IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 97 - 9186

ADOPTION OF AMENDMENTS TO THE TEXAS CODE OF JUDICIAL CONDUCT

ORDERED:

The Supreme Court of Texas this day adopts amendments to Canon 4, Canon 5, and Canon 6 of the Code of Judicial Conduct. The amendment to Canon 4 will be effective January 1, 1998. The amendments to Canons 5 & 6 will be effective January 1, 1999.

Canon 4

CONDUCTING THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-judicial activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) interfere with the proper performance of judicial duties.

B. ~~Avocational~~ Activities to Improve the Law. A judge may:

(1) speak, write, lecture, teach and participate in extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code; and,

(2) serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He or she may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Canon 5

(4) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

Canon 6

B. A county judge who performs judicial functions shall comply with all provisions of this Code, except the judge is not required to comply:

. . .

(4) with Canon 5(4)~~or 5(5)~~

C. (1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

. . .

(e) with Canon 5(4).

SIGNED this 30th day of October, 1997.

Thomas R. Phillips

Thomas R. Phillips, Chief Justice

Raul A. Gonzalez, Justice

Nathan L. Hecht., Justice

Craig T. Enoch, Justice

Rose Spector, Justice

Priscilla Owen, Justice

James A. Baker, Justice

Greg Abbott, Justice

Deborah G. Hankinson, Justice

IN THE SUPREME COURT OF TEXAS

PER CURIAM OPINION CONCERNING AMENDMENTS TO CANONS 5 AND 6 OF THE CODE OF JUDICIAL CONDUCT

By Order signed this day, the Supreme Court has amended the Code of Judicial Conduct, effective January 1, 1999, to require certain types of judges to resign their judicial positions to seek a non-judicial elective office. Specifically, the following additions or changes to the Code will be made:

Canon 5

(4) A judge shall resign from judicial office upon becoming a candidate in a contested election for a non-judicial office either in a primary or in a general or in a special election. A judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention or while being a candidate for election to any judicial office.

Canon 6

B. A county judge who performs judicial functions shall comply with all provisions of this Code, except the judge is not required to comply:

. . .

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C. (1) A justice of the peace or municipal court judge shall comply with all provisions of this Code, except the judge is not required to comply:

. . .

(e) with Canon 5(4).

The text of the new provision is based on Canon 5A(2) of the American Bar Association Model Code of 1990, which provides:

> A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

It is also similar to Canon 7A(3) of the 1972 Model Code, drafted by a committee chaired by Justice Roger Traynor of the California Supreme Court, which provided:

> A judge should resign his office when he becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that he may continue to hold his judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if he is otherwise permitted by law to do so.

Although the 1972 Code employed the hortatory language "should" rather than the mandatory term "shall," its provisions were also intended to be mandatory. *See* JEFFREY M. SHAMAN, ET AL., JUDICIAL CONDUCT AND ETHICS § 16.01, at 492 (1990).

The provisions of both model codes are derived from Canon 30 of the American Bar Association's 1924 Canons of Judicial Ethics, drafted by a committee chaired by Chief Justice Taft, which provided in relevant part:

> While holding a judicial position [a judge] should not become an active candidate either at a party primary or at a general election for any office other than a judicial office. If a judge should decide to become a candidate for any office not judicial, he should resign in order that it cannot be said that he is using the power or prestige of his judicial position to promote his own candidacy or the success of his party.

Every other state in the nation already requires all or most judges to resign when seeking a non-judicial elective office. In forty-three states, such conduct is prohibited by a Canon of Judicial Conduct derived from the Model Code.[1] One state has a Code of Judicial Ethics, not based on the

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[1] ALA. CANONS OF JUD. CONDUCT Canon 7A(2); ALASKA CODE OF JUD. CONDUCT Canon 7A(3); ARIZ. CODE OF JUD. CONDUCT Canon 7A(4); ARK. CODE OF JUD. CONDUCT Canon 5A(2); COLO. CODE OF JUD. CONDUCT Canon 7A(2); CONN. CODE OF JUD. CONDUCT Canon 7A(2); DEL. CODE OF JUD. CONDUCT Canon 7B; FLA. CODE OF JUD. CONDUCT Canon 7A(2); HAW. CODE OF JUD. CONDUCT Canon 7A(2); ILL. CODE OF JUD. CONDUCT Canon 7A(2); IND. CODE OF JUD. CONDUCT Canon 5A(2); IOWA CODE OF JUD. CONDUCT Canon 7A(2); KAN. CODE OF JUD. CONDUCT Canon 7A(4); KY. CODE OF JUD. CONDUCT Canon 7A(2); LA. CODE OF JUD. CONDUCT Canon 7A(3); ME. CODE OF JUD. CONDUCT Canon 5A(3); MD. CODE OF JUD. CONDUCT Canon 5A; MASS. CODE OF JUD. CONDUCT Canon 7(A)2; MICH. CODE OF JUD. CONDUCT Canon 7A(3); MINN. CODE OF JUD. CONDUCT Canon 7A(2); MISS. CODE OF JUD. CONDUCT

