



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
ADMINISTRATIVE OFFICE OF THE COURTS
100 MILLCREEK PARK
FRANKFORT, KENTUCKY 40601-9230

LAURANCE B. VANMETER
COURT OF APPEALS

JEAN CHENAULT LOGUE
CIRCUIT COURT

DONALD H. COMBS
ATTORNEY

ARNOLD S. TAYLOR
ATTORNEY CHAIR

JEFFREY SCOTT LAWLESS
DISTRICT COURT

FORMAL
JUDICIAL ETHICS OPINION JE-116

August 5, 2008

The Committee has received an inquiry from a judicial candidate, requesting a formal opinion in response to questions posed by an attorney on behalf of the candidate. The fact that the original request was made by an attorney on behalf of the candidate is mentioned only for the purpose of advising the Bar, members of the judiciary and candidates for judicial office that the Committee has adopted a policy of responding to inquiries from judges or judicial candidates only, and even then only in regard to a question posed regarding the inquirer's own proposed action. Without the inquiry being made by the judge or candidate personally, the Committee cannot learn if it is fully informed as to the facts on which the opinion is solicited; even more important, a question by one person, regarding the propriety of another's actions, might be based on a biased presentation of the facts. In this instance, the candidate subsequently ratified the request in writing.

The questions posed to the Committee (with modifications to preserve the anonymity of the candidate) were:

1. May a Judicial Candidate publicize the endorsement of a parent, who holds a partisan-elected public office, through any means, if the parent is identified as such an official?
2. If the answer to Question 1 is no, may a Judicial Candidate publicize the endorsement of the office-holding parent, through any means, if the parent is not identified as holding his office?
3. May a Judicial Candidate campaign alongside the office-holding parent at church picnics and other public functions if the parent's office is identified (such as by name tag)?
4. If the answer to Question 3 is no, may a Judicial Candidate campaign alongside the office-holding parent at church picnics and other public functions, if the parent's office is not identified?

5. May a Judicial Candidate use the name and image of the office-holding parent in campaign literature and on campaign advertisements if the parent's office is identified?

6. If the answer to Question 5 is no, may a Judicial Candidate use the name and image of the office-holding parent in campaign literature and on campaign advertisements if the parent's office is not identified?

7. May a Judicial Candidate authorize the office-holding parent to host a fundraiser for the Judicial Candidate's campaign committee if the parent is identified in invitations or during the fundraiser as holding that office?

8. If the answer to Question 7 is no, may a Judicial Candidate authorize the office-holding parent to host a fundraiser for the Judicial Candidate's campaign committee if the parent is **not** identified in invitations or during the fundraiser as holding that office?

9. May a Judicial Candidate knowingly permit the office-holding parent to send letters, postcards and emails to his friends and acquaintances urging a vote for the Judicial Candidate if the parent is identified in the letters, postcards and emails as holding that office?

10. If the answer to question 9 is no, may a Judicial Candidate knowingly permit the office-holding parent to send letters, postcards and emails to friends and acquaintances urging a vote for the Judicial Candidate if the parent is **not** identified in the letters, postcards and emails as holding that office?

With regard to questions 1, 2, 3 (one member dissenting), 5, 6, 7 and 8, the Committee responds: "a qualified No".

With regard to questions 4, 9 and 10, the Committee responds: "Yes".

JE 93 and 66 advise that the candidate should not advertise the office-holding parent's support as the support of a public official, and the Committee sees no reason why those opinions do not apply to questions 1, 2, 3 (one member dissenting), 5, 6, 7 and 8. Canon 5B(1)(b) prohibits candidates from allowing "public officials...subject to the candidate's direction and control from doing for the candidate what the candidate is prohibited from doing...." Thus, a candidate may not explicitly or implicitly advertise the office holder's support, and a listing of the name of the official in campaign literature, even though the office is not stated, is a violation of the Canons.

The Committee is not unaware of *Carey vs Wolnitzek*, 2006 WL 2916814. Even so, the Committee reaches the foregoing opinions for two reasons. First, this Committee is not empowered to alter the substance of the Canons of Judicial Ethics, and is bound by their provisions, which can only be changed by the Kentucky Supreme Court. Second, the Committee believes that the reference to *Carey* in the letter ratified by the candidate contains an overstatement. While we would be bound by a clear decision by a court of competent jurisdiction that a particular part of the Canons is unconstitutional, Judge Caldwell actually said, at page 15 of her opinion:

Carey cannot establish an intent to engage in a course of conduct proscribed by the Endorsement Clause because he has failed to show that the clause proscribes the activity in which Carey proposes to engage, i.e., soliciting the endorsement of public officials. While that issue is unresolved, Carey cannot establish an objectively real, immediate or credible threat of sanctions for soliciting the support of public officials. Accordingly...Carey has failed to establish the requisite injury to satisfy the standing or ripeness doctrines.

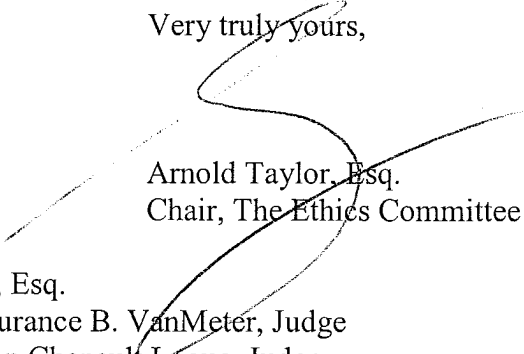
Judge Caldwell went on to point out that it is unknown whether the Kentucky Supreme Court would interpret the Canons to prohibit the use of public officials for support. The Committee is in the same position, especially since *Carey* is not final, and is therefore compelled to follow the conclusions reached in JE 66 and 93 and, with the following exception, the candidate may not publicize the support of a person holding political office, whether or not the office is mentioned.

The exception is based on the fact that the official in question is a parent of the candidate. In JE 93 this Committee noted that the Canons of Judicial Ethics do not apply to non-judicial elected public officials; thus, such an official is generally entitled to do as he or she wishes in regard to supporting a judicial candidate, and cannot be prohibited from announcing support for the candidate while identifying himself as an elected public official. While the office-holding parent might accede to the candidate's wishes if asked by the candidate to refrain from identifying himself/herself as a public official during any supportive activities, the Committee does not believe that an office-holding parent is so under the candidate's "control" that such support would taint the campaign. Also, common sense dictates that no candidate should be deprived of the opportunity to demonstrate that he or she is a family person and to appear in person or in campaign materials with a spouse or parent should not be prohibited, so long as the office is not itself mentioned. *Caveat*, this is to be clearly distinguished from activities of the official which are directed by the candidate.

Formal Judicial Ethics Opinion JE-116
August 5, 2008
Page 4

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Very truly yours,



Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.