Advisory Opinion #2000-02

(adopted October 16, 2000)

Question: *May a judge contribute to an aggregate campaign fund that supports the retention of one or more judicial candidates?*

Opinion: A judge may not contribute to any campaign fund for public office regardless of whether the fund is an aggregate fund or an individual fund or whether the fund supports the retention of a judicial candidate or exists for another elective purpose. This opinion reaffirms Advisory Opinion #98-3. That opinion noted that the purpose of the Code provisions in Canon 5 is to insulate judges from "the political pressures that campaigns and fundraising necessarily entail." Canon 5A(1)(e) specifically prohibits judges from making "a contribution to a political organization or candidate for public office." The only exception is for judges who are candidates seeking retention and are covered by Canon 5C. That Canon allows judges who are candidates for retention to engage in limited political activity to secure their own retention. There are no other express exceptions to the Canon 5A(1)(e) prohibitions. However, there is arguably a different definition for "candidate for public office" and "candidate" for judicial retention. If there is a differentiation between the two, neither the language of the Code's Canons, themselves, nor the terminology section of the Code makes that distinction clear.

While the commentary to Canon 5C(3) (permitting limited political fundraising activity by retention judges) states that the sections of the Canon "are not intended to prohibit an organization of judges from soliciting money from judges to establish a campaign fund to assist judges who face active opposition to their retention," it does not address the prohibited political contribution activity of non-retention judges under Canon 5A(1). As stated above, that Canon addresses the ability of judges to contribute to political campaigns. The 5C(3) commentary seems to attempt to permit judges to do indirectly what they are prohibited from doing directly. In other words, the commentary implies that an organization of judges could solicit money from judges for a campaign fund (and necessarily that judges could then contribute to the campaign fund) that would not be permitted if the campaign fund were created by a single judge facing active opposition under Canon 5C(3). Judges should not be permitted to do indirectly what the Code prohibits directly.

The public will view an aggregate campaign fund supporting the retention of one or more judges as political activity opposing the various positions that the active opposition espouses. Aggregate funds, like those of individual judicial retention campaigns, necessarily engage the judges in the political forum. The commentary to Canon 5C(3) is unique to Alaska; other states with merit selection and retention systems do not permit judicial contributions. To best protect the non-political nature of Alaska's judiciary, judges should be insulated as much as possible from political influence and the

appearance of political influence. Prohibiting judicial contributions to judicial retention campaign funds, individually or as an aggregate, provides the necessary insulation.