Model Code, which also prohibits such a candidacy.[2] One state constitutionally provides that all judges vacate their office if they seek a non-judicial office,[3] while another state constitutionally prohibits any elected officials, including judges, from running for a different office more than thirty days prior to the expiration of such official's current term of office.[4] Still another state constitutionally prohibits only supreme court justices from making such a race, but by code requires all other judges to take a leave of absence during such a campaign.[5] Finally, one state constitutionally prohibits appellate judges from holding non-judicial office during their term but allows trial judges to take a leave of absence when seeking another elective office.[6] Thus, the promulgation of a resign-to-run requirement by our Court will bring Texas into line with every other jurisdiction.

Since our Code was originally promulgated effective September 1, 1974, the practice of sitting Texas judges running for non-judicial office has increased substantially. While judges have occasionally sought non-judicial positions ever since Chief Justice John Hemphill defeated United States Senator Sam Houston in an 1857 legislative election, we have found no instance of more than one judge in the entire state seeking non-judicial office in any one election year prior to 1986. Since then, however, the increase in frequency of judicial candidacies for non-judicial office has harmed public confidence in our state's judiciary. Serving as a judge and running for non-judicial public office are inherently inconsistent pursuits. While most Texas judges seeking such office have no doubt labored to avoid the appearance of impropriety, the tension between these roles raises

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Canon 7A(3); MO. CODE OF JUD. CONDUCT Canon 7A(3); NEB. CODE OF JUD. CONDUCT Canon 5A(2); NEV. CODE OF JUD. CONDUCT Canon 5A(2); N.H. CODE OF JUD. CONDUCT Canon 7A(2); NEW JERSEY CODE OF JUD. CONDUCT Canon 7B; N.M. CODE OF JUD. CONDUCT Rule 21-700C; N.Y. CODE OF JUD. CONDUCT Canon 7A(3); N.C. CODE OF JUD. CONDUCT Canon 7A(3); N.D. CODE OF JUD. CONDUCT Canon 7A(3); OHIO CODE OF JUD. CONDUCT Canon 7B(4); OKLA. CODE OF JUD. CONDUCT Canon 7A(3); OR. CODE OF JUD. CONDUCT Jud. Rule 4-103; PA. CODE OF JUD. CONDUCT Canon 7A(3); R.I. CODE OF JUD. CONDUCT Canon 5A(2); S.C. CODE OF JUD. CONDUCT Canon 5A(2); TENN. CODE OF JUD. CONDUCT Canon 7A(2); UTAH CODE OF JUD. CONDUCT Canon 5E; VT. CODE OF JUD. CONDUCT Canon 5A(3); VA. CANONS OF JUD. CONDUCT Canon 7A(2); WASH. CODE OF JUD. CONDUCT Canon 7A(4); W.VA. CODE OF JUD. CONDUCT Canon 5A(2); WYO. CODE OF JUD. CONDUCT Canon 5A(2).

[2] WIS. S. CT. R. 60.06.

[3] MONT. CONST. art. VII, § 10.

[4] GA. CONST. art. II, § 2, ¶ 5.

[5] IDAHO CONST. art. V, § 7; IDAHO CODE OF JUDICIAL CONDUCT Canon 7.

[6] CAL. CONST. art. VI, § 17; *see also Lungren v. Davis*, 234 Cal. Rptr. 777 (Cal. Ct. App. 1991) (interpreting CAL. CONST. art. 6, § 17). The Texas Constitution, by contrast, prohibits only legislative races during the terms of judges and various other officials. TEX. CONST. art. III, § 19 ("No judge of any court . . . shall during the for which he is elected or appointed, be eligible to the Legislature.").

inevitable problems.

One problem involves the effect on the campaign debate. The public statements of any judge are curtailed by other provisions in the Code of Judicial Conduct. Canon 3B(10), for example, provides in relevant part:

> A judge shall abstain from public comment about a pending or impending proceeding which may come before the judge's court in a manner which suggests to a reasonable person the judge's probable decision on any particular case.

Similarly, Canon 5(1) states in part:

> A judge . . . shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is . . . held

These provisions are no less binding on judges merely because they are seeking non-judicial office. In virtually any contested election for a policy-making office, therefore, a judge will not be able to comment on the full range of issues that will be confronted by the successful candidate. This limitation on free debate, while necessary to preserve the fairness and impartiality of the judicial branch, is unfair to both candidates and voters in the non-judicial campaign.

