

Serial: 111532

IN THE SUPREME COURT OF MISSISSIPPI  
No. 89-R-99013-SCT

**FILED**

FEB 26 2004

OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

*RE: CODE OF JUDICIAL CONDUCT*

**ORDER**

This matter has come before the Court en banc for consideration of amendments to the Commentary to Section 5A(3)(d) of the Code of Judicial Conduct. Having considered the matter, the Court finds that the amendments set forth in Exhibit "A" to this order will promote the fair and efficient administration of justice.

IT IS THEREFORE ORDERED that the Commentary to Section 5A(3)(d) of the Code of Judicial Conduct is amended as set forth in Exhibit "A" to this order.

IT IS FURTHER ORDERED that the Clerk of this Court shall spread this order upon the minutes of the Court and shall forthwith forward a true certified copy hereof to West Publishing Company for publication as soon as practical in the advance sheets of *Southern Reporter, Second Series (Mississippi Edition)* and in the next edition of *Mississippi Rules of Court*.

SO ORDERED, this the 23<sup>rd</sup> day of February, 2004.



EDWIN LLOYD PITTMAN, CHIEF JUSTICE,  
FOR THE COURT

DIAZ, J., NOT PARTICIPATING  
EASLEY, J., OPPOSES THE AMENDMENTS.

## EXHIBIT "A" TO ORDER

### CODE OF JUDICIAL CONDUCT AMENDMENT TO COMMENTARY TO SECTION 5A(3)(d)

#### *Commentary*

~~Section 5A(3)(d) prohibits a candidate for judicial office from 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 or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section 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 suggest fixed views on issues which may come before the courts, when applied to the candidate or an opponent, and may be taken as prohibited by Section 5A(3)(d.)~~

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.

[Commentary amended effective February 26, 2004.]