

**INFORMAL OPINION IO-1998-008**  
**ISSUED August 11, 1998**

You have requested an informal opinion on the following questions:

*When, and under what circumstances, do the Constitutional Ethics Rules [also "the constitutional rules" or "the Rules"], Section 257:1-1-1 et seq. Of the Rules of the Ethics Commission, 74 O.S. Supp. 1998, Ch. 62, App., permit you, as a judge/justice, to begin a campaign in support of your retention? You have also asked if published information you cite qualifies as the type of "active opposition" which allows you to begin a campaign.*

**ANALYSIS**

The Ethics Commission is charged with the duty of writing rules of ethical conduct for all state officers, employees and campaigns.

After public hearing, the Ethics Commission shall promulgate rules of ethical conduct for campaigns for elective state office and for campaigns for initiatives and referenda, including civil penalties for violation of these rules.

OKLA. CONST. Article XXIX, Section Three (B)

The Commission is also charged with enforcing its rules.

The Ethics Commission shall investigate and, when it deems appropriate, prosecute in the District Court of the County where the violation occurred violations of its rules governing ethical conduct of campaigns, state officers, and state employees . . .

OKLA. CONST. Article XXIX, Section Four (A)

To ascertain who falls within the purview of the Rules, we look to the definition of "state officer." The Rules define the term as meaning:

... an elective, appointed or employed officer, including a public member, in the executive, *judicial* or legislative branch of the State of Oklahoma

257:1-1-2

[emphasis added]

Members of the judicial branch of state government are thus under the ethics rules. Chapter Ten on campaign reporting applies to them the same as other candidates for state office. Judicial candidates, however, are subject to additional regulation per the Code Of Judicial Conduct, 5 O.S. 1991, Ch. 1, App. 4. We mention this in passing for informative purposes. This agency has no jurisdiction over the code. We, therefore, confine our advice to the Constitutional Ethics Rules [supra].

Those Rules provide that citizens seeking office become candidates under the following circumstances:

**“Candidate”** means a person who seeks nomination or election to state office. An individual is a candidate when the individual:

- (1) has filed a declaration of candidacy for any stat office w ith the Secretary of the State election Board;
- (2) *has filed a declaration of candidacy with the Secretary of State and has drawn active opposition;*
- (3) is nominated as a “substitute candidate” pursuant to Section 1-105 of Title 26 of the Oklahoma Statutes; or
- (4) solicits or accepts contributions, makes expenditures or gives consent to an individual, organization, party committee, or other committee to solicit or accept contributions or make expenditures to secure election to any state office at any time, whether or not the office for which the individual seek nomination or election is know n when the”
  - (A) solicitation is made;
  - (B) contribution is accepted; ord
  - (C) expenditure is made.

The term “candidate” shall include a person whose candidacy is unopposed.

Section 257:1-1-2

[emphasis added]

Thus, whenever a judicial officer subject to retention encounters active opposition, he or she is entitled to become a candidate and begin a campaign.

The Rules are silent, however, as to what constitutes “active opposition.” This is a determination left to the individual, to be made on a case by case basis. Once a judicial officer has, in his or her discretion, ascertained the existence of active opposition to his/her retention, the Rules permit the judge/justice to become a candidate. Once a candidate, the judge/justice incurs the same requirements to register and report with this agency as do other candidates seeking state office.

A candidate registers by forming a candidate committee. Registration occurs with the filing of the Statement Of Organization For Candidate Committees [“Form SO-1”], which must be received by the Commission within ten (10) days of accepting or expending in excess of Five Hundred Dollars (\$500).

#### **Designation of candidate committees**

A candidate shall designate one (1) candidate committee by filing a statement of organization no later than ten (10) days after accepting or expending in excess of five hundred dollars (\$500) ...

Section 257:10-1-8(a)

Once registered, a candidate committee incurs a periodic reporting requirement. A series of pre-election, last minute (where applicable) and quarterly reports must be also filed. These are titled: Campaign Contributions And Expenditures Reports ["Form C-1R"]. Where there has been no activity within a reporting period, a Statement Of Inactivity ["Form C-3R"], may be filed instead. Due dates and report contents are spelled out in Sections 257:10-1-13 and 257:10-1-14 of the Rules. The reporting obligation continues until the candidate committee dissolves, per terms of Section 257:10-1-19. The Commission provides candidates with a booklet of forms, an instructional manual, a copy of the Rules and a list of due dates. These may be obtained from the agency office at the letterhead address.

## CONCLUSION

**It is therefore the informal opinion of the staff of the Ethics Commission that, once you have ascertained you have encountered active opposition of your retention as a judge/justice, the Constitutional Ethics Rules [supra] permit you to begin a candidate campaign. Since the Rules are silent on the issue of what constitutes "active opposition," it is not necessary for staff to examine whether the cited material qualifies, because such determination is a matter solely within the discretion of the person whose name will appear on the retention ballot. Should you, in your judgment, ascertain that you have encountered such opposition, the Rules permit you to form a candidate committee to solicit campaign contributions and make expenditures on your behalf. Once the \$500 threshold of either is reached, the committee must register and report with this agency. While the constitutional rules apply to all state candidates alike, we note that those seeking judicial office are subject to additional regulation by the Code Of Judicial Conduct [supra] about which this office offers no advice. We encourage judicial candidates to inquire of the Judicial Ethics Advisory Panel as to the application of that code.<sup>1</sup>**

Please be aware that ethics rules permit this agency's staff to issue informal opinions, like this one, upon the approval of the Chair or, in his absence, the Vice Chair. These may issue if the matter is reasonably susceptible to a single analysis and is not the subject of litigation, investigation or legislation. As is the case with the Commission's official pronouncements, known as ethics interpretations, informal opinions protect the identity of the requesting party. This letter thus bears a confidential label. Since this is for the individual's benefit, the requesting party may choose to reveal his or her name, disclose its contents and/or make whatever use of this letter he/she sees fit. The Rules further provide that any member may ask that the opinion be converted into a request for ethics interpretation and, hence, be decided by the full Commission. This opinion is therefore subject to review at the next regular meeting.

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<sup>1</sup>We understand that inquires to the panel should be made in care of the Office of the Court Administrator, Attention: La Donna Dowding/ 1915 N. Stiles/Oklahoma City, OK 73105/ (405) 522-7879.

The Rules require the agency to publish informal opinions with sufficient deletions to protect the requesting party. This letter, in a sufficiently redacted form, will therefore be added to the Commission's body of interpretative authority and made available to the public.

This opinion letter has been approved by the Commission Chair.