



**CALIFORNIA SUPREME COURT
COMMITTEE ON JUDICIAL ETHICS OPINIONS**

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ATTENDING POLITICAL FUNDRAISING OR ENDORSEMENT EVENTS

I. Question Presented

The Committee on Judicial Ethics Opinions has been asked to provide an opinion on the following questions:

Under what circumstances does the California Code of Judicial Ethics permit a judicial officer to attend, speak, appear as the guest of honor, or receive an award at a political event where a nonjudicial candidate will be endorsed or funds will be raised? To what extent are these activities permissible in the context of a judicial campaign?

Does the code impose an obligation on judges attending a political event, or engaging in the above-described activities, to inspect promotional material used for such an event to ensure that the judicial title and prestige of office are not used to advance the interests of the candidate or the political organization?

II. Summary of Conclusions

Judges are broadly prohibited from engaging in political activities that may create the appearance of political bias or impropriety. (Canon 5.) They are specifically prohibited from certain activities that are usually an integral part of political events, such as making speeches for a political organization or nonjudicial candidate, and publicly endorsing or personally soliciting funds for a nonjudicial candidate or political organization.¹ (Canon 5A(2) & (3).)

In deciding whether to attend a political fundraising or endorsement event, judges must consider whether their presence may create the appearance that they are endorsing or fundraising for a nonjudicial candidate or political organization. When attending, the types of activities that would be likely to create the appearance of political bias include being introduced as a judge, receiving an award, or being the guest of honor at the event.

Making speeches for a political organization or nonjudicial candidate is prohibited (canon 5A(2)), but speaking about the law, the legal system, or the administration of justice is permitted at a political event so long as the activity does not create the appearance of political bias and is otherwise consistent with the code. (Canon 5D.) If the event is being held for the purpose of endorsement or fundraising for a nonjudicial candidate or political party, judges should consider whether speechmaking on even permissible topics would create the appearance of speaking on behalf of, or lending the prestige of office to, the candidate or political organization.

¹ “Political organization” is a term defined in the code to include political parties or other groups with the principal purpose of furthering candidates for nonjudicial office. (See p. 4, *post*.) This opinion discusses the canon 5 restrictions on political activities and specifically focuses on activities at political *events* held for the purpose of endorsement or fundraising, which may include events involving *groups* that fall within the definition of political organizations. As is the pattern in canon 5 (see p. 8, *post*), this opinion uses the defined term “political organization” when discussing activities involving such *groups* in the broader context of political fundraising or endorsement *events*. (Canon 5 [restrictions on political activities generally]; canon 5A(2) & (3) [specific restrictions on activities involving political organizations or nonjudicial candidates]; canon 5B [permitting specific activities at political gatherings].)

Judges may endorse candidates for judicial office and may speak at political gatherings on their behalf. (Canon 5A, C.) Candidates for judicial office may attend, be introduced, and speak on their own behalf or on behalf of another candidate for judicial office at a political event so long as the candidate does not commit to a position on an issue that is likely to come before the courts and does not endorse or solicit funds for a candidate for nonjudicial office or a political organization. (Canon 5A(2) & (3), B(1)(a), C.)

While canon 5 does *not* include an express obligation on the part of judges who are not running for election to inspect promotional material used for political fundraising or endorsement events they are attending, judges do have an affirmative obligation to guard against the impermissible use of their names or judicial titles. (Canon 2B(2).) The committee advises judges to assess the likelihood that their attendance will be known to, and possibly used by the promoters of the event, and if so, it would be wise for judges to make reasonable efforts to ensure their title will not be used to promote the event. This may include informing the promoters in advance of the ethical restrictions and reviewing promotional material.

III. Authorities

A. Applicable Canons²

Preamble: “The code consists of broad declarations called canons, with subparts, and a terminology section. Following many canons is a commentary section prepared by the Supreme Court Advisory Committee on the Code of Judicial Ethics. The commentary, by explanation and example, provides guidance as to the purpose and meaning of the canons. The commentary does not constitute additional rules and should not be so construed. All members of the judiciary must comply with the code. Compliance is required to preserve the integrity of the bench and to ensure the confidence of the public. [¶] The canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision. . . .”

² All further references to canons and to Advisory Committee commentary are to the California Code of Judicial Ethics unless otherwise indicated.

Terminology: “‘Candidate for judicial office’ is a person seeking election to or retention of a judicial office. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.”

“‘Law, the legal system, or the administration of justice.’ When a judge engages in an activity that relates to the law, the legal system, or the administration of justice, the judge should also consider factors such as whether the activity upholds the integrity, impartiality, and independence of the judiciary (Canons 1 and 2A), whether it impairs public confidence in the judiciary (Canon 2), whether the judge is allowing the activity to take precedence over judicial duties (Canon 3A), and whether engaging in the activity would cause the judge to be disqualified (Canon 4A(4)).”

