

JUDICIAL INQUIRY COMMISSION

OPINION WITHDRAWN
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ADVISORY OPINION 00-763

ANSWERING QUESTIONNAIRE TO BE USED IN PREPARATION OF ORGANIZATION'S VOTERS GUIDE

ISSUE

Do the Alabama Canons of Judicial Ethics permit judges who are candidates for judicial office to respond to a particular questionnaire that is to be used in preparation of an organization's voters guide? **Answer:** No, except to decline to answer the inquiries presented.

FACTS

The Christian Coalition of Alabama has sent a questionnaire to all appellate, circuit, and district court judicial candidates who have opposition in the general election that will be held in November. The cover letter states that responses will be used by the Coalition in preparation of a voters guide.

Stated generally, the questionnaire inquires about whether the candidate's views are consistent with various United States Supreme Court rulings, and how the candidate would apply those rulings; whether the candidate would uphold as constitutional certain hypothetical statutory provisions; what the candidate's interpretation is of certain provisions of the United States and state constitutions; and what the candidate's views are on such political topics as legalized gambling, gun control, sexual orientation, prayer in public school, the National Endowment of the Arts, voter identification, tort reform, abortion, and class action lawsuits.

The candidate is permitted to give his or her response to each inquiry by checking a blank indicating either "Agree," "Disagree," "Undecided," or "Decline." The questionnaire states that the "decline" option is provided "in the event a candidate believes, based on a good faith, reasonable construction of the Canons of Judicial Ethics, that he or she must decline to respond to a particular issue." The cover letter states that the Coalition can only publish the answered questions as marked, and that any additional narrative explaining the candidate's position on an issue will not be useful and will not be used in the voters guide.

DISCUSSION

The Commission has previously addressed the subject of questionnaires to judicial candidates in its Advisory Opinion 94-537. The Commission concluded that judicial candidates should not respond to questions concerning issues that are likely to come before them in their judicial capacity. The Commission also concluded that an expression of intent to disregard precedent would be unethical.

Canon 7B(1)(a) provides that candidates for judicial office must "maintain the dignity appropriate to judicial office." Canon 7B(1)(c) states that a candidate for judicial office:

Shall not make any promise of conduct in office other than the faithful and impartial performance of the duties of the office; shall not announce in advance the candidate's conclusions of law on pending

litigation; and shall not misrepresent his or her identity, qualification, present position, or other fact.

Canon 2A states: “A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Canon 3 requires judges to perform the duties of their office impartially and diligently. The standards for adjudicative responsibilities in subsection “A” of Canon 3 include the following:

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court[.]

The inquiries under consideration in the questionnaire at issue call for or appear to solicit the judicial candidate’s predisposition toward specific legal views on matters pending or impending before any number of trial and appellate courts. Some of the questions call for the candidate to comment on issues that are likely to come before the candidate if elected judge. A judge’s response to such questions would clearly violate Canon 3A(6), which provides that a judge should abstain from public comment about the merits of “a pending or impending proceeding *in any court*.” See, *In re Matter of Sheffield*, 465 So.2d 350, 355 (Ala. 1984). Such remarks raise the “red flag” of potential bias. *Riddle v. State*, 669 So.2d 1014, 1020 (Ala. Crim. App. 1994).

Many of the inquiries under consideration tend to indicate that the candidate, if elected, would be predisposed to ruling in a certain manner on the subject issues. A response to these inquiries would be proscribed by the prohibitions in Canon 7B(1)(c) against judicial candidates making any promise of conduct in office other than the faithful and impartial performance of the duties of the office and announcing their conclusions of law on pending litigation. In addition, such responses would also impair a judge’s obligations under Canon 2A, thereby jeopardizing public confidence in the law and in the integrity and impartiality of the judiciary. Michigan State Bar Standing Committee on Professional and Judicial Ethics, Advisory Opinion JI-82; and Tennessee Judicial Ethics Committee, Advisory Opinion 98-4. It is not appropriate for a judicial candidate to answer questions which are intended to, or will have the effect of, committing the candidate to a course of action with respect to issues likely to come before the court. Georgia Judicial Qualifications Commission, Advisory Opinion 228.

To the extent that some of the inquiries in the questionnaire involve rulings by the United States Supreme Court, the Commission notes that it has previously concluded that a judicial candidate may not express an intent to disregard precedent. Advisory Opinion 94-537. A candidate for judicial office should not give the impression to anyone that the candidate would disregard controlling judicial authority as this would encourage disrespect for the law and/or the judicial office. Canons 2A, 3A(1), and 7B(1)(c).

Other inquiries in the subject questionnaire appear to solicit answers that would tend to embroil the judicial candidate in political

debate that is inappropriate to the dignity of the judicial office. For a judicial candidate to answer such questions gives the appearance of a lack of impartiality or of pandering to certain interests, and places the judge in the role of a political advocate. Canons 2A and 3A(1). Tennessee Advisory Opinion 98-4.

A judge must avoid any statements which could be interpreted as a pledge of judicial conduct or which appeal to prejudices or special interests. An impartial judiciary is indispensable to our system of justice.

The form of the questionnaire is also troublesome in that it requires simplistic responses to difficult and complex matters. Complex issues can rarely be appropriately addressed with a one word response. As the Florida Committee on Standards Governing Judges has observed, “Depending on the subject matter of the question, some complex legal or political questions may not be able to be ethically answered at all. Other questions may need a thoughtfully drafted explanation or elaboration to appropriately satisfy ethical considerations.” Florida Committee on Standards Governing Judges, Advisory Opinion 94-34. *See also*, Michigan State Bar Standing Committee on Professional and Judicial Ethics, Advisory Opinion C-222. Any response to a judicial candidate questionnaire must be carefully and meticulously tailored to be consistent with the spirit and intent of the Canons of Judicial Ethics.

For the reasons expressed, the Commission finds that the Alabama Canons of Judicial Ethics do not permit a judicial candidate to respond to the subject Christian Coalition questionnaire, other than by checking the option indicating that the candidate declines to respond to the questions posed.

REFERENCES

Alabama Advisory Opinion 94-537.

Alabama Canons of Judicial Ethics, Canons 2A, 3, 3A(1), 3A(6), 7B(1)(a), and 7B(1)(c).

Florida Committee on Standards Governing Judges, Advisory Opinion 94-34.

Georgia Judicial Qualifications Commission, Advisory Opinion 228.

In re Matter of Sheffield, 465 So.2d 350 (Ala. 1984).

Michigan State Bar Standing Committee on Professional and Judicial Ethics, Advisory Opinions C-222 and JI-82.

Riddle v. State, 669 So.2d 1014 (Ala. Crim. App. 1994).

Tennessee Judicial Ethics Committee, Advisory Opinion 98-4.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 17 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, 800 South McDonough Street, Suite 201, Montgomery, Alabama 36104; tel.: (334) 242-4089; fax: (334) 240-3327; E-mail: jic@alalinc.net.