Second, running a contested election for any office imposes substantial fund-raising burdens. For more than a decade, the entire Texas judicial selection system has been under relentless attack because of the fund-raising activities of our elected judiciary.[7] To address one problem associated

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[7] *See, e.g.*, Clay Robison, *Justice blind to noncontributors in Texas,* HOUSTON CHRONICLE, July 27, 1997; *Judicial-reform plan better than present/Taking most big money out of judicial elections would be a major improvement,* SAN ANTONIO EXPRESS-NEWS, May 5, 1997; *Deplorable/ Judges letting public think contributions buy justice,* HOUSTON CHRONICLE, Nov. 2, 1996; Bruce Nichols, *Republican judges lead money race/ Now opponents fling charges,* DALLAS MORNING NEWS, Oct. 27, 1996; *Justice for Sale/ Money and Texas judges don't mix well,* HOUSTON CHRONICLE, Apr. 22, 1996; *Fund-raising casts shadow on high court,* AUSTIN AMERICAN-STATESMAN, Apr. 12, 1996; Kemper Diehl, *Political judges bad for Texas,* SAN ANTONIO EXPRESS-NEWS, Oct. 22, 1995; *Embarrassments demonstrate need for judicial reform,* AUSTIN AMERICAN-STATESMAN, Aug. 8, 1995; *Judicial Reform/ Justices' impartiality is in question,* LONGVIEW NEWS-JOURNAL, Aug. 7, 1995; Clay Robison, *Election funding clouds Supreme Court,* HOUSTON CHRONICLE, Aug. 6, 1995; *Justice bought, sold/ Texas should have campaign finance limits on court races,* WACO TRIBUNE HERALD, May 8, 1995; *Curb the money in court races,* SAN ANTONIO EXPRESS-NEWS, Apr. 8, 1995; Tommy Denton, *Courtroom odor getting worse,* FORT WORTH STAR-TELEGRAM, October 30, 1994; Bruce Davidson, *Court candidates admit big money infects races,* SAN ANTONIO EXPRESS-NEWS, Oct. 23, 1994; Joe D. Hughes, *Judicial campaigns take too long, cost too much,* LUBBOCK AVALANCHE-JOURNAL, Oct. 6, 1994; Walt Borges & Mark Ballard, *Vested Interests and Firms Bankroll Court Campaigns,* TEXAS LAWYER, Oct. 3, 1994; *Tighter Reins/ Judges need to have fund-raising limits,* DALLAS MORNING NEWS, Sept. 27, 1994; Diana Fuentes, *Report criticizes lawyers for campaign gifts,* SAN ANTONIO EXPRESS-NEWS, Sept. 14, 1994; *Money compromises courts,* SAN ANTONIO EXPRESS-

with judges seeking political contributions, this Court in 1994 amended the Code of Judicial Conduct to place temporal limits on when judges could accept donations. New Canon 5(4), which became effective January 1, 1995, provided as follows:

> In addition to any other restrictions imposed by law, a judge or judicial candidate shall not either personally or through others solicit or accept contributions:
>
> (i) earlier than 210 days before the filing deadline for the office sought by the judge or judicial candidate; or
>
> (ii) later than 120 days after the general election in which the judge or judicial candidate seeks office.

By their plain terms, these restrictions applied equally whether judges sought judicial and non-judicial office, and represented at least a modest attempt to distinguish judges from other elected officials. However, this limitation was repealed by the Court after the Legislature incorporated identical temporal requirements into Section 253.153 of the Texas Election Code, the Judicial Campaign Fairness Act, effective September 1, 1995. The statute by its terms applies "only to a political contribution or political expenditure in connection with" certain judicial offices, Tex. Elec.

