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Opinion No. 06-049

General Sessions Judge Running for Office of District Attorney General

QUESTION

Is a general sessions judge required to resign his or her office in order to run for the office of district attorney?

OPINION

A general sessions judge is subject to the Code of Judicial Conduct. Only the Judicial Ethics Committee and reviewing courts may authoritatively interpret the Code of Judicial Conduct. But, under Canon 5.A.(2) of the Code of Judicial Conduct, a judge must resign from judicial office upon becoming a candidate for a non-judicial office. The rule appears to apply regardless of whether the judge is opposed in the campaign for non-judicial office.

ANALYSIS

This opinion concerns whether a general sessions judge may, while holding office, run for the office of district attorney. A general sessions judge is subject to the Code of Judicial Conduct, Tennessee Supreme Court Rule 10. Only the Judicial Ethics Committee and reviewing courts may authoritatively interpret the Code of Judicial Conduct. Tenn. R. Sup. Ct. 9, § 26.6. Canon 5.A.(2) of the Code of Judicial Conduct provides:

> A judge shall resign from judicial office *upon becoming a candidate for a nonjudicial 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.

(Emphasis added). As used in the Code:

> "Candidate" denotes a person seeking selection for or retention in judicial office by election or appointment. A person becomes a

> candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Sections 5A, 5B, 5C, and 5E.

Code of Judicial Conduct, Terminology. The Code does not define the term "non-judicial office." But a district attorney general is charged with prosecuting criminal conduct. Tenn. Code Ann. § 8-7-103(1). Because a judge is responsible for adjudicating cases, rather than prosecuting them, the office of district attorney general appears to be a "non-judicial office" within the meaning of Canon 5.A.(2). The rule appears to apply regardless of whether the judge is opposed in the campaign for non-judicial office. For this reason, under the Code of Judicial Conduct, a general sessions judge must resign from office upon becoming a candidate for district attorney general.

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