

# CHAPTER 21

## JUDICIAL ELECTIONS

### *Summary of Contents:*

- 21.1 Legal Authorities Pertaining to Judicial Campaigns
- 21.2 Judicial Candidate Qualifications
- 21.3 Judicial Canons Applicable to Judicial Candidates
- 21.4 Appellate Court Ballot Placement
- 21.5 Judicial Inquiry Commission Advisory Opinions
- 21.6 Judicial Recusal Issues

### **21.1 Legal Authorities Pertaining to Judicial Campaigns**

Seeking a judicial office presents unique issues for judges in light of specific provisions in the Alabama Canons of Judicial Ethics. These include Canon 7 (which specifically applies to campaign conduct and other political activities), Canon 6C (which stipulates the requirements for filing certain disclosure statements within 10 days after qualifying), and Canon 2 (which sets forth the general conduct of all sitting judges).

Additionally, the Alabama Constitution imposes further restrictions on judicial campaigns. No judge other than a municipal or judge of probate may seek or accept any non-judicial elected office or hold any non-military office of public trust. Ala. Const. §§ 145 and 147(b). Furthermore, like most other state officials, judges are forbidden from simultaneously holding two state offices of profit. Ala. Const. § 280.

Judicial campaigns also raise issues concerning recusal. If in the preceding election, a judge has received a substantial campaign contribution from or benefits from an electioneering communication by a party who has a case pending before the judge, recusal may be required. If such a campaign contribution exceeds a certain percentage of the judge's total contributions, depending on the type of judicial office, then a rebuttable presumption arises in favor of recusal. § 12-24-3. Depending on the circumstances, a judge may also be disqualified pursuant to Canon 2 and/or 3C(1).

## 21.2 Judicial Candidate Qualifications

Judicial candidates must meet various legal qualifications depending upon the office sought. First, no judge may be elected or appointed to office after reaching the age of 70. Ala. Const. Art. VI § 155. However, local amendment may alter this rule in specific counties. At the time of publication, both Geneva and Henry Counties have a higher age restriction for the office of judge of probate. Ala. Const. Geneva County § 1.20 and Henry County § 4.50.

Justices of the Supreme Court and judges of the courts of appeals, circuit courts, and district courts must be licensed to practice law in Alabama. Ala. Const. § 146. Supreme Court justices and appellate judges must have been licensed to practice law in Alabama or another state for a combined ten years or more prior to election. §§ 12-2-1 and 12-3-1. For circuit judges this requirement is seven years, while for district judges it is only four. §§ 12-11-1 and 12-12-1.

Circuit and district judges must have resided within their respective circuit or district for at least 12 months prior to election. They must also reside within their respective circuits for the duration of their terms. §§ 12-17-22 and 12-17-64.

Further qualifications for judges of probate and municipal judges may vary by jurisdiction. Most notably, several counties require that their judges of probate be licensed to practice law. *See e.g.*, Ala. Const. Shelby County § 4.01. Other counties require that the judge be learned in the law. Prospective candidates for these races should carefully investigate local requirements.

## 21.3 Judicial Canons Applicable to Judicial Candidates

Under Rule 8.2(b) Alabama Rules of Professional Conduct of the Alabama State Bar, the Alabama Canons of Judicial Ethics are applied to candidates for judicial office who are licensed to practice law. Failure to abide by the provisions of the canons will subject such candidates to discipline from the Bar.

## 21.4 Appellate Court Ballot Placement

Beginning with the 2022 statewide election cycle, each seat on Alabama's Supreme Court and courts of appeals will have a permanent place name. However, it should be noted that the place numbers themselves do not indicate sequential order on the ballot. Ballot placement is governed by memorandum provided to the Secretary of State by each of the courts. § 17-6-48.1

## 21.5 Judicial Inquiry Commission Advisory Opinions

Guidance on the application of the Canons to campaign conduct and related disqualification questions is provided by the Alabama Judicial Inquiry Commission's advisory opinions. A chart summarizing select opinions relevant to political and campaign activities is included here. Consideration of these opinions should be guided by the following:

- Neither the advisory opinions summarized, nor the synopses provided should be viewed as authority for specific conduct, or as evidence of a good-faith effort to comply with the canons unless the underlying facts are identical.
- An incumbent judge who contemplates activity that is not clearly permitted would be well advised to seek an opinion from the Commission before proceeding. The Commission cannot render an advisory opinion to a judicial candidate who is not currently a judge, but a lawyer who is a judicial candidate may seek an opinion regarding Canon 7 from the Alabama State Bar. In addition, the Commission will attempt to informally assist any candidate with concerns about proposed conduct.
- Commission opinions are based on the Canons and other pertinent laws in effect at the time the opinions were issued. All synopses should be read in conjunction with the current Canons and other laws involved, with the understanding that the Commission has not addressed whether the conclusions stated have been affected by past changes in either the Canons or other law. This is particularly important in view of the changes to Canon 7 made in 1998 and 2004.

**Chart of Judicial Inquiry Commission Advisory Opinions on  
Political & Campaign Activities and Related Disqualification Issues<sup>1</sup>**

| AO / Date /<br>Subject(s)  | Synopses and Key Excerpts from AO  |
|--|--|
| <p>77-30<br/>11-21-1977</p> <p>Serving on state executive committee of political party</p>   | <p>May a circuit judge serve as an active member of the State Democratic Executive Committee?</p> <p><b>OPINION:</b> Canon 7, Canons of Judicial Ethics, explicitly discourages but does not prohibit participation or involvement in the internal workings of political organizations.</p> <p>“...Canon 7 explicitly discourages but does not prohibit participation or involvement in the internal workings of political organization. Active membership on the State Democratic Executive Committee is thus not prohibited by the canons. However, a judge who is directly or indirectly involved in the internal workings of political organizations is admonished by the Canons to be circumspect in all such activities so as to prevent even the appearance of political considerations, entanglements, or influences being involved in any judicial decision or in the judicial process.”</p>  |
| <p>78-39<br/>6-19-1978</p> <p>Soliciting funds for non-judicial candidate</p> <p>Serving as local campaign manager for candidate</p> <p>Soliciting votes for candidate from family and close friends</p> <p>Making public speeches for candidate</p> | <ol style="list-style-type: none"> <li>1. Can a judge solicit funds on behalf of a candidate for a non-judicial office from (a) his family and close friends (b) members of the public (c) members of the bar?</li> <li>2. Can a judge (a) serve as campaign manager in a locality for a candidate? (b) solicit votes for a candidate among his family and close friends? (c) solicit votes of the general public for a candidate? (d) make speeches at a political rally or other public gathering for a candidate? (e) solicit members of the bar to assist or work in the campaign of a candidate? (f) privately advise and assist in the campaign of a candidate?</li> <li>3. Can a judge contribute money or property to a candidate or his designated committee, and if so, is there any limit imposed by Canon 7 on the amount of money and property that may be contributed?</li> <li>4. Can a judge authorize his name to be used by a candidate for public office, and if so, to what extent?</li> </ol> |

1 The full text of all opinions issued by the Commission is available at:  
<https://www.alabar.org/for-the-public/alabama-jic-opinions/>.