NEWS, Sept. 11, 1994; *Judges and Money/ Judicial candidates should limit funds,* DALLAS MORNING NEWS, Aug. 24, 1993; Michael Totty, *Is this Any Way to Choose a Judge?,* WALL STREET JOURNAL—TEXAS JOURNAL, Aug. 3, 1994; *Reform rancid judicial system,* SAN ANTONIO EXPRESS-NEWS, Apr. 15, 1994; *A Stopgap/ Judicial candidates should limit their spending,* HOUSTON POST, July 5, 1993; *Court blight/ Get politics out of judicial selection,* FORT WORTH STAR-TELEGRAM, Feb. 27, 1993; *Thwart Special Interests/ Select Judges on Merit,* LUBBOCK AVALANCHE-JOURNAL, Feb. 1, 1993; Tommy Denton, *Rank hypocrisy exposed in 'shock' over money-gorged judicial races,* FORT WORTH STAR-TELEGRAM Sept. 6, 1992; *Justice and Money: Danger in way state Supreme Court races financed,* HOUSTON POST, Sept. 4, 1992; *Money hustle: Judicial race spawns big-bucks politics,* FORT WORTH STAR-TELEGRAM, Mar. 3, 1992; *Texas judicial selection still in need of reform,* CORPUS CHRISTI CALLER-TIMES, Oct. 25, 1991; Donald W. Jackson & James W. Riddlesperger, Jr., *Money and politics in judicial elections: The 1988 election of the chief justice of the Texas Supreme Court,* 74 JUDICATURE 184 (Dec.-Jan. 1991); *Justice for Sale/ a handful of millionaire lawyers shaped the Texas Supreme Court to their liking. Here's how the people won it back,* 134 READER'S DIGEST 131 (May 1989); Steve Levine, *Litigants' donations raise questions*, BEAUMONT ENTERPRISE, Oct. 4, 1988; Bruce Hight, *Donations to judges a serious problem, poll finds*, AUSTIN AMERICAN-STATESMAN, Mar. 13, 1988; *End image of "justice for sale,"* DALLAS TIMES HERALD, Feb. 14, 1988; *Money pipeline/ cash fuels "justice for sale" perception*, FORT WORTH STAR-TELEGRAM, Feb. 10, 1988; *Texas pays too much for judicial elections*, BEAUMONT ENTERPRISE, Feb. 5, 1988; *Fund lid on judge campaigns*, AUSTIN AMERICAN-STATESMAN, Feb. 3, 1988; Michael Holmes, *Contributions to judges cast shadow on system, study shows*, DALLAS MORNING NEWS, Feb. 2, 1988; Susan Yerkes, *Justice may be blind, but it is not cheap*, SAN ANTONIO LIGHT, Jan. 13, 1988; Tommy Denton, *Legislators should listen to the people on "Justice for sale,"* FORT WORTH STAR-TELEGRAM, Dec. 13, 1987; Clay Robinson, *Judges, big bucks and politics,* HOUSTON CHRONICLE, Dec. 12, 1987; 60 *Painful Minutes/ Televised view of Texas justice was embarrassing*, DALLAS MORNING NEWS, Dec. 8, 1987; *60 Minutes: Justice for Sale* (CBS television broadcast, Dec. 6, 1987); *It's Time Texas Defused this Judicial Time Bomb,* CORPUS CHRISTI CALLER-TIMES, Dec. 21, 1986.

Code sec. 253.151, however, thus leaving a judge who does not hold statewide office free to raise money at any time for a non-judicial election. As a result, judges are actually encouraged under the current state of the law to seek non-judicial elective positions.

Third, a contested election for non-judicial office may interfere with even the most diligent judge's performance of judicial duties. The Preamble to the Code of Judicial Conduct emphasizes that judges "must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system," and describes the judge as "a highly visible symbol of government under the rule of law." Canon 3A provides in part:

> The judicial duties of a judge take precedence over all the judge's other activities.

A campaign for non-judicial office differs from a campaign for re-election or another judicial office in at least three ways. First, a non-judicial campaign generally involves more public scrutiny and more diverse demands than an average judicial campaign. Second, a judge's judicial performance is almost always a pre-eminent issue in a judicial campaign, but may play little or no role in a judge's campaign for non-judicial office. Finally, all judges must run in judicial elections, and a persuasive case can be made that a judge's campaign for higher judicial office is a contribution to improving the judiciary; but judicial campaigns for non-judicial office confer no such benefit on the administration of justice.

These problems of restricted debate, ethical fund-raising and devotion to judicial duties have repeatedly been raised in recent campaigns by judges for non-judicial office.[8] They are common to campaigns by judges for any non-judicial position.[9] Citing ethical concerns, two Texas jurists

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[8] *See, e.g., Judge sees no conflict in attorney general bid,* AUSTIN AMERICAN-STATESMAN, October 28, 1997; Alan Bernstein, *Stockman gets nod in TV ad fight/ Judge weighs own impartiality on issue,* HOUSTON CHRONICLE, Oct. 23, 1996; Elizabeth A. Allen, *Hinojosa's campaign chest, spending dwarf's Garcia's/ Democrat's* support *from attorneys draws criticism,* VALLEY MORNING STAR, Oct. 25, 1994; Peggy Fikac, *In attorney general race, Morales calls on Wittig to resign as judge,* AUSTIN AMERICAN-STATESMAN, Sept. 24, 1994; Ben Wear, *Doggett is criticized over law firm donors,* AUSTIN AMERICAN-STATESMAN, Sept. 10, 1994.

[9] Some judges have urged us to adopt a rule, unique among the fifty states, that would allow judges to run for any non-judicial office that must by law be filled by a lawyer, such as attorney general or a prosecutor, while prohibiting judges from running for non-judicial offices that may be filled by the public generally, such as Governor or Congress. We believe this is the wrong approach. The Office of Attorney General and the various prosecutors are the most frequent litigants in our courts, and anyone who holds such offices must act on many issues which will ultimately be resolved by the courts. *See* HOUSTON LAWYERS ASSOCIATION, POSITION PAPER ON JUDICIAL REFORM—THE RESIGN TO RUN RULE (1994).

recently resigned to seek non-judicial office.[10] For those who decide not to leave the bench, however, these issues will remain.