“‘Political organization’ means a political party, political action committee, or other group, the principal purpose of which is to further the election or appointment of candidates to nonjudicial office.”

Canon 2B(2): “A judge shall not lend the prestige of judicial office or use the judicial title in any manner, including any oral or written communication, to advance the pecuniary or personal interests of the judge or others. . . .”

Canon 4A(1): “A judge shall conduct all of the judge’s extrajudicial activities so that they do not [¶] (1) cast reasonable doubt on the judge’s capacity to act impartially”

Canon 4C(3): “Subject to the following limitations and the other requirements of this code, [¶] . . . [¶] (d) a judge . . .

“(i) . . . shall not personally participate in the solicitation of funds or other fundraising activities [¶] . . . [¶]

“(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fundraising mechanism

“(iv) shall not permit the use of the prestige of his or her judicial office for fundraising or membership solicitation but may be a speaker, guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds and complies with Canons 4A(1)”

Advisory Committee commentary following canon 4C(3)(d): “[A] judge must . . . make reasonable efforts to ensure that . . . others subject to the judge’s direction and control do not solicit funds on the judge’s behalf for any purpose, charitable or otherwise.”

Canon 5: “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary. [¶] Judges and candidates for judicial office are entitled to entertain their personal views on political questions. They are not required to surrender their rights or opinions as citizens. They shall, however, not engage in political activity that may create the appearance of political bias or impropriety. Judicial independence, impartiality, and integrity shall dictate the conduct of judges and candidates for judicial office. [¶] Judges and candidates for judicial office shall comply with all applicable election, election campaign, and election campaign fundraising laws and regulations.”

Advisory Committee commentary following canon 5: “The term ‘political activity’ should not be construed so narrowly as to prevent private comment.”

Canon 5A: “Judges and candidates for judicial office shall not [¶] . . . [¶] (2) make speeches for a political organization or candidate for nonjudicial office or publicly endorse or publicly oppose a candidate for nonjudicial office; or [¶] (3) personally solicit funds for a political organization or nonjudicial candidate”

Advisory Committee commentary following canon 5A: “In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone, including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See Canons 1, 2, 2A, and 2B”

“Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice otherwise prohibited by this canon. [¶]

“Under this canon, a judge may publicly endorse a candidate for judicial office. Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.”

Canon 5B: “(1) A candidate for judicial office . . . shall not: [¶] (a) make statements to the electorate . . . that commit the candidate . . . with respect to cases, controversies, or issues that are likely to come before the courts”

Canon 5C: “Candidates for judicial office may speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.”

Canon 5D: “A judge or candidate for judicial office may engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

B. Other Authorities

Williams–Yulee v. Florida Bar (2015) 575 U.S. ____ [135 S.Ct. 1656, 191 L.Ed.2d 570]

Wolfson v. Concannon (9th Cir. 2016) 811 F.3d 1176 [2016 WL 363202]

Commission on Judicial Performance:

Annual Report (1986) advisory letter, page 5

Annual Report (1987) advisory letter, page 11

Annual Report (1989) advisory letter 24, page 25

Annual Report (1992) advisory letter 12, page 14

Annual Report (1997) advisory letter 23, page 22

Annual Report (2010) advisory letter 9, page 25

Annual Report (2011), private admonishment 4, page 23

Inquiry Concerning Judge Zellerbach, Public Admonishment (2011) pages 4-5

Rothman, *California Judicial Conduct Handbook* (3d ed. 2007) sections 10.16, 10.17, 10.53, 11.01, 11.07, 11.18

California Judges Association, *Judicial Elections Handbook* (13th ed. 2014) pages 57-58

California Judges Association, Ethics Committee (2000) Advisory Opinion No. 50

California Judges Association: *Judicial Ethics Update* (1982) page 5; *Judicial Ethics Update* (1987) II.A; *Judicial Ethics Update* (1995) II.A.6; *Judicial Ethics Update* (1997) III.M; *Judicial Ethics Update* (2000) III.C; *Judicial Ethics Update* (2005) III.1; *Judicial Ethics Update* (2013/2014) III.4

IV. Discussion

A. Restrictions on Political Activity

Canon 5 states that “A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”³ This restrictive language “makes clear that the issue of inappropriate political activity is connected to the central principal of judicial ethics: the integrity of the judicial decision.” (Rothman, *Cal. Judicial Conduct Handbook* (3d ed. 2007) § 11.01, p. 567 (Rothman); see *Williams–Yulee v. Florida Bar* (2015) 575 U.S. ___, 135 S.Ct. 1656, 1665 (*Williams–Yulee*) [restrictions narrowly tailored to achieve the compelling state interest in upholding public confidence in the judiciary withstand strict scrutiny]; *Wolfson v. Concannon* (9th Cir. 2016) 811 F.3d 1176 (*Wolfson*) [under *Williams–Yulee*, a state may properly restrict judges and judicial candidates from taking part in political activities that undermine the public’s confidence that judges base rulings on law and not on party affiliations].)