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| <p>Soliciting attorneys to work in candidate's campaign</p> <p>Privately assisting in candidate's campaign</p> <p>Making campaign contribution</p> <p>Use of judge's name and judicial title for candidate</p> <p>Publicly procuring advertising for candidate</p> | <p>5. Can a judge procure advertising in the news media for a candidate and state in such advertisement that he is the sponsor thereof or that he paid for the same?</p> <p><b>OPINION:</b></p> <p>1. It is desirable and strongly encouraged that a judge refrain from soliciting funds on behalf of a political candidate. While such solicitation is not prohibited, it is the opinion of this Commission that it would be virtually impossible for a judge to solicit funds on behalf of another from either lawyers who practice within the jurisdiction of his court or litigants appearing before his court without conveying the appearance that political considerations, etc. may be involved in his judicial decisions or in the judicial process. Such solicitations could also lead to a violation of Canons 1 and 2. It would of course be easier for a judge to make such solicitations from either family or very close friends without violating either the letter or spirit of the Canons.</p> <p>2. It is desirable and encouraged that a judge not engage in campaign activities in connection with a political candidate. Such discouraged, though not prohibited, activities include serving as a local campaign manager, soliciting votes of the general public, making speeches at a political rally or other public gathering, soliciting members of the bar to assist or work in the campaign of a candidate. Canon 7 neither discourages nor prohibits the private expression of opinion by a judge on a political subject. Thus, <u>privately</u> advising or assisting in a political campaign would, under most circumstances in no way violate the spirit of the Canons.</p> <p>3. Canon 7 neither discourages nor prohibits contributions of either property or money to a candidate or his designated committee. However, in making such contributions, a judge should exercise caution so that the method or manner in which the contribution is made does not violate the spirit of the Canons.</p> <p>4. A judge authorizing his name to be used by a candidate for public office is undesirable and discouraged. This is especially so should the judge authorize the candidate to identify him by his official position.</p> <p>5. It is undesirable and strongly discouraged that a judge procure advertising in the news media for a candidate and to</p> |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
|   | <p>state in such advertisement that he is the sponsor thereof or that he paid for the advertisement. Again, this is especially true as to the use of the judge's official title in identifying him as the sponsor of the advertisement.</p>  |
| <p>78-46<br/>6-19-1978<br/>Serving as delegate to political convention</p>              | <p>Under the Alabama Canons of Judicial Ethics, may a judge serve as a delegate to a national convention or mini-convention of a national political party?</p> <p><b>OPINION:</b> Canon 7A(1) specifically discourages involvement in the internal workings of political organizations:</p> <p>“. . . it is desirable that a judge or candidate for election to judicial office endeavor not to be involved in the internal workings of political organizations . . .”</p> <p>While such activity is not prohibited, Canon 7 mandates,</p> <p>“. . . it is imperative that he conduct himself in a manner at all times to prevent any political considerations, entanglements or influences from ever becoming involved in or appearing to be involved in any judicial decision or in the judicial process.”</p> |
| <p>78-47<br/>10-4-1978<br/>Resign-to-run rule:<br/>inapplicable to municipal judges</p> | <p>Is a municipal court judge required to resign his judicial office before running for a non-judicial elected office”?</p> <p><b>OPINION:</b> While it appears under Canon 7 of the Alabama Canons of Judicial Ethics that a municipal court judge would have to resign his judicial office to seek an elective non-judicial office, such judges are exempted from resigning his judicial office when running for a non-judicial elected office by Section 6.065 of Amendment 328, Constitution of Alabama, 1901. (<i>But see AO 94-525 when a municipal ordinance applies.</i>)</p>  |
| <p>80-85<br/>7-1-1980<br/>Explaining basis of decisions</p>                             | <p>May an incumbent judge who is running for re-election to judicial office publicly explain the bases of his rulings or sentences in criminal cases?</p> <p><b>OPINION:</b> No, except under the most extraordinary circumstances, a judge should refrain from commenting on specific cases in which he has participated, especially where such comment could compromise the validity of any rulings or orders entered by him in such cases. This does not preclude a judge commenting on his duty to set a reasonable bail and appoint counsel in criminal cases. Canon 3A(6) and</p>  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
|  | 7B(1)(c).  |
| 80-86<br>7-1-1980<br><br>General statements regarding litigation                   | <p>What statements with regard to litigation may be made by an incumbent judge during the course of a political campaign?</p> <p><b>OPINION:</b> Under Canon 3A(6) and Canon 7B(1)(c), judges are specifically prohibited from commenting on pending litigation and announcing rulings in advance. However, it is further the opinion of the Commission that, during the course of his own political campaign, a judge may make general references to court records, statistics, and procedures. A judge may also explain generally that sentences on guilty pleas, in the vast majority of cases, were upon the recommendation of the State, the officer, or the victim, or were dictated by law, and that the disposal of cases in this manner constitutes a useful tool for law enforcement and saves the taxpayers money. A judge may also comment on the probation statistics of his court and explain generally the useful effects of probation.</p> |
| 80-95<br>12-15-1980<br><br>Signing statement supporting partisan ticket            | <p>May judges sign a statement supporting a partisan ticket in an election? The statement is planned to be published in local newspapers as support for all candidates of the political party in question.</p> <p><b>OPINION:</b> It is the opinion of the Commission that, while the conduct described is not specifically prohibited under the canons, such conduct is undesirable and a judge should refrain from lending his name to the support of other candidates for election to non-judicial public office. Canon 7A(1).</p>  |
| 81-124<br>11-2-1981<br><br>Resign-to-run rule:<br>inapplicable to municipal judges | <p>May a municipal court judge serve as such and be a candidate for membership in the State House of Representatives, and if elected, may the judge hold both positions?</p> <p><b>OPINION:</b> It is the opinion of the Commission that under the Constitution of Alabama a municipal court judge does not have to resign his judicial office before running for a non-judicial office. Such judges are exempted by Section 6.065 of Amendment 328, Constitution of Alabama, 1901, from the prohibition in Section 6.08 of Amendment 328, <i>supra</i>, against judges seeking a non-judicial elective office while serving as a judge. While it appears under Canon 7 of the Alabama Canons of Judicial Ethics that a municipal court judge would have to resign his judicial office to seek an elective non-judicial office, we find the constitutional provisions to be</p>  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
|  | controlling in this instance. Thus, this provision of Canon 7 is inapplicable to municipal judges. See Advisory Opinion 78-47. ( <i>But see AO 94-525 when a municipal ordinance applies.</i> )  |
| 82-140<br>5-6-1982<br>Meaning of “administration of justice”                         | <p>What constitutes the “administration of justice” under Canon 7A(3)?</p> <p><b>OPINION:</b> This phrase is meant to be narrowly construed so as to include the functions of the legal system by which and through which cases may be brought before a court, tried, determined, and disposed of, and judgments enforced. In this instance, all of the functions necessary to the proper operation of the court system also are included. Should a judge have any specific questions, the judge may request an opinion.</p>   |
| 82-141<br>5-6-1982<br>Membership in political and civic organizations, such as NAACP | <p>Is a judge prohibited from being a member of an organization, such as the NAACP, which promotes the economic and political interests of minorities?</p> <p><b>OPINION:</b> See Canons 5, 5B and 7. These Canons do not prohibit mere membership in organizations which are conducted for the economic or political benefit of others. Such membership is prohibited if it raises conflicts with the judge’s judicial duties, reflects adversely upon his impartiality or interferes with the performance of his judicial duties. Further, a judge should not serve in an organization if that organization is likely to be engaged in proceedings before him or if the organization will be regularly engaged in adversary proceeding in any court. Canon 7 specifically allows a judge to participate in political organizations so long as his activities remain with the provisions of Canons 5 and 7.</p> |
| 82-142<br>5-6-1982<br>Campaigning for close relative                                 | <p>May a judge actively participate (such as speaking, handing out literature, etc.) in a campaign in which his immediate kin is a candidate?</p> <p><b>OPINION:</b> Canon 7A(1) provides that such activity on behalf of a candidate for a non-judicial office is undesirable and is therefore strongly discouraged by the Commission. The canon does not recognize a judge’s kinship to another candidate for a non-judicial office as a sufficient reason for removing the undesirability of such campaign activity. Also, Canon 2C provides that a judge should not convey, nor should he permit others to convey, the impression that they are in a special position to influence him.</p>  |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO   |
|---|---|
| 82-143<br>5-6-1982<br>Campaigning for close relative<br>Allowing judge's photo to be used in a campaign | <p>May a judge allow his picture to be used in a campaign in which his immediate kin is a candidate?</p> <p><b>OPINION:</b> Canon 7A(1) provides that such activity on behalf of a candidate for non-judicial office is undesirable and is therefore strongly discouraged by the Commission. The canon does not recognize a judge's kinship to another candidate for a non-judicial office as a sufficient reason for removing the undesirability of such campaign activity. Also Canon 2C provides that a judge should not convey, nor should he permit others to convey, the impression that they are in a special position to influence him.</p>   |
| 82-144<br>5-6-1982<br>Attending fund-raising dinner for candidate                                       | <p>Would it violate the spirit of Canon 7 for a judge to attend a \$50 per plate dinner for a candidate?</p> <p><b>OPINION:</b> No. It does not violate the spirit of Canon 7 for a judge to attend a \$50 per plate dinner for a candidate.</p>  |
| 82-145<br>5-6-1982<br>Judge's expression of view of candidate when speaking about court's functions     | <p>If a judge is speaking to a group about the functions of the court and someone asked him how he feels about a certain candidate or candidates, is it proper for the judge to express his views?</p> <p><b>OPINION:</b> The question posed is unclear in what manner and to what extent a judge is called upon to express his views about a candidate or candidates. Canon 7 does not specifically prohibit expression of political opinion by a judge. Canon 7 does provide that it is desirable that a judge endeavor not to engage in campaign activities in connection with a political candidate other than candidates for judicial office. Also, Canon 2C provides that a judge should not lend the prestige of his office to advance the private interest of others. It is therefore the opinion of the Commission that for a judge to respond as suggested could violate the spirit of Canon 7 and Canon 2C. This does not mean that a judge may not express his political viewpoints, but when speaking specifically about the functions of the court, a judge should refrain insofar as possible from using that opportunity to make political comment as to the candidacy of any other person. See Advisory Opinion 78-39.</p> |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| 82-146<br>5-6-1982<br>Political activities of judge's spouse                         | <p>How active can a judge's spouse be in a candidate's campaign?</p> <p><b>OPINION:</b> The Canons do not prohibit independent political activities by a judge's spouse.</p>  |
| 82-147<br>5-6-1982<br>Accepting contributions after election to reduce campaign debt | <p>May a judge who has completed a successful campaign for judicial office accept campaign contributions which are tendered after his election is concluded and he has assumed office, for the purpose of reducing his campaign debt?</p> <p><b>OPINION:</b> Yes. A judge may accept campaign contributions at any time where such contributions comply with the various laws which pertain to campaign contributions and elections. Of course, a judge in accepting such contributions must remain ever mindful of the provisions of Canon 7B(1)(d). (<i>Canon 7B(4)(b), which places time limitations on the solicitation and acceptance of campaign contributions, was adopted after this AO.</i>)</p> |
