
ISSUE I

May a candidate for judicial office solicit campaign funds from close friends and others?

ANSWER

No, but a voluntary campaign committee may solicit on his or her behalf and the candidate may enlist friends and others to serve on the campaign committee.

ISSUE II

May a candidate for judicial office initiate a call to a potential campaign contributor, but leave the solicitation to someone else?

ANSWER

No.

ISSUE III

May a candidate for judicial office solicit campaign funds from his or her spouse and members of the family?

ANSWER

Yes.

FACTS

A non-judge candidate for judicial office needs to raise money for a judicial campaign. The candidate's spouse, several relatives and some close friends have the financial capacity to make significant contributions to the campaign. The candidate plans to organize a voluntary campaign committee to assist in fundraising. The candidate would like to initiate a call to a potential contributor and, following a perfunctory conversation, hand the telephone to a member of the voluntary campaign committee who would make a solicitation for a contribution.

DISCUSSION

These issues involve the provisions of SCR 60.01(2) and (11), SCR 60.02, SCR 60.03, SCR 60.04(4)(d) and (e), and SCR 60.06(4).

A. SCR 60.01(2)

SCR 60.01(2) reads as follows:

"Candidate" means a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

This definition covers both judges and non-judges who run for judicial office. The only other section of the Code of Judicial Conduct which uses the term "candidate for judicial office" is SCR 60.06(4) which relates to campaign contributions. Thus non-judge candidates for judicial office are subject to only SCR 60.06(4), while judges who are candidates remain subject to all of the provisions of the Code.

B. SCR 60.06(4)

SCR 60.06(4) reads as follows:

Solicitation or acceptance of campaign contributions.

A judge or candidate for judicial office shall not personally solicit or accept campaign contributions.

The comment to SCR 60.06(4) states in part that:

This provision does not prohibit reasonable financial contributions to a voluntary campaign committee in behalf of a judicial candidate. The nonpartisan elective process as now constituted is an expensive one, and until other means of conducting and financing judicial elections are devised, this provision should be so construed....

The committee believes that these two portions of the Code must be read together in order to fully understand and apply SCR 60.06(4), even though the Preamble to the Code states that the Commentary is not intended as a statement of additional rules.

1. Issue I - May a judicial candidate solicit campaign funds?

SCR 60.06(4) prohibits a judge or judicial candidate from either soliciting or accepting campaign contributions. However, the comment makes it clear that a candidate must be allowed to raise money for a judicial campaign and that fundraising can be done through the use of a "voluntary campaign committee." Is there an unreasonable contradiction between the rule and the comment? Does the comment allow or encourage what 60.06(4) prohibits?

The seeming contradiction is resolved by the adverb "personally" which modifies both "solicit" and "accept" in SCR 60.06(4). According to the American Heritage Dictionary "personally" means "... in person or without the intervention of another." Thus, what is prohibited is the candidate's personal or direct solicitation of campaign funds and the personal or direct acceptance of campaign funds. What is not prohibited, as exemplified in the comment, is the solicitation and acceptance of funds through a campaign committee or an agent. "Personally" modifies both "solicit" and "accept" because not to do so produces the absurd result of allowing a candidate to solicit through a committee or agent, but prohibiting the acceptance of the use of the funds solicited by the agent or campaign committee.

A candidate for judicial office, whether a judge or non-judge, may not directly solicit close friends or others for campaign contributions. However, it may be done through an agent or a voluntary campaign committee. Since a candidate can not always depend upon supporters to come forward to volunteer to form a campaign committee or to solicit funds and since the Code, by way of its comment to SCR 60.06(4), acknowledges the reality of a candidate for judicial office having to undertake an "expensive" process, it follows that the prohibition against personal solicitation of campaign contributions in SCR 60.06(4) does not prohibit a candidate from taking steps to organize a committee. That process implicitly entails the recruitment of others to work on the campaign. They, in turn, would conduct the solicitation and accept contributions. It is recognized that campaign contributions can be made in the form of services. The personal solicitation of services by the judicial candidate is also prohibited except for that solicitation necessary to begin and maintain a voluntary campaign committee.

2. Issue II - May a judicial candidate initiate a call to a potential campaign contributor?

The suggestion has been made that a candidate might call a prospective contributor, engage in some perfunctory conversation and then turn over the phone to a campaign committee representative who would make the actual solicitation. The Committee believes that such a solicitation method violates the Code of Judicial Conduct because of the candidate's transparent attempt to avoid a "personal" solicitation. It remains solicitation by the candidate, but done with a wink and a nod. The presence of the candidate in the conversation continues. It is as if the candidate is looking over the shoulder of the solicitor.

3. Issue III - May a judicial candidate solicit funds from spouse or family?

A strict reading of SCR 60.06(4) would prohibit a candidate from asking a spouse or close relative for financial help in the campaign. Such a strict reading produces an absurd result and is contrary to public policy as expressed in the statutes. The policy of the state set forth in sec. 765.001(2), Wis. Stats., is "... to promote the stability and best interests of marriage and the family." A strict reading is also contrary to the Preamble of the Code of Judicial Conduct which states in part:

... The provisions of the Code of Judicial Conduct are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances....

SCR 60.02 requires a judge "... to uphold the integrity and independence of the judiciary." The comment to that section states in part:

... Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility....

The direct solicitation by a judicial candidate of campaign funds demeans the office of judge, undermines its independence and contributes to a public perception of lack of impartiality. The ban against personal solicitation by a judicial candidate exists for two reasons: (1) the party solicited will not feel "obligated" or "strong-armed" into feeling that a contribution is required; and (2) if a contribution is made, the contributor will not appear to have "purchased" the judge's favor.

None of these dangers occur when a candidate solicits a spouse or close family member, because SCR 60.04(4)(d) and (e) require a judge to disqualify himself or herself whenever certain family and household members are involved in a case pending before the judge, and SCR 60.02 and 60.03 implicitly require such recusal. SCR 60.01(11) defines

member of the judge's family as:

... the judge's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the judge maintains a close familial relationship.

CONCLUSION

The Committee concludes that a candidate for a judicial office may not directly solicit campaign funds from friends or others. A candidate may not initiate a phone contact with a potential contributor, but leave the actual solicitation to another. A candidate may solicit funds through a voluntary campaign committee or agent. The Committee further concludes that the prohibition against the personal solicitation or acceptance of campaign funds does not apply to spouses or members of the candidate's family.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60--Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 97-7 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this 10th day of December, 1997.

Thomas H. Barland
Chair