The text of canon 5 recognizes that judges do not surrender their rights as citizens but also places general and specific restrictions on the exercise of those rights. As a broad general matter, judges may not “engage in political activity that may create the appearance of political bias or impropriety.” (Canon 5.) Thus, the fundamental test a judge must apply when considering whether to participate as a citizen in any political activity is whether the judge’s conduct will create the appearance of political bias or impropriety.

The subparts of canon 5 prohibit specified activities, presumably because they have been deemed to reflect impermissible political bias. Canon 5A(2) and (3) prohibit

³ The structure of the California Code of Judicial Ethics enactments is explained in the preamble as consisting of “broad declarations called canons, with subparts, and a terminology section,” followed by Supreme Court Advisory Committee commentary that provides guidance on the meaning of the canons. (Cal. Code Jud. Ethics, Preamble.)

judges from making speeches for a political organization or candidate for nonjudicial office, publicly endorsing or opposing a candidate for nonjudicial office, or personally soliciting funds for a political organization or nonjudicial candidate. Canon 5A(3) prohibits contributions to nonjudicial candidates or parties over certain amounts.⁴ Canon 5B also prohibits a judicial candidate from making statements that commit the candidate with respect to cases, controversies, or issues that are likely to come before the courts. (Canon 5A(2), (3), B(1)(a).)

Other subparts of canon 5 specify activities that are permitted. Canon 5C permits “[c]andidates for judicial office [to] speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.” And significantly, canon 5D permits “[a] judge or candidate for judicial office [to] engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice, only if the conduct is consistent with this code.”

Read together, canon 5 and its subparts (1) generally prohibit any political activities that create the appearance of political bias, (2) specifically prohibit certain activities that have been determined to be impermissible, such as public endorsements and personal solicitations, and (3) specifically permit certain activities, such as those concerning law and legal system improvements, so long as other canons are not violated, including the canon 5 prohibition on activities that create the appearance of political bias or impropriety.

Given this combination of prohibitions and permissions, the committee has been asked to discuss what conduct is permissible at a political event where a nonjudicial candidate will be endorsed or funds will be raised, including when a judicial candidate is

⁴ While the contribution limits appear to be somewhat arbitrary, the committee assumes the canon’s authors concluded that contributions in excess of these limits would be deemed to show political bias. (See *Wolfson, supra*, 811 F.3d 1176, fn. 10 [judges and judicial candidates may make limited contributions to another candidate or political organization as one of the few exceptions to a valid prohibition on endorsement or campaign participation].)

attending the event as part of his or her campaign for judicial office. This opinion provides guidance to judges on how to decide whether to (1) attend, (2) speak, or (3) appear as the guest of honor or receive an award at a political fundraising or endorsement event. The opinion also discusses how those activities might differ for judicial candidates and what obligations a judge has regarding promotional materials for such a political gathering.

B. Political Fundraising or Endorsement Events

There are different types of political events and the same political activity in different circumstances will have different ethical implications. Political groups may meet for no reason other than to learn about the law or, for example, to visit or discuss an historical site. The committee has been asked, however, to address political events that are held for the purpose of fundraising for, or endorsement of, nonjudicial candidates or political parties.

While it is clear a judge may never engage in certain political activities at such events, i.e., personal fundraising for or public endorsement of a nonjudicial candidate or political organization, there are other activities, such as speaking on the law, and silent presence during solicitation or endorsement by others, that may or may not be permissible under canon 5 depending on whether the context creates the appearance of political bias.

C. Political Activities

1. Attendance

As we have described, a judge or judicial candidate is prohibited from engaging in any political activities that create the appearance of political bias and canon 5A specifically prohibits personally soliciting funds for a political organization or nonjudicial candidate and publicly endorsing or opposing a candidate for nonjudicial office. (Canon 5A(2), (3).) Under these provisions a judge may not attend a political event and

personally request donations or publicly state his or her endorsement of or opposition to a nonjudicial candidate. (Commission on Judicial Performance (CJP), Annual Rep. (2010) advisory letter 9, p. 25 [advisory letter issued for publicly endorsing a candidate for nonjudicial office, although the judge promptly arranged to have the endorsement removed]; CJP, Annual Rep. (1989) advisory letter 24, p. 25 [advisory letter issued for endorsing a candidate for city council]; CJP, Annual Rep. (1987) advisory letter, p. 11 [advisory letter issued for publicly endorsing candidates for nonjudicial office].)

