

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

2018-28 Opinion (REVISED)

The “Friends of [P]” filed its October 30, 2018 Pre-Election Campaign Finance report. The report indicated a contribution dated October 5, 2018, in the amount of \$18,814.20, received from the “Committee to Elect [Q].” Q is currently the incumbent circuit court judge of the position sought, and eventually, won by judicial candidate P.

The Secretary of State asked the Special Committee whether this was an appropriate (i.e., legal) campaign contribution.

The Committee to Elect P and judicial candidate P were provided notice of this inquiry and given an opportunity to respond. The candidate and the Committee contend that Committee member [R] contacted the Mississippi Secretary of State’s office to inquire whether this contribution would violate Miss. Code Ann. Section 23-15-821. The Committee and the candidate contend that they were given an assurance that this transaction would not violate Section 23-15-821.

Q contacted the Special Committee and asked for an opportunity to respond to the allegations. The Special Committee agreed and provided Q an opportunity to respond. In his response, Q advised the Special Committee that a number of years ago he had a conversation with the then Executive Director of the Commission on Judicial Performance about the proper disposal of judicial committee campaign funds. Based on this conversation, Q claims he had the good faith belief that accumulated judicial campaign funds, which were no longer needed, could be contributed to another candidate in another race. Further, Q states that he discussed this proposed contribution with the candidate and asked the candidate to “make sure that it's okay to do this.” Q then provided information related to the discussions of candidate’s campaign Committee representative with the Secretary of State’s office. According to Q, the candidate confirmed that his Committee was given an assurance that this transaction would not violate Mississippi law.

The Mississippi Secretary of State’s office advises the Special Committee that it does not issue written opinions. Instead, the Secretary of State’s office refers all such requests for written legal opinions about campaign finance matters to the Mississippi Ethics Commission or the Attorney General’s office. As a result, the Special Committee has determined that there is a dispute as to the information provided by the Secretary of State’s office.

Regardless, the Special Committee has determined that this is a question that should have been submitted to the Special Committee pursuant to Mississippi Code of Judicial Conduct Canon 5(F)(2), which provides:

Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization.

In May, the candidate and a representative of the Committee attended the Special Committee's seminar on judicial elections. They were advised to submit any such request for an opinion to the Special Committee.

A. Q and the Committee to Elect Q

As an incumbent judge, there are several provisions of the Code of Judicial Conduct that govern the actions of Q and his judicial election committee.

First, Canon 5(A)(1)(c) provides that a "judge . . . shall not . . . make a contribution to a political organization or candidate . . ." As a sitting judge, Q is prohibited from making a campaign contribution for a candidate.

Second, Canon 5(C)(2) provides that "A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate Such committees may . . . manage the expenditure of funds for the candidate's campaign" The Committee to Elect Q may only make expenditures "of funds for the candidate's campaign." There is no authority that would allow the committee established for one judicial candidate to make a contribution to another judicial candidate's campaign committee.

Third, Canon 5(D) is titled "Incumbent Judges," and it provides that "[a] judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law." The Commentary adds "Section 5D expressly prohibits judges from engaging 'in any political activity' not expressly authorized by the Code of Judicial Conduct or by law."

The Special Committee is of the opinion that the contribution by the Committee to Elect Q violated Canon 5(C)(2) because it was not an "expenditure of funds for the candidate's campaign." Further, the Special Committee is of the opinion that Canon 5(D)

prohibits the committee of one judicial candidate from contributing its funds to another judicial candidate. Such contribution would imply the incumbent judge supports a candidate and would be considered inappropriate “political activity.”

However, the Special Committee has no jurisdiction over Q. Accordingly, the Special Committee takes no action against Q.

B. P and the Friends of P

Canon 5(A)(3)(a) provides that “[a] candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary”

Canon 5(A)(3)(b) provides that “[a] candidate for a judicial office . . . shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate’s direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon.”

Canon 5(A)(3)(c) provides that “[a] candidate for a judicial office . . . except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

Canon 5(C) is titled “Judges and Candidates Subject to Public Election.” It provides:

- (1) Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election, identify themselves as members of political parties, and contribute to political parties or organizations.
- (2) A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of

support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. . . .

- (3) Candidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law.

Commentary

The ABA Model Code of Judicial Conduct is drafted for the insertion of specific limits on contributions for judicial campaigns. As adopted for Mississippi, this section simply makes references to limits established by the Legislature by statutes which limit contributions to \$5,000 in appellate court races, to \$2,500 in chancery, circuit or county court races, and generally limits corporate contributions to \$1,000. See Miss. Code Ann. § 23-15-1021 (2000 Supp.) (judicial races) and Miss. Code Ann. § 97-13-15 (1999 Supp.) (corporate contributions.)

Canon 5(D) provides “Incumbent Judges. A judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.”

Commentary

. . .

Sections 5A through 5D limit the participation of judges and candidates in political activities. *Section 5D expressly prohibits judges from engaging “in any political activity” not expressly authorized by the Code of Judicial Conduct or by law.* These provisions do not prohibit voting in party primaries and general elections, which is not “political activity” as the phrase is used in Canon 5. The statute governing non-partisan judicial elections, while prohibiting candidates for judicial offices covered by the statute from campaigning or qualifying for the offices based on party affiliation, does not preclude the candidates from voting in party primaries. Miss. Code Ann. § 23-25-973 (Supp. 2000.)

The Special Committee is of the opinion that the “Committee to Elect Q” was established under Canon 5(C)(2). The authority for and the only permitted use of the

funds of this Committee was to “conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law.” Further, the Canon authorized the committee to “solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate’s campaign . . .”

The Special Committee is of the opinion that the Friends of P is in violation of the Code of Judicial Conduct for accepting a campaign contribution from the committee of another judicial candidate.

First, Canon 5(C)(2) authorizes a judicial candidate’s committee to “reasonable campaign contributions.” Canon 5(C)(3) provides that “[c]andidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law.” The limit for a circuit court race for individuals and political action committees is \$2,500. Miss. Code Ann. § 23-15-1021. Corporate contributions are limited to \$1,000. Miss. Code Ann. § 97-13-15. The contribution from the Committee to Elect Q was in the amount of \$18,814.20. The Friends of P provided the Special Committee the following response to these allegations – the contribution was not governed by these limits because it was not from an individual, political action committee or a corporation.

The contribution here substantially exceeded the limits placed on judicial campaigns by the Mississippi legislature and the Code of Judicial Conduct. The Special Committee is of the opinion that the Friends of P accepted an improper campaign contribution from an incumbent judge’s committee and a contribution that exceeds the reasonable limits imposed by the Mississippi election law and the Code of Judicial Conduct.

The Special Committee instructs the Friends of P to reimburse the Committee to Elect Q the sum of \$18,814.20 no later than March 27, 2019.

Further, the Special Committee has determined that it is required to report this matter as to the Friends of P and P to the Commission on Judicial Performance for further consideration.

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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