

Judicial Inquiry Commission

800 SOUTH MCDONOUGH STREET
SUITE 201
MONTGOMERY, ALABAMA 36104

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In response to your request for an advisory opinion from the Judicial Inquiry Commission regarding questionnaires submitted to a candidate for judicial office during a political election campaign, this Commission issues the following answer:

“Ethics advisory opinions have addressed the propriety of numerous statements and pledges candidates have proposed to use in the course of a campaign. The general sense of these opinions is that anything that could be interpreted as a pledge that the candidate will take a particular approach in deciding cases or a particular class of cases is prohibited. ...

“Most advisory opinions addressing the use of questionnaires in judicial campaigns strongly disapprove of the practice. Thus, judicial candidates have been advised to refuse to respond to questionnaires from political organizations concerning gun control, abortion, the Equal Rights Amendment, regulation of condominiums, and the right to work.

. . .

“Generally, candidates for judicial office may neither initiate discussion of specific recent cases nor respond to questions concerning such cases.”

J. Shaman, S. Lubet, J. Alfani, Judicial Conduct and Ethics § 11.09 at 330-332 (1990).

However, recent court decisions have recognized that ethical provisions prohibiting judicial candidates from discussing all disputed legal or political issues are unconstitutional. American Civil Liberties Union, Inc. v. Florida Bar, 744 F. Supp. 1094 (N.D. Fla 1990). See also Beshear v. Butt, 733 F.Supp. 1229 (E.D. Ark. 1991); Clark v. Burleigh, 279 Cal.Rptr. 333 (Cal.App. 6th Dist. 1990); J.C.J.C. v. R.J.C.R., 803 S.W.2d 953 (Ky. 1991). However, such provisions may be constitutional if the scope of the particular provision prohibiting comment is narrowly construed and limited to statements made on issues that are likely to come before the judicial candidate when sitting as a judge. See Buckley v. Illinois Judicial Inquiry Board, 801 F.Supp. 83 (N.D. Ill. 1992); Stretton v. Disciplinary Board of Supreme Court of Pennsylvania, 944 F.2d 137 (3d Cir. 1991).

This Commission does not have the authority to determine the constitutionality of any provision of the Alabama Canons of Judicial Ethics. However, it is the opinion of this commission that a candidate for judicial office may respond to questions seeking the candidate's opinion on a specific issue where the candidate makes it clear that the candidate is expressing a personal opinion and that the candidate will be bound by the law and will follow the law if elected. An expression of intent to disregard precedent would be unethical. In addition, a candidate should not respond to questions concerning issues that are likely to come before them in their judicial capacity.

This advisory opinion has been considered and approved by the entire Commission.