As the Advisory Committee commentary to canon 5A illustrates, however, attendance may be prohibited even if a judge does not make an express statement of endorsement:

“Although attendance at political gatherings is not prohibited, any such attendance should be restricted so that it would not constitute an express public endorsement of a nonjudicial candidate or a measure not affecting the law, the legal system, or the administration of justice *otherwise prohibited by this canon.*” (Advisory Com. com., Cal. Code Jud. Ethics, foll. canon 5A [italics added].)

Thus, it is the committee’s opinion that attendance would be prohibited if the judge’s presence could reasonably be construed to constitute a public endorsement or otherwise create the appearance of political bias. (Canon 5.) Similarly, attendance might be prohibited where it creates the appearance of a personal solicitation of funds. The California Judicial Conduct Handbook cautions that under canon 5A(3), which prohibits the personal solicitation of funds, “[e]ven the appearance of making such a solicitation would be grounds for discipline.” (Rothman, *supra*, § 11.06, p. 573.) Indeed, discipline has been imposed for such an appearance of solicitation. (CJP, Annual Rep. (1992) advisory letter 12, p. 14 [advisory letter issued to a judge who gave the appearance of soliciting contributions from attorneys and their clients for the election campaign of a candidate for nonjudicial office].)

The question is, under what circumstances might attendance at a political fundraising or endorsement event create the appearance of political bias?

To assist in answering that question, the committee looked to the canons that apply to the governmental, civic, and charitable activities of judges.⁵ Canon 4C(3)(d)(i) prohibits judges from “personally participat[ing] in the solicitation of funds or *other fundraising activities*” on behalf of civic or charitable organizations.⁶ (Italics added.) In that context, the California Judicial Conduct Handbook cautions that, although silent presence during solicitation by others is permitted, judges should not attend a small solicitation event where a potential donor might interpret the judge’s presence as intended to influence the donation. (Rothman, *supra*, § 10.53, p. 564.) A judge's literal or symbolic proximity to a personal solicitor can appear coercive or reflect political bias and can undermine the integrity of the judiciary, whether or not the public might perceive the judge as personally soliciting funds by proxy. (Canon 1 [“A judge shall uphold the integrity and independence of the judiciary”]; canon 2B(2) [“A judge shall not lend the prestige of judicial office or use the judicial title in any manner . . . to advance the . . . interests of the judge or others”]; canon 4C(3)(d)(iii) [a judge “shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or . . . is essentially a fundraising mechanism”]; canon 4C(3)(d)(iv) [a judge “shall not permit the use of the prestige of his or her judicial office for fundraising or

⁵ Attendance at a political event necessarily involves governmental and civic activity that is governed by canon 4 as well as by canon 5, which specifically addresses political and campaign activity. (See canon 5 [governing judges’ rights as citizens]; see also Preamble [the canons should be read together as a whole, and each provision should be construed in context and consistent with every other provision]; Advisory Com. commentary, foll. canon 5D [a judge must consider whether conduct would violate other provisions of the code when deciding whether to engage in permitted activity].)

⁶ In the committee's view, the fact that canon 5A(3) proscribes only the *personal solicitation* of funds does not mean “other fundraising activities” that are prohibited under canon 4C(3)(d)(i) would be permitted at political events. Canon 5 broadly prohibits “political activity that may create the appearance of political bias or impropriety.” (Canon 5; see pt. IV.A, *ante*, at pp. 7-8.) This necessarily includes activities that give the appearance of soliciting contributions. (CJP, Annual Rep. (1992) advisory letter 12, p. 14; see pt. IV.C.1, *post*, at pp. 10-11.)

membership solicitation . . .”]; canon 5 [a judge shall “not engage in political activity that may create the appearance of political bias or impropriety”].)

The size of the group being solicited is particularly relevant in the context of political events where the donations solicited for a nonjudicial candidate could imply an endorsement in the form of financial support. If a judge is standing next to someone who is asking a small number of individuals for donations, it would be reasonable to interpret the judge’s presence as joining the solicitation. Similarly, the judge’s silent presence in the small group could create the appearance of an endorsement of the candidate for whom the funds are being solicited. Conversely, a judge’s mere presence at a large fundraising event should not give the appearance of personal solicitation or public endorsement, particularly if the judge does not wear a name badge or other insignia bearing his or her title.