| 82-148<br>5-6-1982<br>Resign-to-run rule: running for non-judicial office            | <p>Regarding Canon 7A(l), must a judge resign his judicial office to run for District Attorney?</p> <p><b>OPINION:</b> Yes. The office of District Attorney is not a "judicial office" within the meaning of Canon 7A(2).</p>   |
| 82-149<br>5-6-1982<br>Definition of inappropriate "political activities"             | <p>In Canon 7A(1), please define what is meant be the phrase, "should endeavor at all times to refrain from political activities inappropriate to the judicial office that he holds or seeks."</p> <p><b>OPINION:</b> Activities inappropriate to the judicial office are activities that the canons in their entirety seek to prohibit. See Advisory Opinion 78-39 on political conduct in general.</p>  |
| 82-150<br>5-6-1982<br>Examples of inappropriate "political activities"               | <p>Please give specific examples of just what type of political activities are considered appropriate and what activities are considered inappropriate.</p> <p><b>OPINION:</b> See Advisory Opinions 77-30, 78-39, 80-85, and 80-86 for specific examples of conduct. Other concerns may be addressed to the Commission.</p>  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
| 82-151<br>5-6-1982<br>Explanation of “maintain the dignity appropriate to judicial office”                 | <p>Under Canon 7B(1) regarding campaign conduct, please explain the phrase, “maintain the dignity appropriate to judicial office”, in sub-paragraph (a).</p> <p><b>OPINION:</b> A judge who becomes involved in any political campaign must exercise extreme caution to maintain the dignity of his office, to uphold the independence, integrity, and impartiality of the judiciary, and to refrain from interjecting the prestige of his office into the campaign. See Commentary to Canon 2.</p>  |
| 82-153<br>5-6-1982<br>Content of campaign speech   | <p>Does Canon 7B(1)(c) limit all campaign speeches to the single phrase, “I pledge and/or promise to faithfully and impartially perform the duties of the office I seek”? Is nothing else permissible? If not, give examples of what a judicial candidate may say at political rallies.</p> <p><b>OPINION:</b> The campaign speeches by a candidate for judicial office are not limited to the above single phrase. The provisions of the canons are not so restrictive as to prohibit ordinary campaigning by judges or candidates for judicial office so long as the campaign is conducted in accordance with the high standards of conduct to which judges of this State should aspire in order to maintain the independence, impartiality, and integrity of the judiciary of this State mandated in Canons 1 and 2. Canon 7 places a burden upon candidates to carefully consider whether their participation in a course of conduct under a given set of circumstances would violate any of the remaining canons, <i>i.e.</i>, Canons 1 and 2. Whether such violations occur would depend on the facts of each particular case.</p> |
| 82-154<br>5-6-1982<br>Explanation of “not be involved in the internal workings of political organizations” | <p>Under Canon 7A(1), please explain the phrase, “not be involved in the internal workings of political organizations,” and give examples of what conduct is permissible and what conduct is not permissible.</p> <p><b>OPINION:</b> It is the opinion of the Commission that a candidate should not hold any office in a political organization nor serve on any committee of such organization involved in the solicitation of funds for any purpose of that organization; except, he may pay for the qualification fee required by such political organization for qualification as a candidate. See Advisory Opinions 77-30, 78-39, and 78-46.</p>   |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO   |
|---|---|
| 82-155<br>5-6-1982<br>Paying qualifying fees to political party                             | <p>Under Canon 7A(1), is the paying of qualifying fees to a political party considered being involved in the internal workings of a political organization?</p> <p><b>OPINION:</b> No. The paying of qualifying fees to a political party is not considered being involved in the internal workings of a political organization under Canon 7A(1).</p>  |
| 82-156<br>5-6-1982<br>Content of campaign literature  | <p>Under Canon 7, what may be said in campaign literature?</p> <p><b>OPINION:</b> Canon 7B(1)(c) prohibits a judge from commenting on pending litigation and from publishing his conclusions of law on pending litigation. The canons do not prohibit a judge from making general references to court records, statistics, and procedures, nor do they prohibit a judge from explaining generally that sentences on guilty pleas were, in many cases, based upon recommendations of the district attorney and acquiesced in by the victim or his family. A judge may comment on the useful effects of probation, and he may comment on his duty to set a reasonable bail and appoint counsel in criminal cases. However, a judge may not publicly explain the bases of his rulings or sentences in criminal cases, and he should refrain from commenting on specific cases in which he has participated, especially where such comment could compromise the validity of any ruling or order entered by him in such cases. (<i>This opinion explicitly does not attempt to list everything that may be said in campaign literature.</i>)</p> |
| 82-157<br>5-6-1982<br>Content of campaign speech  | <p>Under Canon 7, what subjects may be discussed in newspaper interviews during political campaigns for judicial office?</p> <p><b>OPINION:</b> In newspaper interviews, a candidate should avoid commenting on subjects which the canons in their entirety seek to prohibit. See Advisory Opinion 82-156, and Advisory Opinion 78-39 on political conduct in general.</p>  |
| 82-159<br>8-2-1982<br>Accepting contributions from bonding company or its major stockholder | <p>Is it permissible for a district judge who is a candidate for circuit judge to accept campaign contributions from a bonding company or a major stockholder in a bonding company which does business in the circuit and district courts?</p> <p><b>OPINION:</b> It is the opinion of the Commission that the Alabama Canons of Judicial Ethics do not prohibit such campaign contributions; however, a candidate for judicial office should be ever mindful of Canons 7B(1)(c), 1, 2A, and 2C.</p>  |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO   |
|---|---|
| 82-160<br>8-27-1982<br>Sending letters to jurors                                      | <p>May a circuit judge send commendatory letters to jurors at his own expense as long as he is not in conflict with Advisory Opinion 82-126?</p> <p><b>OPINION:</b> Yes, a circuit judge may send commendatory letters to jurors at his own expense so long as his action does not conflict with Advisory Opinion 82-126. However, a judge should be ever mindful of the high standards set out in Canon 1. Under this canon, in order to protect the integrity of the judiciary, such letters should be sent only to those jurors who participated in a proceeding over which the judge sending the letters presided, <i>i.e.</i>, qualifying or striking a jury, or a jury trial. (<i>Overruled in part by AO 93-482.</i>)</p>  |
| 82-161<br>8-27-1982<br>Responding to criticism of court clerk in clerk's campaign     | <p>May a district judge run a newspaper ad saying that only he, as district judge, has the authority to <i>nolle prosequi</i> cases in the district court, or may the judge make the same statement at a political rally? The judge is an unopposed candidate for re-election. However, the district clerk has opposition. Supporters of the clerk's opponent are distributing copies of the DUI record of the husband of an employee in the clerk's office and suggesting that the clerk dismissed the DUI cases.</p> <p><b>OPINION:</b> The question presented here is answered generally by Advisory Opinion 78-39. Under Canon 7, it is desirable and encouraged that a judge not engage in campaign activities in connection with a candidate for non-judicial office; however, such activity is not prohibited. Also, during a political campaign, a judge or candidate for judicial office must be ever mindful of the provisions of Canons 1 and 2.</p> |
| 82-162<br>9-20-1982<br>Authorizing candidate's use of judge's name and judicial title | <p>Would it violate the Canons for circuit and district judges to allow their names to be used as judges in newspaper advertisements or in other media in support of a candidate for the Supreme Court of Alabama or any judicial office?</p> <p><b>OPINION:</b> It is the opinion of the Commission that any judge of this State may engage in campaign activities in connection with a candidate for judicial office by allowing the judge's name to be used as judge in newspaper advertisements or in other media in support of a candidate for the Alabama Supreme Court or in support of any other candidate for judicial office based on Canon 7A(1). However, judges should be ever mindful of Canons 1 and 2 and refrain from any activity inappropriate to their judicial office.</p>   |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| <p>83-178<br/>3-3-1983<br/>Sending letters to jury venire members</p>                              | <p>May a judge's office stationery and postage be used to send letters of thanks to jury venire members where such letters are signed by all of the circuit judges in a circuit, regardless of whether all of the circuit judges participated in the organization of the court before those venire members or in the trial of cases before them?</p> <p><b>OPINION:</b> See Advisory Opinion 82-126, which states that such letters should not be sent by any judge unless expressly authorized by court rule or the presiding circuit judge; and 82-160, which states that a judge is not prohibited from sending such commendatory letters at his own expense to those jurors who in some manner participated in the judicial process before the judge. As to your specific question whether such letters can be sent at court expense and signed by all judges of the circuit, the Commission reaffirms these prior opinions. However, the Commission finds that the canons do not preclude suitable commendatory letters being sent to venire members at court expense and signed by all circuit judges where the letters are approved by court rule and where such letters accurately reflect their participation or the participation of the signatory judge in the judicial process. Canon 7A(1), Canon 2, and Canon 1. (<i>Overruled in part, Advisory Opinion 93-482.</i>)</p> |
| <p>84-209<br/>5-28-1984<br/>Serving on advisory committee for campaign for non-judicial office</p> | <p>May a judge accept an appointment to serve on the advisory committee for election of a certain person to the position of United States Senator from Alabama?</p> <p><b>OPINION:</b> Political activities of judges are governed by Canon 7 of the Alabama Canons of Judicial Ethics and provides under Canon 7A(1): "...It is desirable that a judge ... endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than candidates for judicial offices and not be involved in political fund solicitation other than for himself..." Further, Canon 7 recognizes that judges hold elective offices in Alabama and, therefore, must engage in partisan politics. However, the canon strongly discourages, although it does not prohibit, a judge from engaging in the activity which you describe. If the judge does serve on the committee in question, he should do so in his individual capacity and not identify himself or allow himself to be identified as a judge. He must not lend the</p>  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
|  | prestige of his office to advance the campaign.   |
| 84-213<br>5-28-1984<br><br>Disqualification:<br>Party contributing to past campaign                                      | <p>Is a judge disqualified from sitting in a proceeding in which a party is known to the judge to have contributed to his past judicial campaign fund and, otherwise, generally supported him for office?</p> <p><b>OPINION:</b> Based on Canon 3C(1) and Canon 7, and upon the fact that judges in Alabama hold elective offices, it is the opinion of the Commission that the mere fact that a party to a proceeding contributed to the judge's campaign and generally supported the judge for office does not cause the judge to be disqualified from sitting in the proceeding. However, the addition of other factors might cause the judge's impartiality to be reasonably questioned, depending on the totality of the circumstance in each particular case. (<i>Issued before passage of Ala. Code §12-24-3.</i>)</p>               |
| 84-227<br>12-3-1984<br><br>Disqualification:<br>party or party's attorney contributed to past campaign<br><br>Disclosure | <p>Is a judge disqualified from sitting as judge in a proceeding in which one of the litigants or a litigant's attorney has made campaign contributions to the judge? Also, what duties does the judge have to the other litigants and attorney in regard to disclosing to them the circumstances surrounding such contribution?</p> <p><b>OPINION:</b> Based on Canon 3C and Canon 7, the judge is not disqualified unless circumstances exist which could cause the judge's impartiality to reasonably be questioned. As to disclosure, campaign contributions are required by law to be disclosed in writing by a report filed with the Secretary of State. No further disclosure is required unless special circumstances exist which might otherwise cause disqualification. (<i>Issued before passage of Ala. Code §12-24-3.</i>)</p> |
