

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 98-01
(March 6, 1998)

**Application of Code to Candidates for
Merit Selection Positions**

Issues

1. Is an applicant for a merit selection judicial position a “candidate” for judicial office subject to the Code of Judicial Conduct?

Answer: Yes.

2. May the applicant host a political fund-raising event?

Answer: No.

Discussion

A lawyer has filed an application for a vacancy on the superior court in a county in which judges are subject to merit selection and not contested election. She would like to host a fund-raising event on behalf of a political candidate for elective office.

The lawyer is clearly a “candidate” for judicial office. The terminology section of the code states: “A candidate is a person seeking selection for or retention in judicial office by election or appointment”(emphasis added). One becomes a candidate when any of the events listed in that provision occurs:

A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, authorizes circulation of a nominating petition, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

Thus, a person who seeks judicial office by appointment becomes a candidate when the application is filed, unless the person publicly announces earlier that he or she seeks the office or authorizes solicitation or acceptance of support, such as letters of endorsement.

As a candidate, the inquiring lawyer may not host a political fund-raiser. Canon 5A(1) provides: “A judge or a candidate for election to judicial office shall not: . . . (c) solicit funds for . . . a political organization or candidate . . . ; or (d) actively take part in any political campaign other than his or her own election, reelection or retention in office.”

Although Canon 5A(1) refers to “a candidate for election to judicial office,” this does not exclude from its operation those who seek appointed office. The definition of the terminology section controls, and Canon 5 provides no other indication that candidates for appointed office are excluded.

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Moreover, the purposes of Canon 5 would be greatly disserved by any other construction. The appointment process could become highly politicized by permitting applicants to seek favor among the influential by making donations to political candidates greatly in excess of the limit of Canon 5A(1)(c) or by soliciting contributions on behalf of such candidates. In addition, permitting such activity by applicants who are not yet judges could place competing applicants who already hold judicial office at a distinct disadvantage. For example, a court commissioner or city magistrate who seeks a superior court appointment would be subject to Canon 5. He or she would thus be unable to engage in fund-raising or to exceed the \$250 political campaign contribution limit.

Applicable Code Sections

Arizona Code of Judicial Conduct, Terminology and Canon 5A(1)(1993).