

ADVISORY COMMITTEE  
ON STANDARDS OF JUDICIAL CONDUCT  
OPINION OPINION NO. 7 - 1992

RE: Propriety of a magistrate retaining his position, under leave of absence, while running for Sheriff of his respective county.

FACTS

A Magistrate wishes to run for the position of Sheriff in his county. The Magistrate proposes to retain his position but take a leave of absence, without pay, pending the outcome of the election.

CONCLUSION

A Magistrate must resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office. Failure to resign creates, at the very least, an appearance of impropriety and can subject the judge to discipline for misconduct.

OPINION

South Carolina Appellate Court Rule 501, Canon 7(A) (3) governs this situation. The rule reads in pertinent part: "A Judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office..." The commentary to this section clearly states:

The purpose of Canon 7(A) (3) is to protect the integrity of the judicial system by preventing even the appearance that a judge's decision might be politically motivated. <sup>1</sup>This worthy purpose can only be fully accomplished by requiring that a judge resign when he first publicly manifests his decision to seek non-judicial office. (Emphasis supplied).

In the request for this advisory opinion, the magistrate expresses a belief that the decision to resign is discretionary and not mandatory. We disagree. A judge "should" resign before engaging in a campaign for a non-judicial office. This language is qualified by the commentary which "requires" such resignation.

In arriving at this opinion we find the language in the Model Code of Judicial Conduct (1990) very persuasive. While not yet adopted by our Supreme Court, the Model Code of Judicial Conduct (1990) has been adopted by the American Bar Association. Canon 5(A) states in pertinent part: "A judge shall resign from judicial office upon becoming a candidate for a non-judicial office. ..." <sup>2</sup> (Emphasis supplied). We find that our Code, when coupled with its commentary, compels the same result.

Moreover, the clear intent behind SCACR 501, Canon 7(A) (3) and its commentary is to prevent any suspicion that a judge would permit political considerations to affect his decisions. This, in and of itself, gives rise to an appearance of impropriety. Inherent in the present fact situation is an appearance of impropriety if the magistrate chooses not to resign. As the commentary to Canon 2 succinctly states: "A judge must avoid all impropriety and appearance

of impropriety." Conduct which violates the Code of Judicial Conduct constitutes misconduct under the Rule on Judicial Discipline and Standards. <sup>3</sup> Rule 502 SCACR. The magistrate, therefore, is advised to resign his office if he becomes a candidate for Sheriff.

C. VICTOR PYLE, JR., CHAIRMAN  
A. CAMDEN LEWIS  
DONALD A. FANNING

June 19, 1992

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1 For a thorough discussion of this topic See Adv. Op. #3-1982 (holding that a magistrate should resign from his judicial position while engaged in a campaign for the position of trustee at a State-supported university). Cf., also, Adv. Op. #4-1984.

2. It is worth noting that this "resign to run" requirement was upheld on U.S. Constitutional grounds in *Morial v. Judicial Commission*, 565 F.2d 295 (5th Cir. 1977).

3. See, *In the Matter of William W. Peagler, etc.*, 303 S.C. 458, 401 S.E.2d 416 (1991), (Probate Judge receiving Public Reprimand for failing to resign before becoming a candidate for County Supervisor.)