

MINNESOTA BOARD ON JUDICIAL STANDARDS

2025 CENTRE POINTE BOULEVARD
SUITE 420
MENDOTA HEIGHTS, MINNESOTA 55120



VERNA KELLY
CHAIRPERSON

HON. CHARLES A. FLINN, JR.
VICE-CHAIRMAN

HON. THOMAS R. BUTLER
CHRISTOPHER P. GEORGACAS
JON O. HAAVEN
HON. JOHN L. HOLAHAN
ROBERT W. JOHNSON, ESQ.
PETER H. WATSON, ESQ.
HON. BRUCE D. WILLIS

DePAUL WILLETTE
EXECUTIVE SECRETARY

DEBORAH K. FLANAGAN
ADMINISTRATIVE ASSISTANT

612-296-3999

FAX 612-452-3433

September 2, 1997

The Honorable
Minnesota Supreme Court
Minnesota Judicial Center
25 Constitution Avenue
St. Paul, MN 55155

04-85-697

Dear Justices:

The Minnesota Board on Judicial Standards files the enclosed Petition for clarifications and amendments to Canon 5 of the Code of Judicial Conduct.

Sincerely,

DePaul Willette
Executive Secretary

DW:df
Enc.

cc: Lawyers Professional Responsibility Board
Conference of Chief Judges
Minnesota Bar Association.

OFFICE OF
APPELLATE COURTS

SEP 09 1997

FILED

SEP 09 1997

STATE OF MINNESOTA
IN SUPREME COURT

Petition To Amend Canon 5, of
the Minnesota Code of Judicial Conduct

TO: Minnesota Supreme Court

The Minnesota Board on Judicial Standards petitions the Supreme Court to amend
Canon 5 of the Code of Judicial Conduct as set out in the attached Report and
Resolution of the Minnesota Board on Judicial Standards which was adopted at its regular
meeting on August 22, 1997.

MINNESOTA BOARD ON JUDICIAL STANDARDS

Date: 9-2-97



By: DePaul Willette
Executive Secretary
MN Board on Judicial Standards
2025 Centre Pointe Blvd., Suite 420
Mendota Heights, MN 55120

STATE OF MINNESOTA
BOARD ON JUDICIAL STANDARDS' REPORT
TO AMEND CANON 5 OF THE
MINNESOTA CODE OF JUDICIAL CONDUCT

PREFACE

In 1996, there were 18 judicial election contests in Minnesota, five were open positions and 13 contests involved incumbent judges. Thirty eight individuals filed in the primaries. This unprecedented number of judicial election contests generated numerous questions about the nonpartisan nature of judicial elections and the involvement of political organizations.

Canon 5 does not define what constitutes a nonpartisan election except by indirectly prescribing the conduct permitted or prohibited by candidates. The addition of M.S. 204B.06, Subd. 6, as preamble to Canon 5, would clearly indicate the nonpartisan nature of judicial elections.

Another area of confusion was whether candidates in attending gatherings on their own behalf, as permitted by Canon 5B(1), overrode the limitation in Canon 5A(1)(d) which states a candidate shall not attend political gatherings. The Board has sought to clarify the matter by clearly prohibiting a candidate from attending a political gathering.

The Canon is clear that a candidate's election committee should not disclose to the candidate the identity of campaign contributors but it does not address the disclosure of those who refused to make contributions or solicitations of public support. The candidate's knowledge

of those who refuse maybe as significant as those who have contributed. The Board recommends language to make the canon consistent between contributors and those who refuse support.

There was some criticism from incumbent judicial candidates that lawyer candidates were not subject to Canons 1 and 2A which require a judge to act in manner that promotes the integrity and impartiality of the judiciary. The Board believes this addition to Canon 5 would require the same responsibilities from all candidates.

Finally, the Board is aware of individuals who have sought endorsements for judicial positions from major political parties in 1996, and is aware of a current campaign underway to achieve that goal in 1998. For these reasons, the Board has requested amendments to Canon 5.

The proposed amendments have been circulated to the Conference of Chief Judges, the Lawyers Professional Responsibility Board's staff members and copies were provided to members of the MSBA Committee "Judicial Election Task Force."

