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DISTRICT COURT

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**FORMAL
JUDICIAL ETHICS OPINION JE-124**

October 21, 2013

This opinion addresses the following question:

**MAY A CANDIDATE FOR JUDICIAL OFFICE HAVE, AS
THE CANDIDATE'S CAMPAIGN CHAIRPERSON, A
PERSON WHO CURRENTLY SERVES AS A PUBLIC
OFFICIAL AND WHICH OFFICIAL WAS ELECTED IN A
PARTISAN ELECTION?**

Answer: Qualified "yes."

The Committee notes that the Code of Judicial Conduct makes no mention of a judicial candidate having a campaign chairperson, referencing only the establishment of "committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy." Canon 5B (2) However, the question can properly be construed as asking whether any partisan-elected public official can serve on the candidate's campaign committee.

In 1981, JE 30 was issued in response to a similar inquiry. The Committee was asked whether a judicial candidate could appoint as campaign chairman an unopposed candidate for election as Commonwealth's Attorney. The Committee answered in the negative, on the grounds: (1) that judicial elections are to be non partisan, whereas elections for Commonwealth's Attorney were distinctly partisan, so the situation was analogous to slating; and (2) that the appointment by the judicial candidate amounted to an endorsement by him of the candidate for Commonwealth's Attorney, and that amounted to a violation of the prohibition against judges or judicial candidates endorsing other office-seekers.

In JE 66, the Committee reiterated the substance of JE 30 by saying "Endorsements by current public officials who run for office on a partisan ticket would violate the policy of nonpartisan elections in judicial campaigns." And in JE 93, the Committee was of the view that a judicial candidate could not state that he or she was endorsed by a certain legislator.

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The case of *Carey vs Wolnitzek* wound its way through the federal court system since the issuance of JE 30, 66 and 93, with the result that those opinions carry with them either a note of caution or disavowal. The Committee recognizes that *Carey* holds that a judicial candidate may disclose his or her party affiliation. Therefore, to the extent that any of our previous opinions touching on the subject at hand are based on content of previous versions of the Kentucky Code of Judicial Conduct declared invalid in *Carey*, those opinions cannot be considered to bar the appointment of a current public official as a member of the campaign committee of the candidate.

Likewise, as noted by the inquiring candidate, JE 30 can be distinguished from a situation where the person he wants to appoint as Campaign Chair will not himself stand for reelection for several years. Thus, the reasoning in the cited opinions, that the appointment would constitute slating, does not prohibit the appointment. Also, the concern expressed in JE 30, that the possible appearance by the Chairman in the inquiring judge's court might promote an appearance of impropriety, does not seem pertinent. Even if the Chairman were to be involved in litigation before the judge he helped elect, the judge could simply recuse.

JE 105 dealt with restrictions on a judge's right to identify himself as a member of a specific political party and is invalid as far as its conclusion is concerned. However, the Committee finds pertinent the following statement In JE 105:

When presented with such a situation [ambiguity in a statute], courts are authorized to look to the intent of the legislature and the purpose of the statute. * * * The Committee believes that it is appropriate to do likewise in construing this canon. As we have already stated, the purpose of Canon 5 and the Code of Judicial Conduct as a whole is to preserve nonpartisan elections and the independence of the judiciary. Therefore, the only possible interpretation of Canon 5(A) (2) which satisfies these goals is to construe the last sentence of the paragraph to apply only to one-on-one situations or very small private informal groups. Any other construction would permit partisanship into Kentucky's judicial elections....

This Committee pays due respect to decisions by the federal courts, but we have a limited remit. We are not empowered to render opinions that go beyond the mandates and verbiage of the Kentucky Code of Judicial Conduct, applicable statutes and the Kentucky Constitution, except as we are required to apply a rule of reason to unclear conditions. In considering the request for advice, we first look to the Canons and we are struck by the February 13, 2013 Order (2013-04) of the Kentucky Supreme Court, amending Canon 5A (1) (a), which now reads:

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- (A) Political Conduct in General:
 - (1) Except as permitted by law, a judge or a candidate for election to judicial office shall not:
 - (a) Campaign as a member of a political organization....

The Committee concludes that the Code of Judicial Conduct contains no absolute prohibition against the appointment of a current public official, elected in a partisan election, to the candidate's campaign committee, or otherwise be named as campaign "Chairperson". However, it must be recognized that by selecting that person, the candidate might be deemed to have adopted the political affiliation of the official and thus be campaigning as such. Consequently, the Committee is of the opinion that neither the candidate nor the campaign committee may make any reference to the official's public office or political affiliation in any official campaign materials, filings, press releases or similar information disseminated to the public. To the extent that news media or other third parties make such disclosures, this would be outside of the candidate's control or responsibility.

Sincerely,



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

cc: Donald H. Combs, Esq.
The Honorable Jeff Taylor, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.