & Prohibitions
 - A candidate for probate office may not permit the use of campaign contributions for private benefit of the judicial candidate or others.
 - “Others” to include; family members; law office; law partners?

Query: Is the expenditure by a town committee of money on behalf of the probate candidate permitted?

- Over all concern of commentary in this section is the recognition of the paradox that a candidate needs to raise funds to support a campaign but is prohibited from asking for money
- A point of concern also identified in the commentary to section 4 of Canon 5 is contributions “made by parties or lawyers” which “by virtue of their size, source or timing” can raise concerns “about a judge’s impartiality” (see disqualification under section 3 E)

Statutory restrictions also apply (see C.G.S. sections 9-611, 9-613 & 9-607)

Election / Polling Activities

Canon 5 addresses prohibited activities at the polling stations or during the course of the election, including:

- Making a speech on behalf of a political organization or party
- Publicly endorsing or opposing another candidate for public office including speeches, advertisements, campaign literature, etc.
 - Restriction not limited to probate elections
 - *Exception: General comment in keeping with the dignity of the office is permitted with respect to comments concerning “party affiliation”; “principles”; or other members of the same political ticket....*

- Managing another political campaign
- Running for another elective office
- Acting as a moderator, recorder... etc. at a polling place
- Working as a driver transporting voters to the polls
- Initiating or circulating a nomination petition, except for your own
- Placing a sign or sticker supporting another candidate on your property (except a co-owner of the property retains the right to post signs)

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- Candidates are advised in the commentary of section 4 to be aware of and advise others concerning the appearance of impropriety if they engage in conduct on behalf of the candidate which the candidate is not permitted to undertake

Public Comment

Canon 5, section A (2)(d)(1) public comment Restrictions and advisement:

Canon 5 contains directives regarding judicial commentary and restraints on judicial commentary. A judicial candidate shall:

- Maintain the dignity appropriate to judicial office
- Act in a manner consistent with the integrity and independence of the judiciary.

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- Refrain from making statements that commit the candidate to specific positions with respect to cases or controversies likely to come before the court or which are before the court
 - Refrain from misrepresenting information or positions of the candidate or an opponent

The commentary points out that a candidate should:

- Use best effort to prevent employees or officials subject to the candidate's direction and control from doing anything on the judicial candidate's behalf that the candidate is prohibited from doing
- And conversely, the candidate should not authorize someone subject to the candidate's direction and control to do something on the candidate's behalf which the candidate is prohibited from doing

- The above directives apply to “members of the judicial candidate’s family” whom the code states are expected “to adhere to the same standards of political conduct in support of the judicial candidate as apply to the judicial candidate”
- A candidate may “respond to personal attacks” or “attacks on the judicial candidates record” provided the candidate does not violate any other code provisions

Extra-Judicial Public Service Activities

The Dos and Don'ts

Presented by

Honorable Michael F. Magistrali



- ***Do:***

- Speak, write, lecture, teach, and participate in activities concerning the law, the legal system, the administration of justice, and non-legal subjects, Canon 4, section B

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- ***Don't:***
 - Appear at a public hearing or consult with an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or when acting pro se, Canon 4, section C(1)



- ***But:***

- You may appear on behalf of clients as long as you don't use the prestige of your office to advance your client's cause, Canon 4, section C(1)



- ***Do:***

- Serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit, Canon 4, section C(2)

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- ***But Not for an Organization That:***
 - Will be engaged in proceedings that would ordinarily come before the court or
 - Will be engaged frequently in adversary proceedings in the court, Canon 4, section C(2)(a)(i) and (ii)



- ***And Don't:***

- Personally participate in the solicitation of funds or other fund-raising activities
- Personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is a fund-raising mechanism
- Use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, Canon 4, section C(2)(b)(i)(iii)(iv)



- ***That Means:***

- Never use court letterhead for fundraising
- Don't nominate a fellow attorney as a James W. Cooper Fellow
- Don't be a speaker or guest of honor at a fundraising event - attendance is o.k.
- Don't allow yourself to be identified as a judge in connection with any advertising, press coverage, or public gathering announcing or encouraging solicitation of members or funds



- ***But:***

- Your name and office or other position with the organization may be listed on the organization's letterhead
- Your judicial designation (i.e., "Hon.") may appear only if comparable designations are listed for others (i.e., "Dr."; "Atty.")



