

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #11 - 4/23/65 (11-64)

Topic: Endorsement of Judicial Candidates

Digest: Lawyers may endorse judicial candidates, and such candidates may announce the support of certain attorneys so long as there is no appearance of impropriety.

Canons: Former Canons 2, 3.
Judicial Canons 30, 32

QUESTION

You inquire as to the propriety of

1. lawyers endorsing judicial candidates;
2. a judicial candidate announcing that he has the support of a number of former presidents of bar associations or of a specified number of attorneys; and
3. a judicial candidate soliciting a lawyer for his support and endorsement.

OPINION

1. It would normally be proper for lawyers to endorse judicial candidates. Members of the bar bear a special responsibility for the selection of qualified candidates for judicial office. It is "the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selections of Judges. It should protest earnestly and actively against the appointment and election of those who are unsuitable for the Bench . . ." (Canon 2 of the Canons of Professional Ethics of the American Bar Association.)

Opinion 189 of the Committee on Professional Ethics of the American Bar Association, with which this Committee concurs, concluded that:

"Lawyers are better able than laymen to appraise accurately the qualifications of candidates for judicial office. It is proper that they should make that appraisal known to the voters in a proper and dignified manner. A lawyer may with propriety endorse a candidate for judicial office and seek like endorsement from other lawyers."

Exhibit "C"

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The Committee would also point out, however, that an attorney has the obligation to refrain from endorsing a judicial candidate where it would appear that such endorsement is a "device or attempt to gain from a Judge special personal consideration or favor." (Canon 3 of the Canons of Professional Ethics.) Thus, the endorsement of a judge for reelection would be improper where the attorney has a matter pending before the judge or has a matter which has a clear present probability of being submitted to the judge in the immediate foreseeable future (See Canon 32, Canons of Judicial Ethics).

2. The Committee sees nothing improper in a judicial candidate announcing that he has the support of a specified number of former presidents of bar associations or attorneys.

3. A judicial candidate, whether a sitting judge standing for reelection to his present position or for election to another judicial post, or a lawyer campaigning for but not presently holding judicial office, may not properly solicit an attorney's endorsement of his candidacy or solicit others to do so on his behalf. As a sitting judge, such solicitation would be improper "as conduct which might tend to arouse reasonable suspicion that he is using the power or prestige of his judicial position to promote his candidacy ***" (See Canon 30 of the Canons of Judicial Ethics). Nor should one who seeks to become a judge stand in any different position (See A.B.A. Opinion 226). Each should observe the same restraint and for the same reasons. Moreover, it would be unfair and impractical to place a sitting judge under a disability in this respect and to free a practicing lawyer for the waging of a more effective campaign in this regard.

Nothing in this opinion is meant to encumber the functions or activities of duly organized local bar associations with respect to the selection and endorsement of judicial officers.