| 87-288<br>2-2-1987<br><br>Accepting contributions after election to reduce campaign debt                                 | <p>Is it permissible for a third party to solicit and collect campaign contributions to retire the campaign debt of a (newly elected) incumbent district judge?</p> <p><b>OPINION:</b> Yes. The judge should, however, admonish his supporters to follow the provisions of Canon 7B.</p>  |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
| 87-315<br>9-29-1987<br>Judge-candidate disqualified from appointing absentee election manager           | <p>Is a presiding circuit judge who is a candidate for re-election disqualified from appointing the absentee election manager for the election in which the judge is seeking office?</p> <p><b>OPINION:</b> Yes. A judge appointing the absentee election manager in an election in which the judge is a candidate constitutes the appearance of impropriety. Canon 2. The judge should disqualify himself and allow another judge to assume the duties of presiding judge for this purpose.</p>   |
| 88-323<br>2-10-1988<br>Unopposed judge-candidate disqualified from appointing absentee election manager | <p>May Advisory Opinion 87-315 be modified to allow the judge to appoint an absentee election manager in an election in which he is an unopposed candidate? The judge's service in making such an appointment could not affect the outcome of his own political race.</p> <p><b>OPINION:</b> Advisory Opinion 87-315 should be modified to the extent that the canons, specifically Canon 2, are not violated where, under <i>Ala. Code</i> §17-10-2 and §17-10-13 (1975), a judge appoints an absentee election manager in an election in which he is an unopposed candidate. The judge is considered to have opposition if either his party or any opposition party fields more than one candidate for the judge's position. The appearance of impropriety in Canon 2, relied upon in Opinion 87-315, continues to exist where the judge's position in the appointment of an absentee election manager could influence the selection of his general election opponent.</p> |
| 88-330<br>3-28-1988<br>Sending letters to jurors  | <p>May a judge who is a candidate for judicial office solicit support by mail from persons who have previously served as jurors in cases in which the judge presided? The solicitation would be in the form of a personal letter to past jurors commending them for their service and making a direct appeal for support for his candidacy. The letter would be prepared at the judge's personal expense, on his personal time away from the courthouse, and would not utilize state personnel or equipment.</p> <p><b>OPINION:</b> A letter that is worded carefully would not violate the canons. See Canon 7. The proposed letter would say "thank you" to the jurors for serving, note that they have had an opportunity to observe the judge on the bench, and ask the jurors to support the judge's re-election. As long as the</p>  |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
|   | letter remains within the constraints of Canons 1 and 2, it remains acceptable campaign conduct. Under these canons, the letter must not impinge upon the integrity or independence of the judiciary, and must not even give the appearance of impropriety in its wording.   |
| 88-331<br>3-28-1988<br>Appearing in judicial robe in campaign-literature photo when running for different judicial office<br>Content of campaign literature | <p>Is it proper for a district judge who is running for circuit judge to appear in his campaign literature in his judicial robes?</p> <p><b>OPINION:</b> The described facts do not present a violation of the canons. See Canon 7. In addition, a judge should be ever mindful of the provisions of Canons 1 and 2 that require that at all times a judge should uphold the integrity of the judiciary and should avoid impropriety in all of his activities. The judge should make sure that his campaign literature accurately reflects his qualifications. Campaign literature, including the picture of the judge, should in no way suggest that the district judge has previously served as circuit judge.</p> |
| 88-332<br>4-29-1988<br>Running for another circuit judgeship in the same circuit  | <p>May a circuit judge continue to serve in his position while qualifying to run and running in an election for another circuit judgeship within the same circuit?</p> <p><b>OPINION:</b> Yes. The above action is not prohibited by the Canons.</p>   |
| 88-334<br>5-2-1988<br>Using unspent campaign funds: repaying loans of campaign  | <p>May a circuit judge use unspent campaign contributions to repay prior loans made by the judge and associated with a previous campaign?</p> <p><b>OPINION:</b> So long as it is clear that the funds are being used to reimburse previous campaign expenditures, the use of such funds to repay loans that the judge personally took out to pay for the prior campaign would not violate Canon 7.</p>  |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
| 91-420<br>4-30-1991<br>Disqualification: attorney or member of attorney's firm is judge's campaign treasurer or member of judge's campaign advisory committee | <p>Is a judge disqualified from sitting in proceedings in which a party is represented by (1) the judge's re-election campaign treasurer or a member of his firm, or (2) a member of the judge's re-election advisory committee or members of their firms, or (3) both parties are represented by one of the above?</p> <p><b>OPINION:</b> None of the above situations would in and of itself cause the judge's disqualification based on Canons 3C and 7. While the Commission finds that it is desirable that a judge not enter into a political relationship with attorneys who practice before him, the canons neither prohibit this activity nor require the judge's disqualification.</p> |
| 93-466<br>2-26-1993<br>Placing ad in high school yearbook or football program   | <p>An incumbent judge may place an advertisement in a local school annual yearbook or football program in which the judge is identified as a judge pictured in his or her robe. If applicable, the incumbent judge may list himself or herself as a candidate for judicial office, even prior to the time of qualifying for re-election. The canons do not limit the time in which an incumbent judge may campaign for re-election. Any advertisement must maintain the dignity appropriate to the judicial office. Any statements made in the advertisement must be true and not misleading.</p>  |
| 93-479<br>4-30-1993<br>Using unspent campaign funds: donating to charity  | <p>A judge may donate any excess political campaign funds to a charity. The judge must have no connection or involvement in the management or control of the charity to which the funds are donated. The judge may not receive any "private benefit" from the donation of the funds, and may not claim a charitable deduction on his or her personal income tax return. The "private benefit" of Canon 7B(1)(d) extends to the judge's spouse and family.</p>  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| 93-482<br>6-25-1993<br>Using unspent campaign funds<br><br>Sending letters of condolences and letters of congratulation to new Bar members | <p>1. A judge may use his or her political campaign fund to pay such reasonable expenses as transportation, food, and lodging for attending professional meetings of either lawyers or judges, legal or judicial continuing education courses, or other similar events.</p> <p>2. Under two circumstances, an elected judge may use campaign funds to pay the monthly bill for the use in his state or private car of a car telephone which was purchased with campaign funds during a campaign for re-election. One, the telephone may be used if the car phone is an ordinary and necessary expense incurred in connection with judicial office and its use is limited to business activity. Two, the telephone may also be used for that campaign activity which is designed to maintain the judge in the office to which he was elected.</p> <p>3. A judge may use excess campaign contributions to pay the expense of letters of condolence and letters of congratulation which include a letter to every new bar member, as this clearly falls within the definition of a legitimate campaign activity. The term "expense" includes the costs of preparing, printing, paper, supplies, and postage. However, a judge should not use state office supplies or personnel in order to send letters of congratulation to every new member to the Alabama State Bar. Such a practice has the appearance of political campaign conduct, and involves the appearance of impropriety when state office supplies or personnel are used. <i>(Overruled in part by AO 08-894.)</i></p> |
| 93-511<br>12-10-1993<br>Disqualification: attorney is member of judge's campaign advisory committee  | A judge is not disqualified from presiding over a civil hearing for contempt filed by the Wife against the Husband under the following circumstances: . . . (6) the Wife's attorney is a member of the judge's campaign advisory committee.   |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
| 94-520<br>3-25-1994<br>Disqualification:<br>attorney is candidate<br>opposing judge in current election           | A judge should disqualify himself from any case in which a party is represented by an attorney opposing the judge in the judge's political campaign for re-election where the initial appearance of the attorney on behalf of the party in the case occurred <i>after</i> the attorney had announced his candidacy for the judge's position. On the other hand, a judge is not automatically disqualified if an attorney in a pending suit already before the judge announces his candidacy against the judge.   |
| 94-525<br>8-26-1994<br>Obeying city ordinance requiring municipal judges to resign to run for non-judicial office | A judge must comply with the law. A municipal judge of the City of Birmingham must comply with a city ordinance providing that the judge must resign his judicial office in order to become a candidate for non-judicial office. A judge is ethically obligated to obey the commands and restrictions of the ordinance until that ordinance is declared unconstitutional or unlawful or until the enforcement of the ordinance is enjoined in a court of law through the judicial process.   |
| 94-537<br>12-9-1994<br>Content of campaign speech:<br>questionnaires  | A candidate for judicial office may respond to questions seeking the candidate's opinion on a specific issue where the candidate makes it clear that the candidate is expressing a personal opinion, and that the candidate will be bound by the law and will follow the law if elected. An expression of intent to disregard precedent would be unethical. In addition, a candidate should not respond to questions concerning issues that are likely to come before him in his judicial capacity. ( <i>Issued before Republican Party of Minn. v. White</i> , 565 U. S. 765 (2002).) |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
| 95-544<br>3-17-1995<br>Disqualification:<br>judge appeared<br>on platforms<br>with<br>party/justice,<br>shared<br>consultants, is a<br>member of same<br>party, and<br>received<br>contributions<br>from various<br>attorneys | <p>In answering a question certified to the Alabama Supreme Court by a federal circuit court of appeals in <i>Roe v. Boggan</i> on counting absentee ballots in the election of the chief justice, the Alabama Supreme Court held that the justices could sit on the question even though they might have contributed to the chief justice's political campaign and might have presented themselves for re-election in that same election.</p> <p>Based upon that decision, the Commission holds that one associate justice was not disqualified to sit in answering the question presented in <i>Roe v. Boggan</i>, despite the facts that that associate justice (1) was a candidate for the position of associate justice and was elected in the election at issue, (2) appeared on platforms with the incumbent chief justice where he sought and received political endorsements from the same groups as the chief justice, (3) shared and used some of the same advertising and media consultants, polling data, and other campaign personnel as the chief justice, (4) was a member of the same political party as the chief justice; (5) received a campaign contribution from the chief justice's attorney son, (6) received a campaign contribution from the law firm in which the chief justice's son is a partner, (7) received campaign contributions from law firms that are representing a class of plaintiffs in the lawsuit closely related to <i>Roe v. Boggan</i>, and those firms also contributed to the chief justice's campaign, and (8) the ruling on the certified question and the effect it may have on the disposition of <i>Roe v. Boggan</i> could affect the final vote totals but not the outcome in the associate justice's 1994 election. The Commission recommends that the associate justice recuse himself from any future participation in the matter.</p> <p>NOTE: The Supreme Court opinion was released shortly before the Commission's advisory opinion.</p> |