SUMMARY OF PROPOSED CHANGES

- | | |
|----------------|--|
| Canon 5A | Clarifies the nonpartisan nature of judicial elections by adding the language from M.S. 204B.06, Subd 6, which provides:

"each justice of the supreme court, and each court of appeals and district court judge is deemed to hold a separate nonpartisan office." |
| Canon 5A(1)(a) | Clarifies the language to prevent a candidate from identifying themselves as members of a political organization whether currently or in the past. |

- Canon 5A(1)(b) Clarifies the limits on the candidate and those on the candidates behalf from endorsing another candidate.
- Canon 5A(1)(d) Clarifies the language to prevent a candidate from seeking an endorsement from a political organization.
- Canon 5B(1)(a) Clarifies the confusion over what gatherings a candidate may attend by clearly excluding political gatherings. This language was originally in the code prior to the 1996 amendments.
- Canon 5B(3) Clarifies the duty of the candidate's committee, as well as a candidate, by prohibiting the seeking, accepting and using political endorsements.
- Canon 5B(3) Clarifies and expands the duty of the committee not to disclose to the candidate the identity of those who were solicited for a contributions or stated public support and who refused such solicitation.
- Canon 5D Clarifies the meaning of political organizations by including the definition from the 1996 comments to the code.
- Canon 5E Clarifies and imposes the obligation of lawyer candidates to promote confidence in the integrity and impartiality of the judiciary by including Canons 1 and 2A as a part of Canon 5

It is the Board members' opinion that these clarifications and additions to Canon 5B will eliminate areas of confusion, define the nonpartisan nature of the elections and clearly define the nature of a political organization and the extent to which candidates are limited in their involvement with these organizations.

The Board recommends the attached clarifications and additions to Canon 5 of the
Minnesota Code of Judicial Conduct.

MINNESOTA BOARD ON JUDICIAL STANDARDS

Date: 9-2-97

A handwritten signature in black ink, appearing to read "DePaul Willette", written over a horizontal line.

By: DePaul Willette
Executive Secretary

PROPOSED CHANGES

CANON 5

A Judge or Judicial Candidate Shall Refrain From Political Activity Inappropriate to Judicial Office

A. In General.

Each justice of the supreme court and each court of appeals and district court judge is deemed to hold a separate nonpartisan office. MS 204B.06 Subd 6.

(1) Except as authorized in Section 5B(1), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold any office in a political organization; identify themselves as members of a political organization, except as necessary to vote in an election.

(b) publicly endorse ~~or~~, either directly or indirectly or, except for the judge or candidate's opponent, publicly oppose another candidate for public office;

(c) make speeches on behalf of a political organization;

(d) attend political gatherings; or seek, accept or use endorsements from a political organization; or

(e) solicit funds for or pay an assessment to or make a contribution to a political organization or candidate, or purchase tickets for political party dinner or other functions.

(2) A judge shall resign the judicial office on becoming a candidate either in a primary or in a general election for a non-judicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office, including an incumbent judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5B(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his or her views on disputed legal or political issue; or misrepresent his or her identity, qualifications, present position or other fact, or those of the opponent; and

(ii) by words or conduct manifest bias or prejudice inappropriate to judicial office.

(e) may respond to statements made during a campaign for judicial office within the limitations of Section 5A(3)(d).

B. Judges and Candidates for Public Election.

(1) A judge or a candidate for election to judicial office may, except as prohibited by law,

(a) speak to gatherings, other than political organization gatherings, on his or her own behalf;

(b) appear in newspaper, television and other media advertisements supporting his or her candidacy; and

(c) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

(2) A candidate shall not personally solicit or accept campaign contributions or solicit publicly stated support. A candidate may, however, establish committees to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting campaign contributions and public support from lawyers, but shall not seek, accept or use political organization endorsements. Such committees shall not disclose to the candidate the identity of campaign contributors nor shall the committee disclose to the candidate the identity of those who were solicited for contribution or stated public support and refused such solicitation. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

C. Incumbent Judges. A judge shall not engage in any political activity except (1) as authorized under any other Section of this Code, (2) on behalf of measures to improve the law, the legal system or the administration of justice, or (3) as expressly authorized by law.

D. Political Organization. For purposes of Canon 5 the term political organization denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

E. Applicability. Canon 1, Canon 2(A), and Canon 5 generally applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to Rule 8.2 of the Minnesota Rules of Professional Conduct.