- ***Don't:***

- Belong to an organization that discriminates on the basis of race, sex, religion, national origin, gender, gender identity or expression, sexual orientation, ethnicity, physical or mental disability, Canon 2, section C

- Ku Klux Klan
- Arayan Nations
- Westboro Baptist Church

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- ***In Any and All Cases – Don't Do Anything:***
 - That is improper or creates an appearance of impropriety, Canon 2
 - That could cast reasonable doubt on your capacity to act impartially, Canon 4, section A(1)
 - That demeans your office, Canon 4, section A(2)
 - That interferes with the performance of your duties, Canon 4, section A(3)



- ***And Don't:***

- Break the law
- Allow family, social, political, or other relationships to influence your judicial conduct or judgment
- Lend the prestige of your office to advance the private interests of you or others
- Give anyone the impression that they're in a special position to influence you
- Testify voluntarily as a character witness,
Canon 2, sections A and B



- ***That Means No:***

- Comments, public or private, that could be interpreted as showing a bias or prejudice
- Jokes or comments demeaning individuals based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status
 - The revised code will add gender and gender identity to this list



- ***Don't:***

- Run for any other elective office, Canon 5, section 5A(1)(f)
 - Town committee doesn't count, but you can't be an officer

Extra-Judicial Private Practice Activities

Presented by
Honorable Thomas M. Sutnik

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- Avoidance of impropriety, Canon 2
 - Respect and comply with the law and act in manner that promotes public confidence in integrity of judiciary
 - Judge shall not lend the prestige of the office to advance private interests of judge or others

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- Extra-judicial activities generally, Canon 4A

To be conducted so as not to:

- Cast doubt on judge's impartiality
- Demean judicial office
- Interfere with performance of judicial duties



- Practice of Law Generally, Canon 4 D

Judge to refrain from dealings that:

- Reflect adversely on judge's impartiality
- Interfere with performance of judicial duties
- Exploit judicial position

- Probate Practice – Judge’s Own Court
 - No judge shall appear as an attorney or fiduciary in the court to which he or she was elected, notwithstanding the fact that another judge has been cited in to hear the matter, Canon 3E(2)
 - Exception for acting as fiduciary for close family, including spouse, child, parent, grandparent, brother, and sister

- Probate Practice – Judge’s Own Court
 - A partner or associate of a judge shall not engage in the practice of law in the court of probate in which the judge holds office, C.G.S. section 45a-26
 - Exception: Serving as fiduciary for spouse, child, parent, grandparent, brother, sister, aunt, uncle, niece or nephew shall not be construed as practice of law for purposes of this section

- Probate Practice – Other Courts
 - Judge not to appear as attorney in any contested matter, C.G.S. section 45a-25
 - For purposes of this section, a matter is contested if any party “informs the court, orally or in writing, of any objection or opposition in such matter, without regard to the apparent merit or lack of merit of such objection or opposition”

- Probate Practice – Other Courts
 - General rule: Judge may not serve as fiduciary or accept any appointment in any other probate court, Canon 3E (3)
 - Exceptions:
 - For spouse, child parent, grandparent, brother, sister, niece, and nephew
 - If named as such in will or designation of conservator

- Probate Practice – Other Courts
 - Exceptions:
 - If nominated as voluntary conservator and no one objects
 - If nominated in application for involuntary conservator and all parties consent in writing
 - Any other fiduciary position if all parties consent in writing

The Judge's Dilemma

- All other judges in this state are prohibited from practicing law
- As part-time judges, probate judges are in a unique and sensitive situation
- Must use care in all extra-judicial activities, but particularly with respect to the practice of law

The Judge's Dilemma

- Use care in deciding which matters to take on:
 - Avoid clients who have matters that are likely to come before your own court
 - Use care in dealing with opposing lawyers that have matters in your court
 - Avoid any suggestion that, by virtue of your own judicial position, you enjoy some special status in appearing in another judge's court

The Judge's Dilemma

- Be careful about the prohibition against appearing in contested matters:
 - All matters are potentially contested
 - Some matters should be considered as innately contested, such as petition for appointment of involuntary conservator
- Let your client know that you cannot appear in a contested matter:
 - If it becomes contested you will have to get out