The makeup of those in attendance is another factor judges should consider when deciding whether to attend an endorsement or fundraising event. If many of those in attendance are likely to know the judge *as a judge* (for example, a room full of prosecutors or public defenders), then the judge’s mere attendance is likely to be noteworthy both to the legal community and in the press. Attendance at even a larger gathering in these circumstances might create the appearance of endorsement or political bias. (Canon 5.)

A judge should also consider whether the judge’s presence will connect his or her judicial title to the fundraising or endorsement purpose. Canons 2B(2) and 4C(3)(d)(iv) prohibit the use of judicial title in any manner to advance the interests of others or to raise funds. At political events where the purpose is to raise funds and endorse a specific candidate, a judge’s presence at a small gathering could create the appearance of political support for, or lending judicial prestige to, the candidate. In contrast, where the purpose of the event is to allow competing candidates to speak or debate, a judge’s attendance is unlikely to be construed as an endorsement or as lending the prestige of the judge’s title, even if those candidates or others engage in direct solicitation. (California Judges

Association (CJA) Judicial Ethics Update (2005) III.1 [judge may serve as a neutral moderator at a forum for candidates for city council election].)

At a larger event where the purpose is to fundraise or endorse a nonjudicial candidate, consideration should be given to whether special attention will be drawn to the presence of a judge in a manner that will be likely to lend the judicial title to that purpose. (CJA Judicial Ethics Update (1995) II.A.6 [a judge may not lead pledge of allegiance at fundraiser for a candidate for partisan political office].) Indeed, the California Judicial Conduct Handbook advises that when attending a political event, a judge who is not a judicial candidate should request that he or she not be introduced because it could be construed as an endorsement for the nonjudicial candidate or political organization. (Rothman, *supra*, § 11.18, p. 575; see also CJA Judicial Ethics Update (2000) III.C [judge may attend a campaign kickoff for a nonjudicial candidate but may not be introduced].)

In sum, when deciding whether to attend a political fundraising or endorsement event, judges should consider the size of the event, the audience, and whether attention will be drawn to their presence in a manner that will create the appearance of political bias by connecting them as judges to fundraising by others or that will be construed as an endorsement of a nonjudicial candidate. These considerations are particularly relevant when a judge is considering making a speech, receiving an award, or being a guest of honor at such a fundraising or endorsement event, as discussed below.

2. *Making Speeches*

Canon 5A(2) specifically prohibits judges from “mak[ing] speeches for a political organization or candidate for nonjudicial office.” Canon 5D, however, specifically permits judges and candidates to engage in activity in relation to measures concerning improvement of the law, the legal system, or the administration of justice. Both the definition of the phrase “law, the legal system, or the administration of justice” and the Advisory Committee commentary following canon 5D make clear that any activity undertaken under canon 5D is nevertheless circumscribed by the other provisions of the

code. (Terminology, “Law, the legal system, or the administration of justice”; Advisory Com. commentary, foll. canon 5D.) Read together, canon 5A(2) and canon 5D raise questions about the extent to which speechmaking about the law, the legal system, or the administration of justice is permitted at a political fundraising or endorsement event.⁷

It is the committee’s conclusion that any speechmaking that reasonably could create the appearance of fundraising or of an endorsement of a nonjudicial candidate or political organization would violate the provisions of canon 5 and would not be permitted, even if the speech discusses the law, the legal system, or the administration of justice. Judges have been disciplined for speaking at events where their actions contributed to either the fundraising or endorsement purposes of an event. (CJP, Annual Rep. (1987) advisory letter, p. 11 [judge disciplined for being a featured speaker at a nonjudicial candidate’s campaign event]; CJP, *Inquiry Concerning Judge Zellerbach* (2011) Public Admonishment, p. 4 [judge disciplined for speaking at a gathering about how the policies adopted by a candidate for district attorney would impact the court, which appeared to be a public opposition to a nonjudicial candidate in violation of canon 5A(2)].) If the speech can be understood as expressly or implicitly soliciting funds for, or endorsing or opposing, a nonjudicial candidate or political organization, the fact that the judge is also speaking on a permissible topic would not remedy its impropriety.

The canons provide a narrow allowance for a judge to speak *to* a political gathering, provided the circumstances “would not give rise to the perception that the judge was speaking *on behalf of, rather than to*, the organization,” and the topic is strictly concerning “the law and the administration of justice.” (Rothman, *supra*, § 10.17, p. 532.) When choosing to speak within this constraint at a political event, however, judges

⁷ The committee does not intend to suggest that judges may not speak on other politically neutral topics, such as music, art, or gardening. The committee limits its discussion in this opinion to speaking on the law, the legal system, or the administration of justice in the context of a political event because judges are more likely to be asked to speak on such topics and because the canons specifically call out these topics as permissible speechmaking material.

should be careful to “deliver a nonpartisan speech on improvement of the law, the legal system, or the administration of justice.” (Rothman, *supra*, § 11.07, p. 574.)

