



Connecticut Committee on Judicial Ethics

Informal Opinion Summaries

2022-03 (April 14, 2022)

Political Activity; Canon 4 and Rules 4.1, 4.2 & 4.3

Issue: May a Judicial Official speak individually to members of a political party's town committee or to other individuals in the community about a possible nonjudicial municipal candidacy, especially considering Canon 4 and Rules 4.1 through 4.3 of the Code of Judicial Conduct?

Facts: The Judicial Official ("JO") has been informed that his/her name has been included in recent discussions regarding an elected municipal position. While the JO is not currently a candidate for this position, and perhaps may never be, the JO would like to "test the waters" by engaging in private conversations with individuals to assess the JO's prospects for success. The JO's conversations would be strictly private one-on-one conversations and would not involve meetings with groups. The JO has no current or recent cases involving the municipality and the JO is not currently assigned to hear matters in the municipality's judicial district.

Relevant Code Provisions: Canon 4, Rules 4.1, 4.2 and 4.3.

Canon 4: "A judge shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the Judiciary."

Rule 4.1 (Political Activities in General) states:

(a) Except as permitted by law, or by Rule 4.2 and 4.3, a judge shall not:

- (1) act as a leader in, or hold an office in, a political organization;
- (2) make speeches on behalf of a political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment, or make a contribution to a political organization or a candidate for public office;
- (5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (6) seek, accept, or use endorsements from a political organization;
- (7) knowingly, or with reckless disregard for the truth, make any false or misleading statement in connection with the appointment or reappointment process;
- (8) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
- (9) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(b) A judge shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge, any activities prohibited under subsection (a).

(c) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

Rule 4.2 (Activities of Judges as Candidates for Reappointment or Elevation to Higher Judicial Office) states that:

A judge who is a candidate for reappointment or elevation to higher judicial office may:

(a) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency: and

(b) seek endorsements for the appointment from any person or organization other than a partisan political organization, provided that such endorsement or the request therefor would not appear to a reasonable person to undermine the judge's independence, integrity or impartiality.

Rule 4.3 (Activities of Judges Who Become Candidates for Public Office) states:

(a) Upon becoming a candidate for an elective public office either in a party primary or a general election, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention.

(b) Upon becoming a candidate for an appointive public office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

Discussion: This inquiry is one of first impression for this Committee. The New York Advisory Committee on Judicial Ethics, however, has considered pre-candidacy activities by judges who want to “test the waters.” New York allows judges to meet privately with the head of a local political committee, political party members and leaders, or may appear privately before a party executive committee at any time to discuss the possibility of becoming a candidate for public office. Private and preliminary discussions with political leaders or officials about a possible candidacy are permissible in New York. By contrast, a judge in New York may not contact community residents before his/her “window period”¹ begins to determine if they would support the judge’s candidacy for office because such activity does not involve “testing of the waters” about a possibility of receiving backing from a political party, but rather determining what the likelihood is of being supported by the voters themselves in an election. See [New York Judicial Campaign Ethics Handbook \(2020 Edition\)](#), pp. 1-2.

The following New York ethics advisory opinions address pre-candidacy activities by judges:

[NY Opinion 02-24](#) A judge may speak individually to members of a party’s county executive committee or to other party leaders about a possible judicial candidacy even though the Window

¹ The “window period” is the period during which judges and non-judges who seek an elective judicial office may engage in political activity pursuant to Section 100.5 of the Rules Governing Judicial Conduct. ([Opinion 05-97](#))

Period is not in effect. But the judge should not contact community residents seeking to determine if they would support the judge's candidacy for judicial office.

[NY Opinion 97-65](#) A judge may discuss with political party members and governmental officials the possibility of becoming a candidate for the nonjudicial office of Lieutenant Governor but must resign upon becoming a candidate for such office.

[NY Opinion 93-55](#) A full-time judge may make an appearance before the Executive Committee of a political party for the purpose of being interviewed as a possible candidate for the position of district attorney.

[NY Opinion 91-44](#) A judge may meet with the head of a local political committee prior to becoming an announced candidate, to discuss the possibility of becoming a candidate for another judicial office.

[NY Joint Opinion 04-143 and 05-05](#) Judges seeking nominations for re-election may meet with the party leaders and the party's executive officer to discuss such nomination.

[NY Opinion 09-40](#) A judge may apply to a political party's judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle; (2) the judicial screening panel process is available to all potential candidates; and, (3) the panel is an official screening panel, such as a standing panel of an existing political party.

Recommendation: Under Rule 4.1 (a)(6) of the Connecticut Code of Judicial Conduct, judges may not "seek, accept, or use endorsements from a political organization." The Committee agrees that this provision should not be interpreted to apply to private preliminary pre-candidacy discussions with political committees and leaders. These types of preliminary conversations with political organizations are intended to "test the waters" and not to seek out an official political endorsement.

Based on the information submitted and consistent with Rule 4.1 and the advisory opinions from New York, the Committee concludes that the Judicial Official may speak individually to members of a political party's committee or other party leaders about his/her possible candidacy but should not contact community residents to determine if they would support his/her candidacy for nonjudicial office. The Judicial Official's conversations must be limited to private one-on-one conversations and involve no meetings with groups.

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