| 95-552<br>4-28-1995<br>Sending letters<br>to jurors   | A judge may send commendatory letters to jurors at the conclusion of jury terms at his own expense, provided that court stationery, stamps, or personnel are not used, and that the letters are sent only to those jurors who, in some manner, participated in the proceeding over which the judge presided. The canons do not preclude suitable commendatory letters being sent to jury venire members at court expense and signed by all the circuit judges in the circuit if the letters are approved by court rule and accurately reflect their  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
|  | participation or the participation of the signatory judge in the judicial process.   |
| 95-561<br>4-28-1995<br><br>Using unspent campaign funds: ticket to political dinner  | An incumbent judge may purchase a ticket to attend a dinner meeting of a political organization.   |
| 95-562<br>4-28-1995<br><br>Using unspent campaign funds: political dinner program booklet  | A judge may use campaign funds from a previous race to buy a ticket to a dinner meeting hosted by a political organization that has endorsed the judge in the past and/or to purchase an advertisement in the program booklet for the dinner meeting. Judges are subject to the provisions of the Alabama Fair Campaign Practices Act.   |
| 95-575<br>8-18-1995<br><br>Disqualification:<br>judge commented on and utilized his involvement in well-known case during campaign | <p>A judge is disqualified from continuing to sit on a case where the case has been pending for some time and a motion for disqualification was filed by one of the parties; where the case involves legal and factual matters affecting the entire citizenry of this state and is heavily disputed among different factions (education funding); where, during the pendency of the litigation, the circuit judge became a candidate for supreme court justice; where during the campaign, the judge, at a minimum by inference, referred to the case as an example of his courage and willingness to decide tough issues when other branches of government had failed to do their jobs or provide leadership; where during the campaign, the judge's opponent, at a minimum also by inference, referred to the case, criticizing the judge's orders; where the judicial campaign was for a statewide office and had extensive statewide media coverage; where the issues on which the judge publicly declared his courage and leadership are now being presented to the judge for his reconsideration; and, where the particular case, although not by name, was a part of a judicial political campaign in a year when statewide judicial political campaigns brought the dignity of the judicial office to a new low in the eyes of the bar and public.</p> <p>While no one circumstance standing alone might require disqualification, all of these factors, when considered together, reach the level of facts providing a reasonable basis</p> |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
|  | for questioning the judge's impartiality. Although no actual bias is shown, none is required where the facts presented indicate a reasonable basis for the appearance of partiality.   |
| 95-578<br>10-6-1995<br>Disqualification:<br>attorney signed<br>bond for costs in<br>proceeding to<br>contest judge's<br>election | <p>Recusal is not required under the following circumstances. An attorney represents a party in a divorce proceeding. Approximately six weeks after that divorce proceeding was initiated, an election contest was filed in probate court contesting the judge's election as circuit judge. The attorney was one of the signatories on the bond for costs concerning the election contest. The probate court ruled in the judge's favor, and some seven months later the same attorney signed as a surety for the costs of an appeal to the Alabama Supreme Court. The next month, the attorney filed a motion for the judge's recusal.</p> <p>Finding significant the facts that the motion for recusal was not made until months after the attorney was already involved in the divorce litigation and had signed the bond, and also after the judge had already made numerous rulings without any allegation of prejudice, the Commission holds that the judge's recusal is not required in the divorce case unless the judge has an actual bias or prejudice concerning a party to the case. Mere representation of a party by a political opponent or a supporter of a judge does not cause a judge's impartiality to be reasonably questionable.</p> |
| 95-579<br>10-27-1995<br>Using unspent<br>campaign funds  | Pursuant to Canon 7B(1)(d), an elected official may use surplus campaign funds (1) to buy a chair or other office equipment to use in the judge's office or courtroom where the equipment would be donated to the State; (2) to pay special membership dues to the Alabama State Bar; (3) to pay membership dues to the local chapter of the American Inn of Court; and, (4) to pay tuition, transportation, and other ordinary and necessary expenses for judicial education programs and for general continuing legal education programs.  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| 96-607<br>6-28-1996<br>Disqualification:<br>attorneys contributed to judge's campaign                          | A judge is not disqualified where the judge received unsolicited personal campaign contributions totaling \$3,100 from three attorneys who practice in the same law firm as two attorneys for the plaintiff, where the judge also received unsolicited campaign contributions totaling \$1,000 from an attorney and a law firm representing some of the plaintiffs, and . . . . ( <i>Issued before passage of Ala. Code §12-24-3.</i> ) |
| 96-613<br>8-9-1996<br>Disqualification:<br>party's attorney and relatives contributed to past campaign         | The following facts do not constitute grounds for a judge's disqualification in a domestic relations case: . . . . 3) the plaintiff/husband's parents gave the judge a \$30 campaign contribution in 1988, and 4) the defendant/wife's attorneys gave the judge \$200 that same year.   |
| 97-674<br>10-3-1997<br>Disqualification:<br>attorney told judge he plans to run against judge in next election | The mere fact that a judge has been told by an attorney that the attorney will present himself as a candidate in opposition to the judge in the next judicial election does not disqualify the judge from sitting in proceedings in which the attorney represents a party. Additional circumstances could arise which would cause the judge's disqualification in such proceedings.   |
| 97-676<br>10-3-1997<br>Making campaign contribution to and soliciting funds for non-judicial candidate         | Members of the Court of the Judiciary are covered by the Canons of Judicial Ethics as part-time judges as set out in the Compliance Section of the Canons. As such, their political activities are governed by Canon 7, under which a judge is not prohibited from soliciting funds for candidates, other than himself, nor from making contributions to other candidates or to political parties.                                      |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
| 98-689<br>1-23-1998<br>Recommending attorney for judicial appointment                                      | A judge may, at the request of an attorney, write a letter to a judicial panel recommending such attorney for appointment to judicial office.  |
| 98-694<br>5-15-1998<br>Disqualification: attorney or party is candidate opposing judge in current election | The Commission reaffirms Advisory Opinion 94-520 that a judge is disqualified in cases filed after an attorney in the case has announced his candidacy in opposition to the judge, and that a judge is not disqualified from already pending cases when an attorney announces his candidacy, absent additional circumstances causing bias against the attorney or his clients or a reasonable question as to impartiality. A judge is disqualified from hearing any case in which his opponent in an upcoming election is a party.     |
| 98-696<br>5-15-1998<br>Content of campaign speech  | A judge may make statements in his campaign for re-election which address the qualifications of his opponent by pointing out types of cases that come before the court with which his opponent has no experience. Any such statements must be true and not misleading to a reasonable person, and the judge must maintain the dignity appropriate to judicial office. <i>(Issued prior to 2004 amendments to Canons 7B(1)(c) and 7B(2).)</i>   |
| 98-698<br>5-15-1998<br>Accepting contributions from litigants  | A judge who is a judicial candidate may retain campaign contributions made by persons who are parties in subsequently filed litigation and may accept campaign contributions from parties to cases currently pending before the judge. No disclosure in addition to the filings mandated by the Fair Campaign Practices Act and Ala. Code §12-24-2 (1975) is required for the contributions described in this particular case. <i>But see, Ala. Code §§12-24-1 and -2 (1975). (§§12-24-1 and -2 were repealed, eff. Jul. 1, 2014.)</i> |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO  |
|---|--|
| 98-716<br>12-18-1998<br>Disqualification:<br>attorney is candidate<br>opposing judge<br>Party supports judge's opponent<br>Attorney endorsed judge in campaign ad | Absent actual bias or prejudice toward a party in the case, a judge is not disqualified to hear a case when the plaintiff engaged the judge's political opponent as a third co-counsel three days before the election and eight days before the scheduled hearing date, the plaintiff supported the judge's opponent, and opposing counsel and a law partner of one of the plaintiff's attorneys were among those who joined in a newspaper ad endorsing the judge that was published the weekend before the election. The plaintiff had already obtained a continuance on a prior occasion due to the hiring of an additional attorney two days before a scheduled hearing of the case. |
| 99-717<br>1-13-1999<br>Disqualification:<br>attorney endorsed judge in campaign ad  | A judge is not disqualified from sitting in criminal cases merely because the local district attorney endorsed her candidacy in a political advertisement in her campaign for judicial office. Additional circumstances might cause the judge's impartiality to be reasonably questioned, but no disqualifying additional circumstances are found in this case.  |
| 99-718<br>2-19-1999<br>Using title "Judge" in campaign for different judicial office  | A sitting judge may use the title "Judge" in a campaign for a different judicial office, but when he does so, he must either identify his current judicial position or otherwise indicate that he is not the incumbent in the current race. Some examples of permissible and impermissible uses of the title "Judge" in campaign materials are addressed in the opinion.   |
| 99-729<br>4-30-1999<br>Disqualification:<br>attorneys contributed to past campaigns   | Unless the judge feels that she may be affected, the judge is not disqualified to hear a case in which the defendant is an attorney where . . . 3) the members of the defendant's firm have made small donations to some of the judge's past campaigns for judicial office, and . . .  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO   |
|--|---|
| 00-745<br>2-28-2000<br>Agreeing not to report campaign violations  | The Alabama Canons of Judicial Ethics do not permit a judge to make an advance agreement to not report any campaign conduct or materials in violation of the canons to the Judicial Inquiry Commission, the Alabama State Bar or other appropriate body as such an agreement would take away the judge's independence to decide whether particular conduct or materials must be reported to one of these bodies under Canon 3B(3) or Canon 7C(1).   |
| 00-746<br>2-29-2000<br>Using Unified Judicial System seal, courthouse address, etc. on campaign materials                                | A judge may not use the State of Alabama Unified Judicial System seal as part of the letterhead for the judge's reelection campaign stationery because this would improperly create an appearance that official stationery is being used for campaign purposes. A judge also may not use his or her courthouse address or telephone or fax numbers on judicial campaign materials.  |
| 00-755<br>6-6-2000<br>Incumbent judge of probate endorsing candidate for judge of probate  | A judge of probate who is not running for reelection may publicly endorse a candidate for the position in an upcoming election. However, a judge making such an endorsement should be careful that the substance of the endorsement complies with the provisions in Canons 1 and 2.   |
| 01-783<br>7-13-2001<br>Disqualification: party is officer of political party that contributed to judge's prior campaign and endorsed him | If the judge feels he can impartially preside, the Alabama Canons of Judicial Ethics do not require his disqualification to hear a case in which a defendant is the Vice Chairman of Minority Affairs for the Alabama Democratic Party and Chairman of the Alabama Democratic Caucus on account of a political campaign endorsement by the Caucus or campaign contributions made by the Party and the defendant's attorney. The campaign contribution from the Party was not from a litigant but from a political party of which the litigant was an officer. |