When a judge speaks at a political event, the judge is likely to be introduced as a judicial officer and extended some special recognition. Depending on the context, even a speech devoted exclusively to permissible subjects may be seen as endorsing a political candidate or party. For example, a judge speaking to a political organization on the origins of the Constitution during a meeting devoted to the history of the law would probably raise no ethical issues. But if the same speech were given at an event designed to garner political or financial support for a nonjudicial candidate and could reasonably be perceived as an endorsement of the candidate, or as lending the prestige of the judge’s office to the candidate, the committee’s opinion is that this activity would be barred by the canons. (Canons 5 & 5A, 2B; Rothman, *supra*, § 11.07, p. 574.)

To summarize, although a speech may relate to the legal system or the administration of justice, the speech’s context will be crucial in determining its permissibility. Judges invited to speak at a political fundraising or endorsement event should consider whether any speech at the event, even on permissible topics, could compromise judicial integrity by creating the appearance of political bias or public support of a political party or a nonjudicial candidate, or by lending the prestige of the judicial office to that candidate.

3. *Receiving an Award or Being a Guest of Honor*

The canons permit a judge to accept an award or to be specially recognized as a guest of honor, even at a fundraising event. Canon 4C(3)(d)(iv) provides that a judge may “be a . . . guest of honor, or recipient of an award for public or charitable service provided the judge does not personally solicit funds” Thus, judges are free to accept awards from specialty bar organizations or other interest groups, so long as doing so does not give the appearance of favor or constitute improper fundraising. (Rothman, *supra*, § 10.16, p. 530 [judge may speak as a guest at a specialty bar event if the judge is also available to speak at opposing bar association functions]; CJA Opinion No. 50 (2000) p.

2 [judge accepting an award from an agency or group should make clear that the judge is open to receiving awards from agencies or groups with opposing interests].)

In the context of a political endorsement or fundraising event for a party or nonjudicial candidate, however, acceptance of an award or being acknowledged as a guest of honor singles out the recipient as a focal point of that event, and therefore would likely create the appearance that the judge is associated with the purpose of the event, i.e., fundraising or endorsement of a political organization or nonjudicial candidate. (CJA Opinion No. 50, *supra*, p. 3 [judge should decline any award that would entangle the judge in political endorsements or fundraising]; CJA Judicial Ethics Update (1987) II.A [it is inappropriate for a judge to be a guest of honor at a fundraising event for a partisan political organization].) It is therefore the committee’s opinion that special recognition at such an event would likely violate canon 5 by creating the appearance of political bias.

D. Judicial Campaign Activities

The prohibitions in canon 5A discussed above are tailored to apply only to political activities involving candidates for *nonjudicial* office. Thus, a judge is not prohibited from publicly endorsing a candidate for *judicial* office. Indeed, “[s]uch endorsements are permitted because judicial officers have a special obligation to uphold the integrity, impartiality, and independence of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer.” (Advisory Com. com., Cal. Code Jud. Ethics, foll. canon 5A.)

Nor are judges who are themselves candidates in an election for judicial office prohibited under canon 5A from campaigning vigorously and effectively:

“In judicial elections, judges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone, including attorneys. Nevertheless, there are necessary limits on judges facing election if the appearance of impropriety is to be avoided. In soliciting campaign contributions or endorsements, a judge shall not use the prestige of judicial office in a manner that would reasonably be perceived as coercive. See

Canons 1, 2, 2A, and 2B.” (Advisory Com. com., foll. canon 5A; see also CJA, Judicial Elections Handbook (13th ed. 2014) pp. 20-24).

Thus, there is no conflict between the prohibitions in canon 5A and the permissions in canon 5C. Canon 5A(2) prohibits judges and judicial candidates from making speeches for nonjudicial candidates, while canon 5C permits “[c]andidates for judicial office [to] speak to political gatherings only on their own behalf or on behalf of another candidate for judicial office.” A judge or judicial candidate who speaks at an event on his or her own behalf must take care, however, not to violate canon 5B, which forbids statements by judicial candidates to the electorate “ that commit the candidate . . . with respect to cases, controversies, or issues that are likely to come before the courts.” (Canon 5B(1)(a); see also CJA, Judicial Elections Handbook (13th ed. 2014) pp. 33-34.)

