



ADVISORY COMMITTEE ON THE CODE OF JUDICIAL CONDUCT

HON. FRANK H. ALLEN JR., CHAIRMAN
HON. THERESA M. BACA

HON. THOMAS A. DONNELLY

December 8, 1992

Re: Judicial Advisory Opinion No.92-5

The Judicial Advisory Committee is in receipt of your letter of December 4, 1992, inquiring as to whether it is inappropriate for you to hold office (vice-chairman) in a county political organization while also serving as a magistrate judge.

We think three different provisions of this State's Code of Judicial Conduct preclude a judge from simultaneously holding both positions. See SCRA 1986, 21-200(A), 21-500(C)&(D)(1)(Repl.1992). Canon 21-200(A) instructs judges to avoid the appearance of impropriety and to promote "public confidence in the integrity and impartiality of the judiciary." Canon 21-500(C) permits a judge to serve as an officer of certain types of organizations, subject to the qualification, however, that the organization or association in which the judge seeks to serve is not conducted for the political advantage of its members. Canon 21-500(D)(1) provides that "[a] judge shall refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves."

In assessing situations in which the appearance of impartiality may occur, a judge is required to consider the public perception which may arise from serving in such dual offices. The issues raised by your inquiry present, in part, a problem in appearance rather than one of conduct. Under Canon 21-200(A), the question is not what a judge actually does or does not do, but what others may reasonably believe he or she has done or may do. The Committee is of the opinion that your active holding the position

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as an officer of a political party would reasonably lead to public perception of partiality on your part for members of the political party in which you hold office, or to rule favorably on platform or other positions adopted by such party and which may bear upon issues that may come before you as a judge. Such public perception serves to undermine public confidence in the impartiality and independence of the judiciary. This is exactly what Canon 21-200(A) is designed to avoid.

Serving as both a magistrate judge and an officer in a county political organization we think also is contrary to the provisions of Canon 21-500 (C) and (D). By their very nature, political organizations engage in activities which the members and party leaders believe will further the political and economic interests of their members. Political parties also engage in fund-raising to advance the interests of party members. Members of the judiciary are restricted from engaging in these activities. Id.

Courts and judicial advisory committees of other states, relying upon the same canons, have also determined that judges are precluded from holding office both as a member of the judiciary and holding office in a political party. A Mississippi judge was censured for continuing to serve on a county executive committee of the Democratic Party after his election to the bench. Mississippi Jud. Performance Comm'n v. Peyton, 555 So. 2d 1036 (Miss. 1990); In re Katic, 549 N.E.2d 1039 (Ind. 1990) (judges are restricted from acting in a leadership role of a political organization); see also Alabama Judicial Inquiry Commission, Op. 82-154 (1982) (judicial candidate should not hold any office in a political organization); Op. No. 36, Georgia Judicial Qualifications Commission (December 5, 1979) (judge may not act as a leader for or hold office in a political organization).

In light of the factors discussed above, it is the opinion of the Judicial Advisory Committee that holding office as vice-chairman of a county political organization and simultaneously serving as a magistrate judge is contrary to Canons 21-200(A) and 21-500(C) and (D)(1) of the New Mexico Code of Judicial Conduct.

Very truly yours,



Frank H. Allen, Jr.
Chairman