

**SPECIAL COMMITTEE ON JUDICIAL CAMPAIGN INTERVENTION
2006 JUDICIAL ELECTIONS**

2002 M 993

OPINION 2006-001

We have been asked by a candidate to render an advisory opinion. The request for opinion poses two different but related questions concerning the interpretation of the words "donor" and "major donor" as used in the Code of Judicial Conduct. These words are defined in the Code and the term "major donor" takes on significance only in the context of litigation before a sitting judge whose candidacy has received contributions from a person or entity so designated. The significance is that a party may file a motion to compel recusal of a judge where the "opposing party or counsel of record for that party is a major donor to the election campaign of such judge." Code of Judicial Conduct, Canon 3E(2). The Code does not require recusal in that instance. All that can be said is that having a "major donor" in the case is an appropriate circumstance in which to raise the recusal issue. The judge and, ultimately, the Supreme Court will determine whether recusal is required.

The questions put are paraphrased below:

1. Whether individual contributions of several lawyers associated with the same firm are aggregated for purposes of determining whether the firm is a major donor; and
2. Where the firm is also a contributor, whether the individual contributions made by members of the firm are aggregated with the firm's contribution for that purpose.

The first question to be answered is whether this a request that falls within the purview of this committee. Canon 5F(2) empowers this committee to render opinions "as to the propriety of any act of conduct by a judicial candidate [or those acting on behalf of the candidate] ...and as to the construction or application of Canon 5....

Opinions issued by this committee are advisory only but "all...regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding."

In 2002 this committee issued the following opinion:

We have been asked for an opinion by a candidate in the following circumstances:

The candidate is seeking an office in which all candidates run at large for unnumbered posts. Those receiving the highest votes fill the number of posts available. The candidate proposes to file a motion to recuse all of the incumbent judges from matters in which he represents clients before them because they are all his opponents in the race.

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The committee has considered the matter and concludes that the request involves matters outside of the scope of this committee's authority. The issue put by the motion to recuse is one of judicial conduct in on going judicial proceedings not candidate campaign conduct. The determination whether a judge should recuse in a case should be made in accordance with the rules promulgated by the Mississippi Supreme Court to wit: Rule 16A, Mississippi Rules of Civil Procedure; Rule 1.15, Uniform Rules of Circuit and Chancery Court Practice; Rule 1.11 Uniform Chancery Court Rules; and Rule 48B Mississippi Rules of Appellate Procedure.

Similarly, the questions presently put to us may be viewed as not involving the propriety of campaign conduct. Rather they involve conduct which may have a bearing upon subsequent judicial conduct. They involve campaign policies which may have consequences quite aside from whether they are deemed proper or improper. This is not unlike other campaign choices. The choice of a campaign manager or treasurer or finance chair, for example, may engender a later request for recusal in matter involving that person. The present circumstance is that the decision to accept or not accept contributions from individuals associated with a particular firm and/or the firm may result in a similar request for recusal. Viewed in this way, the questions are beyond our purview.

Another consideration is the ultimate consequence of a decision by this committee. Its function is to provide some measure of comfort to the candidate contemplating conduct which, if viewed in a particular way, might subject the candidate to sanctions.. Recusal, however, is not a sanction. It should have no impact upon the candidate who becomes a judge. Its only impact, if any at all, would be felt by the parties. Those most in need of an answer to the questions posed then, are not so much the candidates but the prospective contributors to the candidate. Contributors may be viewed as "independent person[s]...conducting activities which impact on the election.... As such we may issue opinions upon the propriety of their acts. But still , recusal of a judge should not be viewed as a sanction for misconduct. While recusal may be a

consequence of their acts that consequence does not turn on a question of "propriety." Recusal will only be required if, in the overall context of the circumstances presented, including whether a party is a major donor, it appears that the judge's impartiality might objectively be questioned by a reasonable observer. Given that the issue involves the rights of more than one party it is difficult to see how this Committee's opinion might be given any effect.

Based upon the foregoing, we conclude that the answers to these questions are beyond the purview of this committee. We are the only body empowered to answer this question on an advisory basis. But, any person may petition the Supreme Court for an order clarifying the rule. In recognition of the fact that these are important questions, the answers to which are unclear, we will send a copy of this opinion to the Supreme Court and urge that it consider clarifying the Code on this issue.