In short, a judge or judicial candidate may only fundraise and solicit support for the judge’s own campaign or for other judicial candidates. (CJP Annual Rep. (1986) advisory letter, p. 5 [advisory letter issued where judge arranged a political mailer that paired the judge with, and endorsed, a candidate for nonjudicial office]; CJP Annual Report (2011) private admonishment 4, p. 23 [private admonishment issued for not promptly removing endorsements of nonjudicial candidates which the judge had made prior to becoming a candidate].)

An effective campaign for judicial office often requires the broadest possible exposure to the electorate. Attending and appearing *as a judicial candidate* at an event devoted primarily to fundraising and promoting nonjudicial candidates or issues may provide such exposure and the opportunity to engage in judicial campaign contribution solicitation that is explicitly permitted under the Advisory Committee commentary to canon 5A. However, because the general and specific restrictions on political activities in canon 5 expressly apply to both judges and candidates for judicial office (see p. 5, *ante*), care must be taken so that a judicial candidate’s activities at such an event do not appear to endorse a political party or candidates for nonjudicial office. (*Wolfson, supra*, 811 F.3d 1176 [the compelling state interest in preserving public confidence in the integrity of the judiciary warrants foreclosing judicial candidates from engaging in

political campaigns other than their own]; CJA, Judicial Elections Handbook, *supra*, p. 58 [judicial candidates may not endorse candidates for nonjudicial office, including candidates for city attorney, district attorneys, and sheriff.]

As the Judicial Elections Handbook advises:

“[Candidates may] attend fundraisers and other political events for nonjudicial candidates . . . [¶] as long as these activities do not appear to endorse political parties, issues or candidates for nonjudicial office. Subject to these restrictions, judicial candidates may attend, hand out their own promotional material, solicit funds, and meet voters and supporters.” (CJA, Judicial Elections Handbook, *supra*, p. 57.)

Subject to the general canon 5 restrictions on judges and candidates, prohibited activities might also include attendance at events of only one political party or nonjudicial candidate to the exclusion of others, which could create the appearance of political bias. (CJA Judicial Ethics Update (2013/2014) III.4 [a judge running for election may make campaign speeches at partisan political meetings so long as the judge is available to both political groups].) Thus, depending on the context, being a guest of honor or a featured speaker might be prohibited, unless the judge is speaking only on behalf of his or her own candidacy or on behalf of another judicial candidate. (Canon 5; CJA, Judicial Elections Handbook, *supra*, p. 58.)

The committee therefore concludes that a candidate for judicial office may attend, be introduced, and speak on his or her own behalf, or on behalf of another candidate for judicial office, at a political event held for the purpose of endorsing or fundraising for a nonjudicial candidate, so long as the candidate does not commit to a position on an issue that is likely to come before the courts, endorse or solicit funds for a candidate for nonjudicial office or a political organization, or otherwise engage in campaign conduct that might create the appearance of political bias. (Canons 5, 5A(2) & (3), 5B(1)(a), 5C.)

E. Obligation to Inspect Promotional Material for Political Events

Canon 5B(2) requires candidates for judicial office to review and approve their campaign materials before dissemination. But canon 5 does not similarly provide that a

noncandidate judge is obligated to inspect promotional material used for political fundraising events a judge plans to attend. Nevertheless, several canons provide that there is a duty to ensure that the prestige of judicial office and judicial title are not used to advance the interests of others, cast doubt on impartiality, or solicit funds. (Canon 2B(2) [a judge shall not lend the prestige of office or use judicial title in any manner, including oral and written communications, to advance the interests of others]; canon 4A(1) [a judge shall conduct all extrajudicial activities so doubt is not cast as to impartiality]; canon 4C(3) [a judge shall not permit the use of the prestige of office for fundraising]; Advisory Com. com., foll. canon 4C(3)(d) [a judge must make reasonable efforts to ensure that others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise].) In the context of political events held for the purpose of endorsing or raising funds for a nonjudicial candidate or party, the canons may impose implicit duties when a judge accepts a personal invitation to attend.