| AO / Date / Subject(s)  | Synopses and Key Excerpts from AO   |
|---|---|
| 04-838<br>4-8-2001<br>Disqualification:<br>attorney was<br>judge's<br>opponent in past<br>campaign                  | A judge is not disqualified to hear a case merely because one of the parties was a candidate in opposition to the judge in a judicial election held more than a dozen years ago.  |
| 06-863<br>3-17-2006<br>Resign-to-run<br>rule: applicable<br>to special circuit<br>judge, i.e., judge<br>pro tempore | A special circuit judge is a judge pro tempore subject to the Alabama Canons of Judicial Ethics as provided in Compliance Section B of the canons. Since a judge pro tempore is subject to Canon 7A(2), a special circuit judge must resign such position when he or she becomes a candidate for non-judicial office.   |
| 06-869<br>6-12-2006<br>Serving on<br>county<br>committee for<br>candidate for<br>non-judicial<br>state office       | Service by a judge and judicial candidate on a county committee for a candidate for election to a non-judicial statewide office is strongly discouraged by Canon 7A(1). Some specific conduct proposed by the inquiring judge is not permitted and some is permitted only in his individual capacity.   |
| 08-894<br>9-12-2008<br>Letters to<br>persons who<br>appeared for<br>jury service                                    | A judge may send an appreciation letter, at the court's expense, to persons who responded to summonses for jury service if (1) such letter is sent only to those persons who reported for jury service; (2) the letter's content is limited simply to the expression of appreciation for the recipients' civic service to the judicial system and does not address the particulars of any case, including a case's outcome; (3) the judge(s) signing the letter must have had some official contact with the recipients; and (4) the letters should be mailed routinely and immediately after the service has been rendered. See Commission's recommended letter. |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
| 09-900<br>6-19-2009<br><br>Serving as auctioneer for fundraiser for political organization | A circuit judge may not serve as an auctioneer for a fundraising auction sponsored by a local women's club affiliated with a political party primarily because it would violate Canon 2C's prohibition that a judge not use his or her official position or judicial title in any fundraising activity, because a judge should not solicit from attorneys who practice in the court's jurisdiction or from litigants who may appear in that court, and because it would be virtually impossible for a judge to serve as the auctioneer without violating the requirement of Canon 7A(1) to conduct oneself in a manner at all times as to prevent conveying the appearance that political considerations may be involved in his or her judicial decisions or the judicial process. |
| 12-914<br>5-17-2012<br><br>Hosting fundraiser for a judicial candidate                     | <p>A judge, including an active-retired judge, may not be listed as a member of a host committee on an invitation to an attorney or litigant currently or likely to be in the judge's court where that invitation seeks or requests a campaign contribution to a judicial candidate.</p> <p>A judge's spouse may host a fundraiser for a judicial candidate, but the judge must take steps to ensure the appearance as well as the reality of the spouse's independence and the judge's impartiality.</p> <p>The appropriateness of a judge's political activity depends on the nature of the judge's particular participation.</p>  |
| 14-925<br>2-18-2014<br><br>Use of personal "judicial" stationery                           | <p>A judge may not use personal "judicial" stationery, with a modified version of the Great Seal of Alabama printed on it, for notes of congratulations and thanks, including notes of thanks to campaign supporters.</p> <p>A judge may not use personal "judicial" stationery, with the courthouse address printed on it and/or the envelopes for notes of thanks to campaign supporters.</p> <p>"To avoid any potential for—or even the appearance of—misuse of official court stationary, the Commission recommends the simple rule that official court stationary should be used only when the matters communicated relate to official court business, the law, the legal system, or the administration of justice—not for a judge's personal purposes."</p>                  |