In upholding the constitutionality of Louisiana's resign-to-run code provision against a First Amendment challenge by Judge (later Mayor) Ernest N. "Dutch" Morial, the Fifth Circuit *en banc* explained as follows:

> Louisiana vigorously defends the resignation requirement as a measure designed to insure the actual and perceived integrity of state judges. . . . First, the state wishes to prevent abuse of the judicial office by a judge-candidate during the course of the campaign. The state also wishes to prevent abuse of the judicial office by judges who have lost their electoral bids and returned to the bench. Finally, Louisiana asserts an interest in eliminating even the appearance of impropriety by judges both during and after the campaign.
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> That these are interests grave and honorable, none can doubt. . . . As the Supreme Court has observed, the reality and the appearance of "political justice" are incompatible with the assumptions of a system of government of laws not men. Ours is an era in which members of the judiciary often are called upon to adjudicate cases squarely presenting hotly contested social or political issues. . . .
>
> The resign-to-run rule is reasonably necessary to the state's vindication of these interests. By requiring a judge to resign at the moment that he becomes a candidate, the state insures that the judge will not be in a position to abuse his office during the campaign by using it to promote his candidacy. The appearance of abuse which might enshroud even an upright judge's decisions during the course of a hard-fought election campaign is also dissipated by requiring the judge to resign.

Morial v. Judiciary Commission of the State of Louisiana, 565 F.2d 295, 302-03 (5th Cir. 1977) (citation omitted). We agree.

Despite the strong practical and theoretical reasons for embracing this rule, we recognize that its proposed adoption has met with vigorous opposition. Because we respect the views of those judges who, like us, will be bound by this prohibition, we believe a close examination of their principal objections is warranted.

Some district and appellate judges have urged that the people have already made this

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[10] *See, High court justice eyes run for attorney general,* HOUSTON CHRONICLE, Sept. 23, 1997; *Gonzalez to follow in father's footsteps,* AUSTIN AMERICAN-STATESMAN, Oct. 23, 1997.

determination by proscribing some judge but not others from seeking any elective office more than a year before the end of their term. Pursuant to Article XVI, Sections 64 and 65 of the Texas Constitution, adopted in 1954, the terms of certain elective offices were extended from two to four years. At the same time, however, the persons holding those offices were precluded from announcing their candidacy or becoming a candidate for any other office more than a year before the expiration of their terms of office. Since district and appellate judges were already serving terms of more than two years in 1954, they were not included in this restriction. All county officials, including statutory county judges, however, are affected. Although this distinction does not violate the United States Constitution,[11] nothing in the language or history of this proviso suggests that it is a conscious policy choice by either the Legislature or the people to give some judges, but not others, free reign to seek non-judicial office. This Court is free to place ethical restrictions on judges which may have the effect of precluding their seeking non-judicial office while serving on the bench.

A second objection is that Texas judges, when formally surveyed, have opposed this provision. We recognize that in 1993, the Supreme Court submitted a questionnaire at the Annual Meeting of the Judicial Section of the State Bar of Texas which posited whether judges favored a resign-to-run rule, a leave of absence-to-run rule, or no rule as currently. The current system was favored by 78 of the 125 judges who voted.

Concerned by the small vote at the meeting, the Court conducted a mail ballot on the resign-to-run issue after the 1994 general election. This vote was much closer, with 110 judges favoring a resign-to-run rule, 114 opposing it, and 13 expressing a conditional vote. It is hard to know how to align these 13 votes, as some judges favored greater restrictions, some less, and some offered only technical corrections.

Regardless of these surveys, however, the promulgation of the Code is the responsibility of the Supreme Court. In every state, the highest court promulgates the Code of Judicial Conduct, either by express constitutional provision,[12] statutory authorization,[13] broad constitutional grant,[14]

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[11] *Clements v. Fashing*, 457 U.S. 957 (1982).