In the committee's opinion, a judge must consider the circumstances of the invitation and the event to assess the likelihood that his or her judicial title will be known to the event promoters. If so, the judge would be wise to make reasonable efforts to ensure that judicial title is not used to promote attendance, solicit funds, or otherwise advance political interests. This may include advising the event organizers of the restrictions placed on judges under the California Code of Judicial Ethics, such as an advisement against being identified in promotional materials or publically introduced at the event.⁸

Although the code does not place an affirmative duty on judges to review and approve promotional materials after accepting an invitation to attend a political event, the

⁸ It is the committee's view that this issue comes into play only where the judge has been personally invited to attend by the event's sponsors or organizers. A judge's decision to attend an event, whose attendance is not requested and probably not expected, should not give rise to any need to inspect promotional materials or inform the organizers in advance of the judge's ethical restrictions.

duty to take corrective action for impermissible use of judicial title is mandatory. (CJP, Annual Rep. (1997) advisory letter 23, p. 22 [judge listed in an endorsement of a candidate for nonjudicial office disciplined for failing to seek a retraction or otherwise ameliorate the problem, even though the endorsement was unauthorized].)

The California Judicial Conduct Handbook provides the following guidance regarding such corrective action:

“In the event the judge’s name somehow shows up on literature as an endorsement, or on literature soliciting funds or participation in a campaign event, the judge should immediately take action. The judge should notify the candidate or organization that the judge has not authorized use of his or her name, and prohibit future use of the judge’s name. If possible, request that the organization clarify to the recipients of the flier that the judge took no part in the endorsement, and request that the campaign withdraw the offending material. The judge’s position on this request would be greatly strengthened if the judge told the candidate in writing about this issue.” (Rothman, *supra*, § 11.05, p. 572; see also CJA Judicial Ethics Update (1997) II.M [judge erroneously listed as an endorser of a candidate advised to send a written request for a retraction].)

It is the committee’s view that prevention is the most effective course of action when a judge concludes his or her attendance might be used to promote a political fundraising or endorsement event. Advising event organizers of ethical restrictions and reviewing promotional materials in advance would eliminate the necessity of taking corrective action after judicial title has been used without consent. In the special circumstance of accepting an invitation to speak about the law, the legal system or the administration of justice at a political event, steps should be taken to prevent, and must be taken to correct, the impermissible use of judicial title to endorse or fundraise in promotional materials.

V. Conclusions

Under any circumstances, judges must refrain from (1) publicly endorsing or opposing, (2) personally soliciting funds for, or (3) making a speech for any nonjudicial candidate or political organization. Beyond these specific proscriptions, canon 5 broadly

prohibits judges and candidates from engaging in political activities that may create the appearance of political bias. When deciding whether to attend political fundraising events where a nonjudicial candidate will be endorsed, judges must consider whether their presence could create the appearance of an endorsement or solicitation due to the size of the event or the makeup of the attendees.

Additional activities that could appear to be an endorsement or solicitation of funds include being introduced, receiving an award, or being a speaker or a guest of honor at a political event where the primary purpose is to raise funds for or endorse a nonjudicial candidate or political organization.

Although making speeches in support of a political organization or nonjudicial candidate is prohibited, speaking at a political gathering about the law, the legal system, or the administration of justice may be permitted. The committee advises judges to consider the context of the gathering, including its primary purpose, in deciding whether or not to be a speaker. If the judge concludes that he or she can accept the speaking invitation, the judge must restrict his or her remarks to the law, the legal system, and the administration of justice and must avoid statements that may appear to be an endorsement or solicitation.

Judges may endorse candidates for judicial office and speak on their behalf. Judicial candidates may speak to political gatherings on their own behalf or on behalf of another judicial candidate and may be introduced as judicial candidates at gatherings for nonjudicial candidates. Candidates for judicial office may not, however, make speeches that make commitments with respect to cases, controversies, or issues that are likely to come before the courts, and may not solicit funds for or endorse nonjudicial candidates.

Because judges have an affirmative obligation to guard against impermissible uses of their judicial titles (canon 2B(2)), the committee advises judges accepting a personal invitation to attend a political fundraising or endorsement event to assess the likelihood that their attendance will be known to the promoters and their name might be used to promote the event. If likely, preventative measures are recommended to inform promoters of the restrictions on the use of judges' names. If a judge's name is used for

promotional purposes, corrective action must be taken. Similarly, when a judge accepts an invitation to speak about the law, the legal system, or the administration of justice at a political fundraising or endorsement event, steps should be taken to prevent, and must be taken to correct the impermissible use of judicial title to endorse or fundraise in promotional materials.



This opinion is advisory only (Cal. Rules of Court, rule 9.80(a), (e); Cal. Com. Jud. Ethics Opns., Internal Operating Rules & Proc. (CJEO) rule 1(a), (b)). It is based on facts and issues, or topics of interest, presented to the California Supreme Court Committee on Judicial Ethics Opinions in a request for an opinion (Cal. Rules of Court, rule 9.80(i)(3); CJEO rules 2(f), 6(c)), or on subjects deemed appropriate by the committee (Cal. Rules of Court, rule 9.80(i)(1); CJEO rule 6(a)).