| AO / Date / Subject(s)   | Synopses and Key Excerpts from AO  |
|--|--|
| 17-932<br>8-4-2017<br>Appointing announced campaign opponent                         | May a judge appoint an announced candidate opposing the judge in the upcoming election to represent indigent defendants in criminal cases? <i>OPINION:</i> No. Because the judge is disqualified from any new case in which his current-campaign opponent represents a litigant, the judge cannot appoint that attorney to represent indigent defendants in any cases assigned to the judge. |
| 17-933<br>8-4-2017<br>Disqualification: attorney is law partner of campaign opponent | Is a judge automatically disqualified from presiding in any case in which the law partner of the current-campaign candidate opposing the judge represents a litigant? <i>OPINION:</i> No. The campaign activity of the particular attorney before the judge should be evaluated for disqualification purposes.   |

A variety of issues may arise during judicial campaigns that have not been addressed by the Judicial Inquiry Commission. In these situations, candidates for judicial office are encouraged to visit the Center for Judicial Ethics, National Center for State Courts (NCSC) at [www.ncsc.org/cje](http://www.ncsc.org/cje). For example, NCSC has addressed questions regarding the relationship between judicial campaigns and social media, and the relationship between the First Amendment and solicitation of campaign contributions.

Candidates for judicial office may also wish to seek guidance from the Judicial Inquiry Commission at <http://judicial.alabama.gov/JIC/JIC.cfm>. Inquiries to the Commission should be directed to:

Elizabeth Bern, Executive Director  
Alabama Judicial Inquiry Commission  
Telephone: 334-242-4089  
E-Mail: Elizabeth.bern@jic.alabama.gov

## 21.6 Judicial Recusal Issues

Judicial campaigns raise issues concerning recusal. If in the preceding election, a judge has received a substantial campaign contribution from or benefits from an electioneering communication by a party who has a case pending before the judge, recusal may be required. If such a campaign

contribution exceeds a certain percentage of the judge's total contributions, depending on the type of judicial office, then a rebuttable presumption arises in favor of recusal. § 12-24-3. Depending on the circumstances, a judge may also be disqualified pursuant to Canon 2 and/or 3C(1).

This statute became effective in 2014 and was first interpreted by the Alabama Court of Civil Appeals in Dupre v. Dupre, 233 So.3d 357, (Ala.Civ.App. 2016). The circuit judge presiding in Dupre was first elected to the bench in 2010, four years before this statute existed. The judge ran for re-election in 2016, and a former husband asserted that, while presiding over the underlying action, the judge had collected a substantial contribution from one of the former wife's attorneys on September 24, 2015. The former husband moved the judge to recuse herself, which motion was denied, and the former husband appealed.

Section 12-24-3(a), Ala. Code 1975, provides, in pertinent part:

(a) "In any civil action, on motion of a party or on its own motion, a justice or judge shall recuse himself or herself from hearing a case if, as a result of a substantial campaign contribution or electioneering communication made to or on behalf of the justice or judge in the immediately preceding election by a party who has a case pending before that justice or judge, either of the following circumstances exist:

"(1) A reasonable person would perceive that the justice or judge's ability to carry out his or her judicial responsibilities with impartiality is impaired.

"(2) There is a serious, objective probability of actual bias by the justice or judge due to his or her acceptance of the campaign contribution."  
(Emphasis added).

The Court of Civil Appeals determined that the "immediately preceding" judicial election would be the last judicial election before the filing of the motion to recuse, which it "judicially noticed" occurred in 2010. Consequently, the Court of Civil Appeals determined that the lawyer's contribution to the judge's 2016 campaign was not to be considered

because the “immediately preceding” election occurred in 2010. The court affirmed the trial judge’s denial of her recusal even though the lawyer before her made a substantial contribution during the present election cycle.

Judicial recusal on account of substantial campaign contributions under §12-24-3 was next interpreted by the Alabama Supreme Court in Startley General Contractors, Inc. v. Waterworks Board of the City of Birmingham, 294 So.3d 742 (2019). There, plaintiffs moved for a circuit judge’s recusal based upon contributions that attorneys and a law firm representing the defendant had made to the judge’s then-ongoing campaign to be elected Chief Justice of the Supreme Court of Alabama. The circuit judge denied the recusal motion and the plaintiffs appealed. Several issues arising out of §12-24-3 were examined. The term “party” as used in the statute, refers to a party to the case that is before the judge or justice who received the contribution. Therefore, when §12-24-3(c)(4) mentions an “attorney for the party” it refers to an attorney representing the party in the case before the judge or justice. The term “party” does not refer to all attorneys who may be retained by a party to a case for purposes other than representing that party in the case before the judge of justice.

Next, the Alabama Supreme Court rejected the plaintiffs’ efforts to aggregate the campaign contributions of separate defendants or separate parties in order to meet rebuttable presumptions and percentage thresholds under the statute. The Court rejected the plaintiffs’ attempt to aggregate all defendant’s contributions to the judge’s campaign. The Court stated that separate defendants in an action do not necessarily have united interests, but the plaintiffs’ interpretation of the statute assumes that separate defendants have the united motive in making campaign contributions. “We reject that interpretation as contrary to the plain language of the statute.” *id.* at 755.

Finally, the Alabama Supreme Court in Startley further interpreted the term “election cycle” as used in §12-24-3. The court rejected the plaintiff’s argument that a single month during a judge or justice’s campaign for office constitutes the term “election cycle.” Instead, the Court concluded that as the term as used in §12-24-3(b) “election cycle” includes the entire period in which a candidate for judicial office may accept campaign contributions until the election for the office is held.