[12] *See* California, CAL. CONST. art. VI, § 18(m) ("The Supreme Court shall make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."); Delaware, DEL. CONST. art. IV, § 37, cl. 3 ("A judicial officer may be censured or removed by virtue of this section for wilful misconduct in office, wilful and persistent failure to perform his duties, the commission after appointment of an offense involving moral turpitude, or other persistent misconduct in violation of the Canons of Judicial Ethics as adopted by the Delaware Supreme Court from time to time."); Hawaii, HAW. CONST. art. V, § 5 ("The supreme court shall have the power to reprimand, discipline, suspend without salary, retire or remove from office any justice or judge for misconduct or disability, as provided by rules adopted by the supreme court."); Illinois, ILL. CONST. art. VI, § 13(a) ("The Supreme Court shall adopt rules of conduct for judges and Associate Judges."); Nevada, NEV. CONST. art. VI, § 5(b) ("The supreme court shall make appropriate rules for: The grounds of censure and other forms of discipline which may be imposed by the commission."); New York, N.Y. CONST. art. VI,

§ 20 b(4), c ("Judges and Justices of the courts specified in this subdivision shall also be subject to such rules of conduct as may be promulgated by the chief administrator of the courts with the approval of the court of appeals."); Oregon, OR. CONST. art. VII, § 8(1)(e) ("In the manner provided by law, and notwithstanding section 1 of this Article, a judge of any court may be removed or suspended from his judicial office by the Supreme Court, or censured by the Supreme Court, for: Wilful violation of any rule of judicial conduct as shall be established by the Supreme Court."); Pennsylvania, PA. CONST. art. V, § 10 ("The Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of all courts . . . ."); West Virginia, W.VA. CONST. art VIII, § 8, cl. 1 ("Under its inherent rule-making power, which is hereby declared, the supreme court of appeals shall, from time to time, prescribe, adopt, promulgate and amend rules prescribing a judicial code of ethics . . . ."); Wyoming, WYO. CONST. art. V, § 6(e) ("The supreme court shall adopt a code of judicial conduct applicable to all judicial officers . . . .").

[13] *See* North Dakota, N.D. CENT. CODE. § 27-23-03(3)(b) (1995) ("On recommendation of the commission, the supreme court may . . . censure or remove a judge for action that constitutes . . . willful violation of provisions of the code of judicial conduct as adopted by the supreme court."); Vermont, VT. STAT. ANN. tit. 4, § 3 (1988) ("The supreme court shall have administrative and disciplinary control over all judicial officers of the state, in addition to and not inconsistent with the constitutional powers of the general assembly in those matters. It shall adopt and promulgate a code of judicial ethics which shall be binding on those officers for disciplinary purposes."); Virginia, VA. CODE ANN. §54.1-3909 (Michie 1996) ("The supreme court may promulgate rules and regulations: Defining the practice of law. . . . Prescribing a code of ethics governing the professional conduct of attorneys . . . and a code of judicial ethics.").

[14] *See* Alabama, ALA. CONST. amend. 328, § 6.02 (2) ("The supreme court shall have original jurisdiction . . . to issue such remedial writs and orders as to give it general supervisory control of courts of inferior jurisdiction . . . ."), and 6.11 ("The supreme court shall make and promulgate rules governing the administration of all courts and rules governing the practice and procedure in all courts . . . ."); Arizona, ARIZ. CONST. art. VI, § 5 (5) ("The Supreme Court shall have . . . . Power to make rules relative to all procedural matters in any court."); Arkansas, ARK. CONST. art. VII, § 4 ("The Supreme Court . . . . [S]hall have a general superintending control over all inferior courts of law and equity . . . ."); Connecticut, CONN. CONST. art. V, § 7 ("[J]udges of all courts, except those to which judges are elected, in such a manner as shall by law be prescribed, be removed or suspended by the supreme court."); Georgia, GA. CONST. art. VI, § 7(a) ("Any judge may be removed, suspended, or otherwise disciplined for wilful misconduct in office . . . . The Supreme Court shall adopt rules of implementation."); *see also Judicial Qualifications Comm'n v. Lowenstein*, 314 S.E.2d 107, 108 (Ga. 1984) (citing Art. VI, § 7 and stating, "It follows that this Court possesses the authority to regulate also the conduct of judges— including conduct during judicial elections. . . . Accordingly, this Court has the authority to promulgate and enforce Canon 7 B(2) of the Code of Judicial Conduct (1974) (Code Ann. Title 24 Appendix A)."); Idaho, IDAHO CONST. art. V, § 2 (vesting judicial power in the supreme court and cited by the Idaho supreme court in its order promulgating a code of judicial ethics), *but see Malmin v. Oths*, 895 P.2d 1217, 1222 (Idaho 1995) ("[T]his court possesses the inherent authority to regulate the practice of law in Idaho. Included in this inherent authority is the power to regulate attorneys who violate rules of conduct the Court has promulgated."); Indiana, IND. CONST. art. VII, § 4 ("The Supreme Court shall have no original jurisdiction except in . . . discipline, removal, and retirement of justices and judges . . . ."); Iowa, IOWA CONST. art. V, § 4 ("The supreme court shall . . . exercise a supervisory and administrative control over all inferior judicial tribunals throughout the state."), and art. V, § 19 ("[T]he supreme court shall have power to retire judges for disability and to discipline them for good cause . . . ."); Kentucky, KY. CONST. § 121 ("Subject to rules of procedure to be established by the Supreme Court . . . [any judge] may be retired for disability or suspended without pay or removed for good cause . . . ."); *see also J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953, 955 (Ky. 1991) ("By Section 121 of the Kentucky Constitution, the authority to regulate the conduct of the judiciary was conferred upon the supreme court."); Louisiana, LA. CONST. art. V, §§ 1, 5 (vesting judicial power in a supreme court and granting the supreme court general supervisory jurisdiction over all courts), *see* LA. CODE OF JUD. CONDUCT,

or inherent power.[15] This Court's current authority to promulgate our Code is clear from its

