

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 14 - 2023

RE: Propriety of a part-time magistrate judge engaging in political activities.

FACTS

A recently appointed part-time judge inquires as to the applicability of the activities prohibited by Canon 5A(1)(a)-(e). The judge has been appointed to a four-year term as a part-time magistrate. The judge notes that the Application of the code excuses continuing part-time judge and periodic part-time judges from compliance with certain provisions of the code. The judge first asks for clarification as to whether the position here is continuing or periodic. As a follow-up the judge inquires as to whether he/she can engage in the activities in Canon 5A(1)(3) when not on the bench.

A continuing part-time judge: (1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) at any time with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

Rule 501, Application of the Code of Judicial Conduct-

CONCLUSION

A part-time magistrate judge may engage in political activities.

OPINION

As to the judge's first question as to whether a four-year term as a part-time magistrate is continuing or periodic, the Application of the Judicial Code defines both terms thusly:

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law.

"Periodic part-time judge." A periodic part-time judge is a judge who serves or expects to serve repeatedly on a part-time basis but under a separate appointment for each limited period of service or for each matter.

The commentary to the "Periodic part-time judge" definition notes that that a person can cease acting as a judge when he or she "no longer accepts appointments." Because the judge here is appointed for a four-year continuing term, rather than appointed for a specific judicial matter, the judge is a continuing part-time judge. The Code also provides:

A continuing part-time judge: (1) is not required to comply:

(a) except while serving as a judge, with Section 3B(9); and

(b) **at any time** with Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2) and 5D.

Rule 501, Application of the Code of Judicial Conduct (emphasis added). Thus, the judge can engage in those activities at any time during his 4-year appointment.¹

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

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

s/ Keith M. Babcock
KEITH M. BABCOCK

November 1, 2023

¹ The inquiring judge seemed to believe that the Application stated a part-time judge was not required to comply with Canon 5A(1) "except while serving as a judge," and asked for clarification of that phrase. However, the Application actually states that a part-time judge is not required to comply "except while acting as judge, with Section 3B(9)" --a provision that addresses a judge's comments on a pending matter. The inquiring judge has not sought an opinion as Canon 3B(9) and therefore we need not address it further.