

**JUDICIAL ETHICS COMMITTEE**  
**Advisory Opinion No. 10-2**  
**Issued October 27, 2010**

Issue

A Probate Judge has requested the Committee evaluate the following issue: A County is seeking voter approval of a bond issue that would move the Probate Court, Deeds, Commissioners, and treasurer into an adjacent building. The proposal would provide the Probate Court with a modern courtroom, chambers, waiting area away from the criminal court, and room to store probate records.

This particular referendum also includes the Registry of Deeds , County Commissioners' offices and a renovated dispatch center at the Sheriff's office.

The Probate Judge would like to air a radio spot that he would pay for advocating approval and speaking of the probate court needs and the registry of deeds needs.

Discussion

The Advisory Committee serves to provide advice to judicial officers who are confronted with potential ethical issues. The opinions of the

Committee have no precedential effect in other forums.<sup>1</sup> In many cases the Committee is able to reach a clear cut conclusion and issue an opinion.

However, given the complexity of this issue and the role of the Committee to provide advice as opposed to adjudication, it is the view of the Committee that its role is best served in this instance by a discussion of the various arguments which would support the ad and those which would oppose it.

Canon 5(C) relaxes the political activity rules for probate judges during the years that they are running for office. However, taking a position on a referendum is not listed in subsections 2, 3, or 4.

Airing a radio spot in connection with a pending election is likely political activity. Canon 5A(1) sets forth the kind of political activity that is forbidden. Probate Judges are not required to comply with 5A(1)(a)-(d). See Applicability sec. B(1)(b). But probate judges are required to comply with 5A(1)(e) and (f). Canon 5A(1)(e) forbids political contributions and the like. Canon 5A(1)(f) forbids judges from engaging in any other political activity except as authorized under any other section of this Code or on behalf of measures to improve the law, the legal system, or the administration of justice.

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<sup>1</sup> This does not mean the opinions have no evidentiary value but rather are not preclusive like doctrines of collateral estoppel or res judicata or have the effect of stare decisis upon other forums

The majority of the Committee concludes that such public comment in the advertisement with this Canon, standing alone , would represent political activity on behalf of measures to improve the administration of justice.

However, the scope of the referendum gave some members of the Committee pause as it related to an evaluation of Canon 4 (C).

Canon 4(C)(3) allows a judge to serve as a member of "a governmental agency, devoted to the improvement of the law, the legal system or the administration of justice." Further, in subparagraph b(ii), he or she may "make recommendations to public and private fund-granting organization of projects and programs concerning the law, the legal system, or the administration of justice."

Some of the Committee felt Canon 4(C) may not support the radio advertisement. The inclusion of the facilities for the Registry of Deeds, County Commissioners and Sheriff may exceed the scope of allowable recommendations. Were the referendum solely for court improvements, the question would be clearer. Here there is the potential that other uses take the referendum beyond the legal system focus of Canon 4(C)(3)(b)(ii).

Ultimately, providing a modern courtroom for the Franklin probate court would appear to qualify as a measure to improve the administrative of

justice, which would be allowable in the viewpoint of a majority of the Committee under Canon 5.

There are, however, compelling arguments against this, including that permitting judges to campaign for ballot measures would not promote public confidence in the impartiality and integrity of the judiciary as required by Canon 2A. It is also unlikely the general public draws any distinction between probate judges and any other judges

### Conclusions

It is therefore the opinion and advice of the Committee that different forums may draw differing conclusions regarding the interplay of the Canon 2A public confidence argument and allowing political activity intended to improve the administration of justice in Canon 5A(1)(f).

Without further facts concerning the political intensity of this issue as well as the number of potential litigants and attorneys who may oppose this referendum, it is difficult to predict whether taking a stance might create recusal issues that would involve Canon 4 considerations as well.

Accordingly, the Committee is unable to issue a definitive opinion on this issue.