

IN THE SUPREME COURT OF THE STATE OF ALASKA
ORDER NO. 1762

Amending Code of Judicial
Conduct Canon 5A(1), Canon 5C,
and the Application Section
concerning a judge's activities.

IT IS ORDERED:

1. The Alaska Code of Judicial Conduct Canon 5A(1) and Canon 5C are amended to read as follows:

Canon 5. A Judge or Judicial Candidate Shall Refrain from Inappropriate Political Activity.

A. All Judges and Candidates.

(1) Except as authorized in Sections 5B(2) and 5C, a judge or a candidate* for appointment to judicial office shall not:

(a) act as a leader of or hold office in a political organization.*

(b) publicly endorse or publicly oppose a candidate for any public office. However, when false information concerning a judicial candidate* is made public, a judge or candidate having knowledge* of contrary facts may make the facts public.

(c) make speeches on behalf of a political organization.*

(d) ◇ attend political gatherings.

(e) ◇ solicit funds for any political organization* or candidate for public office, pay an assessment or make a contribution to a political organization or candidate for public office, purchase tickets for a political organization's dinners or other functions.

Commentary.—*A judge or candidate for judicial office retains the right to participate in the political process as a voter.*

Section 5A(1)(b) does not prohibit a judge or judicial candidate from privately expressing his or her views on judicial candidates or other candidates for public office. Nor does this section restrict the Chief Justice, acting in the role of Chair of the Alaska Judicial Council, when explaining the Judicial Council's retention recommendations to the public.

Judges should be able to take part in the public debate over proposals to change the legal system or the administration of justice; judges' training and experience make them a valuable resource to the electorate wishing to decide these issues. Since many speeches are given in forums sponsored by political organizations, a question arises concerning the relationship between, on the one hand, a judge's right to speak publicly on issues concerning the legal system and the administration of justice, and, on the other hand, the prohibition contained in Section 5A(1)(d)—that a judge shall not attend the gathering of a political organization. Despite a judge's freedom to speak on legal issues, a judge shall not do so on behalf of a political organization or at a political gathering.

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B. ◇ Candidates Seeking Appointment to Judicial or Other Governmental Office.

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C. Judges Seeking Retention.

(1) A judge who is a candidate* for retention in judicial office may engage in the following political activity to secure retention:

(a) submit a photograph and a statement supporting his or her candidacy for inclusion in the state election pamphlet under AS 15.58;

(b) in response to an unsolicited request,

(i) speak to public gatherings on behalf of his or her candidacy;

(ii) appear on television and radio programs to discuss his or her candidacy; and

(iii) grant interviews regarding his or her candidacy;

(c) form an election committee of responsible persons to conduct an election campaign in anticipation of active opposition to the judge's candidacy; and

(d) reserve media space, domains, and locations, and design and prepare campaign materials in anticipation of active opposition to the judge's candidacy and spend necessary funds for these activities.

(2) A judge who is a candidate* for retention in judicial office may engage in the following additional political activity when there is active opposition to the judge's candidacy:

(a) advertise in newspapers, on television, and in other media in support of his or her candidacy; and

(b) distribute pamphlets and other promotional literature supporting his or her candidacy.

Commentary.—Sections 5C(1) and (2) permit a judge who is a

candidate for retention to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity.

Section 5C(2) allows judges seeking retention in office to engage in overt political activity if there is “active opposition” to their candidacy. This Code, like the prior Code, does not define “active opposition.” However, the term is meant to be broadly construed. A negative recommendation by the Alaska Judicial Council constitutes active opposition. Holding a press conference, advertising, distributing brochures or leaflets, and sending letters to voters are all forms of active opposition. On the other hand, statements made by individual speakers at Judicial Council meetings rarely constitute active opposition, regardless of what is said. Active opposition may be conducted by individuals acting alone as well as by groups. The opposition need not be specifically targeted at one particular judge or at a discrete group of judges—a newspaper advertisement urging the rejection of all judges standing for retention would be viewed as active opposition to the candidacy of each individual judge. If a judge has information and believes that active opposition is imminent, the judge may document the basis of this belief to the Judicial Conduct Commission and may then proceed as if there were active opposition to the judge’s candidacy.