The Judge's Dilemma

- Fee disputes are particularly sensitive:
 - Make sure you have a written fee agreement and time sheets
 - Consider use of CBA fee dispute resolution mechanism
 - Consider being represented by counsel to avoid having to argue before a fellow judge in support of your own fees
 - Sitting judge may consider recusal and citation of a judge from another part of the state

Disqualification

Presented by
Attorney Thomas E. Gaffey

Substantive Rules – Canons 1 & 2

- Uphold the integrity and independence of the judiciary, Canon 1
 - A judge shall establish, maintain, and enforce high standards of conduct
- Avoid impropriety and the appearance of impropriety in all activities, Canon 2
 - A judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment

Substantive Rules – Canon 3 A, B

- Perform the duties of office impartially and diligently, Canon 3A
 - Judicial duties take precedence over all other activities
 - Judge to hear and decide all matters unless disqualification required
- Ex parte communications in contested matters, Canon 3B(7)
 - Disclose at next hearing or
 - Notify parties immediately or
 - Recuse

Substantive Rules – Canon 3E

- A judge shall disqualify self if “the judge’s impartiality might reasonably be questioned”
- The standard is objective not subjective
- “The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his impartiality, on the basis of the circumstances,” *Burton v. Mottolese*, 267 Conn. 1 (2003)

Substantive Rules – Canon 3E

- Canon contains a non-exclusive list of situations requiring disqualification:
 - Personal bias re party or attorney
 - Personal knowledge of disputed facts
 - Served as lawyer in the matter
 - Lawyer with whom judge previously practiced served as lawyer in the matter during their association

Substantive Rules – Canon 3E

- Situations requiring disqualification (*cont'd.*)
 - Judge or family member residing in household has an economic interest* in the matter in controversy
 - Judge, spouse or person within third degree of relationship* is:
 - Party
 - Lawyer in the matter
 - Known to have more than de minimis interest
 - Likely to be a material witness

Substantive Rules – C.G.S. section 45a-22

- Requires disqualification if judge related to:
 - Decedent
 - Legatee
 - Devisee
 - Heir
 - Decedent's spouse
 - Creditor

Substantive Rules – C.G.S. section 45a-22

- Applicable when the nature of the relationship is:
 - Spouse
 - Parent
 - Brother or sister
 - By blood or marriage
 - Judge may decline to act in any matter if he or she believes it would be improper to act

Procedure – Rule 15

- When disqualification required generally determined under C.G.S. section 45a-22 and Canon 3E
- Rule provides procedure
 - Exception – See C.G.S. sections 33.3, 40.4
- Applies to probate judges, Probate Magistrates and attorney probate referees

Procedure – Rule 15

- Written motion required
 - Must set forth grounds
 - Filed at least three business days before hearing (may be waived by court if injustice would result)
- Court must decide disqualification issue before hearing underlying matter

Procedure – Rule 15

- Upon filing of motion court must:
 - Disqualify
 - Conduct a hearing on disqualification, or
 - Request citation of another judge to hear disqualification
- Written decree required
 - If motion denied, must include findings re the grounds set out in motion

Procedure – Rule 15

Lawsuit or complaint to Council on Probate Judicial Conduct

- Disqualification not automatic
- Judge shall:
 - Disqualify, or
 - Advise each party and attorney and
 - Conduct a hearing on disqualification or
 - Request citation of another judge to hear disqualification
 - Disclosure of complaint is not waiver of confidentiality

Procedure – Rule 15

Disclosure and waiver

- Even if disqualification not required, judge having information that a party or attorney “might consider relevant” re disqualification, must disclose in writing
- Judge may hear the matter if:
 - Parties and attorneys afforded opportunity to consider waiver of disqualification outside presence of judge and
 - No motion to disqualify is filed

Procedure – Rule 15

Request for citation

- In requesting citation, *disqualified judge* shall not recommend judge to be cited
- Applies only when reason for citation is disqualification

Five Suggestions for Addressing Questions on Ethics

1. Don't rush to judgment
2. Read the Code and commentary and any applicable statutes
3. Consult another probate judge or Probate Court Administration
4. Still not sure? Consider requesting an Advance Ruling
5. Call the close ones against yourself