

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN RE: AMENDMENT TO RULE 10, RULES OF THE TENNESSEE
SUPREME COURT

Filed: October 11, 2005

ORDER

After reviewing the existing comment to Rule 10, Canon 5(A)(3)(d) of the Tennessee Code of Judicial Conduct in light of Republican Party of Minnesota v. White, 536 U.S. 765 (2002), the Court has decided to delete the current comment in its entirety and adopt in its place the following comment:

Commentary. – A judge's obligation to avoid prejudgment is well established. Under the First Amendment and in light of the voters' right to have information about an elective candidate's views, judicial ethics rules may not prohibit judicial candidates from announcing their views on disputed legal and political issues. Canon 5(A)(3)(d) does not proscribe a candidate's public expression of personal views on disputed issues. To ensure that voters understand a judge's duty to uphold the Constitution and laws of Tennessee where the law differs from the candidate's personal beliefs, however, candidates are encouraged to emphasize their duty to uphold the law regardless of personal views.

Some speech restrictions are indispensable to maintaining the integrity, impartiality, and independence of the judiciary. The state has a compelling interest in enforcing these restrictions. Thus, under Canon 5(A)(3)(d) it remains improper for a judicial candidate to make pledges, promises or commitments regarding pending or impending cases, specific classes of cases, specific litigants or classes of litigants, or specific positions of law, that would reasonably lead to the conclusion that the candidate has prejudged a decision or ruling in cases that would fall within the scope of the pledge, promise or commitment. To fall within the proscription of this rule the statement by the candidate must pertain to matters likely to come before the court on which the candidate would serve, if elected. Statements by a candidate that would have this effect are inconsistent with the obligation of all judges to perform impartially the adjudicative duties of office.

Candidates for judicial office often receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations seeking

to learn their views on disputed or controversial legal or political issues. Canon 5(A)(3)(d) does not generally prohibit candidates from responding to this kind of inquiry, but candidates should proceed with caution if they choose to respond. Depending on the wording of the questions and the format provided for answering, a candidate's responses might constitute pledges, promises or commitments to perform the adjudicative duties of office other than in an impartial way. In order to avoid violating Canon 5(A)(3)(d), therefore, candidates who choose to respond should make clear their commitment to keeping an open mind while on the bench, regardless of their own personal views.

Additionally, judicial candidates must keep in mind that, in stating their position as to an issue, they may later be required to disqualify themselves pursuant to Canon 3(E)(1) should that issue subsequently arise in a proceeding before them and, because of the position taken by the judge while a candidate, the judge's impartiality might reasonably be questioned.

Canon 5(A)(3)(d) does not prohibit a candidate for judicial office from making public statements concerning improvements to the legal system or to the administration of justice.

The Court hereby adopts the above comment to Canon 5(A)(3)(d) effective as of the filing date of this order.

IT IS SO ORDERED.

PER CURIAM