

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 8 - 2022

RE: A Circuit Court judge including a letter of recommendation from the Solicitor in the application for re-election.

FACTS

A sitting Circuit Court judge intends to seek re-election. The elected solicitor of the same circuit (“Solicitor”) has indicated that he/she would like to write a letter of recommendation to accompany the judge’s application for re-election. The judge and the Solicitor have known each other for 20 years. The Solicitor does not try cases in Circuit Court anymore, as the position requires administration of offices in two counties. Of course, other attorneys in the Solicitor’s office do appear in Circuit Court. The judge inquires as to the propriety of including such a letter with the application for re-election.

CONCLUSION

The judge may submit a letter of recommendation from the Solicitor as part of the application for re-election.

OPINION

This is a novel question for the Committee. It involves the conduct of another person, the Solicitor, but presumably the judge is concerned as to whether the Solicitor’s letter would create some sort of conflict that would require the judge to recuse himself or herself should the judge be re-elected.

As part of the election process, a judicial candidate must submit an application and five letters of recommendation. (Rule 8, Procedural Rules for the Judicial Merit Selection Comm’n, Revised 2/11/21). Canon 5 of Rule 501, SCACR, governs political activity of a judge or judicial

candidate. Canon 5B(2) states that a judge may not engage in political activity to secure the judicial appointment, with certain exceptions. One exception allows a judge or candidate to seek support “from individuals to the extent requested or required by those specified in Section 5B(2)(a).” Canon 5B(2)(a)(ii). The “specified” entities in Section 5B(2)(a) are the appointing authority, selection or nominating commission, or other agency designated to screen candidates. The comment to this section notes that “[u]nder Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.” Thus, because the Judicial Merit Selection Commission requires five letters of recommendation to be submitted contemporaneously with the application, there seems to be no reason why the judge’s recommendations could not include one from the Solicitor. However, we must also consider whether the judge, if re-elected, would then be required to recuse himself or herself from cases involving the Solicitor’s office.

A judge must disqualify “himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances where the judge has a personal bias or prejudice concerning a party or a party’s lawyer....” Canon 3E(1)(a). It could be argued that the judge might have a personal bias in favor of the Solicitor for the Solicitor’s submission of a letter of recommendation.¹ However, the Solicitor will not personally appear before the judge as he or she no longer participates in trial work. It is unlikely that any perceived personal bias could or would extend to the many other employees of the Solicitor’s

¹ This could be said for any lawyer that submits a letter of recommendation on the judge’s behalf but of course, other lawyers (including a Solicitor) are ideally-suited to evaluate the judge’s temperament, experience, and qualifications for the bench. If any such lawyer appears thereafter before the judge, the judge can use the considerations of Canon 3E to determine if there is a need for disqualification, and if so, whether the remittal of disqualification procedure under 3F is appropriate.

office that might appear before the Circuit Court judge. Thus, we see no reason why the inquiring judge cannot submit a letter of recommendation from the Solicitor in the application for re-election.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
KEITH M. BABCOCK

May 12, 2022