(3) A judge who is a candidate* for retention in judicial office shall not personally solicit or accept any funds to support his or her candidacy or personally solicit publicly stated support for his or her candidacy. However, if there is active opposition to the judge’s candidacy, the judge’s election committees may engage in media advertisements, brochures, mailings, candidate forums, and any

other legal methods of pursuing the judge's election. Such committees may solicit and accept reasonable campaign contributions, manage and expend these funds on behalf of the judge's election campaign and solicit and obtain public statements of support for the judge's candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committee may solicit contributions and public support for the candidate's campaign preceding the election and for 90 days thereafter. A judge shall not make private use of campaign funds raised by an election committee or use these funds for the private benefit of any other person or permit anyone else to use these funds for the private benefit of any person.

Commentary.—Section 5C(2) permits a judge who is a candidate for retention to establish a campaign committee to solicit and accept public support and reasonable financial contributions if there is active opposition to the judge's candidacy. At the start of the campaign, the judge must instruct his or her campaign committee to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may be relevant to disqualification under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fundraising, to the extent possible.

Section 5C(2) does not prohibit a judge who is a candidate for retention from initiating an evaluation by a judicial selection

commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

Sections 5C and 5D are intended to restrict fundraising by and on behalf of individual judges. These Sections are not intended to prohibit an organization of judges from soliciting money from judges to establish a campaign fund to assist judges who face active opposition to their retention.

They are not intended to restrict the ability of judges to spend their own funds in support of their own candidacies.

(4) A judge who is a candidate* for selection as a delegate to a federal or state constitutional convention may engage in any political activity* to secure election allowed to other candidates for that office.

D. Incumbent Judges. * * * *

E. Applicability. * * * *

2. The section of the Alaska Code of Judicial Conduct entitled Application of the Code of Judicial Conduct is amended to read as follows:

APPLICATION OF THE CODE OF JUDICIAL CONDUCT

A. Full-Time Judicial Officers.

* * * *

B. Senior Judges.

(1) Senior judges (retired justices of the supreme court and retired judges of the court of appeals, the superior court, and the

district court who are eligible for judicial service under Administrative Rule 23) shall comply with all provisions of this Code except:

(a) 4D(1)(b) (transactions with persons likely to come before the judge's court);

(b) 4D(4) (management of financial resources to minimize disqualification);

(c) 4E(1) (fiduciary service for persons other than family members);

(d) 4E(2) (fiduciary service where proceedings likely before judge's court);

(e) 4F (service as arbitrator or mediator). However, a senior judge who serves as an arbitrator or mediator must comply with Administrative Rule 23(f); and

(f) a senior judge may speak publicly regarding the qualification of a judge seeking retention who faces active opposition.

(2) In addition, a senior judge need not comply with Section 4C(2) (appointment to government positions) except during periods of appointment to active judicial service under Administrative Rule 23.

Commentary.—*A senior judge—a retired justice or judge who is eligible for judicial service under Administrative Rule 23—must comply with all provisions of the Code except those listed. Thus, a senior judge may engage in financial and business dealings with any person and has no duty to manage investments and business and financial interests to minimize the number of cases in which*

the judge is disqualified. A senior judge may serve as a personal representative, trustee, guardian, or other fiduciary for persons other than family members. Although senior judges may not engage in the practice of law, they may serve as private arbitrators or mediators and may maintain private arbitration and mediation businesses, even during periods of pro tem service. However, in order to be eligible for judicial service, a judge who performs private arbitration or mediation must comply with the disclosure requirements and employment restrictions set out in Administrative Rule 23(e).

Senior judges may publicly speak regarding the qualifications of judges facing active opposition. This limited exception to Canon 5A(1)(b) preserves the general insulation of judges from political pressures while allowing for an informed public debate on the qualifications of a judge up for retention.

A senior judge may serve on a government committee or commission or hold a government position except during periods of pro tem service.

Despite the relaxation of restrictions on senior judges' financial dealings, they remain subject to the disqualification provisions of Section 3E.

C. Part-Time Magistrates and Deputy Magistrates.

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D. Special Masters.

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E. Time for Compliance. * * * *

DATED: July 1, 2011

EFFECTIVE DATE: July 1, 2011

/s/
Chief Justice Carpeneti

/s/
Justice Fabe

/s/
Justice Winfree

/s/
Justice Christen

/s/
Justice Stowers