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reprinted in 44 LA. B. J. 251, 253 (Oct. 1996) ("The Code has been promulgated pursuant to this Court's inherent authority, as well as the specific power granted to this Court pursuant to Article V, §§ 1 and 5 of the 1974 Louisiana Constitution."); Maryland, MD. Const. art. IV, § 18 ("The Court of Appeals form time to time shall adopt rules and regulations concerning the practice and procedure and the administration of the appellate courts and other courts of this state . . ."); Mississippi, MISS. CONST. art. I, § 1, 2 (separation of powers); Michigan, MICH. CONST. art. VI, §§ 4, 5 (granting supreme court general superintending control over all courts and rule-making authority over practice and procedure in all courts of the state); Missouri, MO. CONST. art. V, § 5 ("The supreme court may establish rules relating to practice, procedure and pleading for all courts and administrative tribunals, which shall have the force and effect of law."); Montana, MONT. CONST. art. VII, § 2(3) (stating the supreme court "may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members."); Nebraska, NEB. CONST. art. VI, § 25 ("[T]he supreme court may promulgate rules of practice and procedure for all courts . . . ."); New Jersey, N.J. CONST. art. VI, § 3 ("The Supreme Court shall make rules governing the administration of all courts in the State and, subject to law, the practice and procedure in all such courts. The Supreme Court has jurisdiction over the admission to the practice of law and the discipline of persons admitted."), *see Knight v. Margate*, 431 A.2d 833, 842 (N.J. 1981) (holding that statutorily imposed restrictions prohibiting judges from accepting gifts was constitutional, stating, "Any possible doubts on this score dissipate in light of this Court's overriding constitutional authority to adopt and fashion its own regulatory and ethical requirements for the judicial branch and the practicing bar any time it becomes appropriate to do so regardless of the Legislature's action."); New Mexico, N.M. CONST. art III, § 1, and art. VI, § 3, *see Ammerman v. Hubbard Broadcasting, Inc.*, 551 P. 2d 307, 311 (N.M. 1976) ("Our constitutional power under N.M. Const. art. III, § 1 and art. VI, § 3 of superintending control over all inferior courts carries with it the inherent power to regulate all pleading, practice and procedure affecting the judicial branch of government."); North Carolina, N.C. CONST. art. IV, § 13 ("The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division."); Ohio, OHIO CONST. art. IV, § 2(B)(1)(g) ("The supreme court shall have original jurisdiction in the following . . . [a]dmission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law."), *but see Mahoning Bar Assoc. v. Franko*, 151 N.E.2d 17, 24 (Ohio 1958) ("[T]his court, through its inherent power and duty to maintain the honor and dignity of the legal profession of Ohio at its traditionally high level, may prescribe a specialized standard of conduct for all members of such profession who hold judicial office and has jurisdiction over the discipline of such a member for violation of the Canons of Judicial Ethics adopted by and made a rule of this court prior to the commission of such acts."); Oklahoma, OKLA. CONST. art. VII, § 4 ("The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts . . . ."); South Carolina, S.C. CONST. art. IV, § 4 ("The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted."); Utah, UTAH CONST. art. VIII, § 4 ("The Supreme Court shall by rule govern the practice of law, including admission to practice law and the conduct and discipline of persons admitted to practice law.").

[15] Alaska, *Citizens Coalition for Tort Reform, Inc. v. McAlpine*, 810 P.2d 162, 165 (Alaska 1991) (citing ALASKA CONST. art. IV, §§ 1, 15 as it sources of rule-making authority, stating, "One inherent judicial power that we have exercised repeatedly is the power to regulate the practice of law in this state. . . . [I]n exercise of our inherent power, we have adopted rules that govern beyond the 'administration . . . practice and procedure' limitations of article IV, section 15, most notably the Alaska Bar Rules and the Code of Professional Responsibility"); Florida, *In re The Florida Bar*, 316 So. 2d 45, 47 (Fla. 1975) ("The authority for each branch to adopt an ethical code has always been with the inherent authority of the respective branches of government."); Kansas, Telephone Interview with Carol Green, Clerk of Court, Kansas Supreme Court (Jan. 9, 1997), *but see* KAN. CONST. art. III, § 1 ("The supreme court shall have

constitutional responsibility for "the efficient administration of the judicial branch," TEX. CONST. art. V, § 31(a). In fact, the Court's actions are arguably constitutionally mandated under Art. V, Section 1-a, which provides in part:

> Any Justice or Judge . . . may . . . be removed from office for willful or persistent violation of rules promulgated by the Supreme Court of Texas, incompetence in performing the duties of the office, *willful violation of the Code of Judicial Conduct,* or willful or persistent conduct that is clearly inconsistent with the proper performance of his duties or casts public discredit upon the judiciary or administration of justice.

