

*Special Committee on Judicial Election Campaign Intervention
2018 Judicial Elections*

2018-21 Opinion

The Special Committee on Judicial Election Campaign Intervention received a request for an opinion from a Candidate.

The Candidate provided a document identified as “Questions for Political Candidates.” He adds that the candidates for Chancery Court Judge and County Court Judge in Lamar County were asked to attend meeting of the American Christians Taking a Stand for Jesus Christ (ACTS) at Lamar Christian School on October 8, 2018. Each candidate was requested to complete this form, sign it, and return it to the organizers of this event. Several of the candidates expressed concern that the questions might violate certain provisions of the Code of Judicial Conduct, Canon 5. We were later informed that ACTS intends to distribute the answers of the various judicial candidates to local pastors, who will give each candidate a "spiritual grade", and publish that grade on their website.

The Candidate asked for an opinion as to whether any or all of the questions violate the Code of Judicial Conduct.

QUESTIONS FOR POLITICAL CANDIDATES:

1. *Where do you go to church?* The Special Committee is aware of no Mississippi Statute or Canon in the Mississippi Code of Judicial Conduct that would not permit a candidate to answer this question.
2. *Do you go to church faithfully?* See Response to Question 1 above.
3. *What is your pastor's name?* See Response to Question 1 above.
4. *Are you a born again Christian?* See Response to Question 1 above.
5. *Should you consider the Bible in government policy?* See Response to Question 1 above.
6. *Do you vote with these same biblical convictions?* See Response to Question 1 above.

7. *Should faith play a role in government?* See Response to Question 1 above.
8. *Would you ever vote for a bill to fund or support abortion?* This question does not appear to be directed at judicial candidates because judges do not vote on bills to fund anything.
9. *Do you think the government has a role in marriage? If so, do you believe same sex marriage should be allowed?* The Special Committee would direct you to Mississippi Code of Judicial Conduct Canon 5(A)(3)(d), which provides

(d) A candidate for judicial office shall not:"

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary

Section 5A(3)(d)(i) prohibits a candidate for judicial office making pledges or promises to decide cases in any particular way and statements committing the candidate with respect to cases, controversies or issues likely to come before the court on which the candidate will serve if elected. This section does not prohibit or limit a candidate's freedom to announce the candidate's current views on issues so long as the announcement does not bind the candidate to maintain those views after election. *See Republican Party of Minn. v. White*, 536 U.S. 765 (2002) (declaring unconstitutional restrictions in the Minnesota Code of Judicial Conduct on the announcement of views on legal and political issues.) The comparable offending language, referred to as the "announce clause", formerly appeared in our Code of Judicial Conduct, but was

removed with the revision of the code on April 4, 2002. This Section does not prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties.

Section 5A(3)(d)(ii) prohibits a candidate for judicial office making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges and promises respecting improvements in court administration.

Section 5A(3)(d) applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Mississippi Rules of Professional Conduct. Phrases such as "tough on crime," "soft on crime," "pro-business," "anti-business," "pro-life," "pro-choice," or in any similar characterizations suggesting personal views on issues which may come before the courts, when applied to the candidate or an opponent, may be considered to be prohibited by Section 5A(3)(d) only when used in a context which contain a pledge or promise to decide cases in a particular manner.

As discussed in the Commentary, the Mississippi Supreme Court has recognized *Republican Party of Minn. v. White*, 536 U.S. 765 (2002). Further, the Special Committee is aware of decisions from the United States Supreme Court, federal circuit courts of appeal and federal district courts that have specifically addressed the constitutionality of the "announce clause" and restrictions on a candidate's First Amendment freedom of speech rights. There are federal decisions that are in conflict with the Canon 5(A)(3)(d).

However, the Mississippi Supreme Court, with knowledge of these decisions, has not revised the Mississippi Code of Judicial Conduct. And, to the knowledge of the Special Committee, there has been no legal challenge to this provision in Mississippi's federal courts.

The Special Committee is of the opinion that it has neither the jurisdiction nor the authority to conclude that the Mississippi Code of Judicial Conduct, specifically Canon 5(A)(3)(d) is unconstitutional or may not be enforced in Mississippi elections. Therefore, the Special Committee is of the opinion that this question may violate Canon 5(A)(3)(d).

10. *What is your view on separation of church and state?* See Response to Question 9 above.
11. *What is your stand on the 2nd Amendment- the right to bear arms?* See Response to Question 9 above.
12. *What is your stand on legalizing marijuana or any other illegal drug?* See Response to Question 9 above.
13. *What is your stand on assisted suicide?* See Response to Question 9 above.
14. *Do you support, or did you support, House Bill 1523?* See Response to Question 9 above.
15. *Can you do the job?* See Response to Question 1 above.

This opinion is limited to the scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct.

Any questions should be in writing and directed to:

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