(emphasis added). See also Chapter 34 of the Texas Government Code.[16]

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general administrative authority over all courts in this state."); Minnesota, *In Re Kirby,* 350 N.W.2d 344, 347 (Minn. 1984) ("This court has always had an existing inherent power to discipline judges . . . ."); New Hampshire, *Opinion of the Justices*, 666 A.2d 523, 525 (N.H. 1995) ("[T]his court has the responsibility to protect and preserve the judicial system. We have the inherent authority to take whatever action is necessary to effectuate this responsibility."), *compare* N.H. REV. STAT. ANN. § 490:4 (1971) ("The supreme court shall have general superintendence of all courts of inferior jurisdiction to prevent and correct errors and abuses, including the authority to approve rules of court and prescribe and administer canons of ethics with respect to such courts . . . ."), *with In re Mussman*, 289 A.2d 403, 405 (N.H. 1972) (stating that section 490:4, "has generally been recognized as confirming the common-law powers of this court from its beginning."); Tennessee, TENN. ST. S. CT. RULE 27, 2.01 ("In accordance with this court's inherent supervisory power over the court system and the judges, and pursuant to TENN. S. CT. R. 11, TENN. CODE ANN. § 16-3-501 (1994) and TENN. CODE ANN. § 14-4-201 (1994) there is hereby established a judicial Performance and Evaluation Program as part of the judicial branch of state government."), *but see* TENN. CODE. ANN. § 16-3-501 (1994) ("In order to ensure the harmonious, efficient and uniform operation of the judicial system of the state, the supreme court is hereby granted and clothed with general supervisory control over all the inferior courts of the state."); Washington, *State v. Fields*, 530 P.2d 284, 285-86 (Wash. 1975) ("Quite apart from the statutory authority [WASH. REV. CODE 2.04.190 (1988)], this court has the inherent power to govern court procedures."), *but see* WASH. REV. CODE 2.04.190 (1988) (authorizing the supreme court to adopt rules of procedure), and *Seattle v. Ratliff*, 667 P.2d 630, 631 (Wash. 1983) ("This court determines who may or may not appear before the bar. Const. art. 4, § 1 vests judicial power of the state in the Supreme Court. It has since been established that the formulation of rules governing admission to the practice is a judicial function inherent in this constitutionally granted power."); Wisconsin, *In the Matter of the Promulgation of a Code of Judicial Ethics*, 153 N.W.2d 873, 874 (Wis. 1967) ("We hold this court has an inherent and an implied power as the supreme court, in the interest of the administration of justice, to formulate and establish the Code of Judicial Ethics accompanying this opinion.").

[16] In relevant part, this Chapter provides:

Section 34.001

(a) A person who has filed an application for a place on the ballot . . . for a judicial office . . . is subject to Canon 7, Code of Judicial Conduct, and is subject to sanctions as provided by this chapter.

. . .

Finally, we emphatically reject a third objection that our adoption of this amendment constitutes unbridled judicial activism. To the contrary, our adoption of this restriction is consistent with our constitutional responsibilities, meets a genuine need for Texas, and reduces the distinction between Texas judges and those of other states. Encouraging judges to be judges, not politicians in robes, is the antithesis of judicial activism.

Having determined what the appropriate standard should be, we must now decide when it should become effective. Because Texas has such early party primaries, its filing deadlines are set about one year before the offices become open. Inevitably, therefore, the Texas political season is essentially perpetual; campaigns for the next cycle start before the current cycle is concluded. From time to time, special elections are also held. Hence, an immediate effective date for a resign to run rule would always impact some candidate, which we believe unfair to the judge, his or her supporters, and the public. Rather than impact any ongoing campaign, we will therefore make this new provision effective on January 1, 1999, after the conclusion of this election cycle.

Section 34.002

A candidate who is a judge subject to the authority of the State Commission on Judicial Conduct who violates the Code of Judicial Conduct is subject to sanctions by the commission.

Section 34.003

A candidate who is an attorney and who violates Canon 7, Code of Judicial Conduct, or any other relevant provision of that code is subject to sanctions by the state bar.

Section 34.004

A candidate other than a judge . . . or an attorney . . . who violates Canon 7, Code of Judicial Conduct, or any other relevant provision of that code is subject to review by the attorney general or the local district attorney for appropriate disciplinary action.