

JUDICIAL QUALIFICATIONS COMMISSION
STATE OF GEORGIA

Public Comments for Proposed Formal Advisory Opinion

Pursuant to Judicial Qualifications Commission Rule 28.B (3), the Commission's Hearing Panel is posting this proposed Formal Advisory Opinion on the websites of the Commission, the Administrative Office of the Courts, and the State Bar of Georgia to solicit public comments on the opinion. Anyone who wishes may submit a comment on the opinion by e-mail to the Commission's staff attorney, Max Jones, at max@gajqc.com. The Hearing Panel will receive and consider comments through **March 23, 2018**.

JUDICIAL QUALIFICATIONS COMMISSION
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(PROPOSED) FORMAL ADVISORY OPINION No. 242

Pursuant to Rule 28(B) of the Rules of the Judicial Qualifications Commission (JQC), the Investigative Panel of the JQC has requested that the Hearing Panel of the JQC issue an opinion on whether the Code of Judicial Conduct, which governs both judges and judicial candidates (as defined in the Code and discussed below), applies to conduct by a non-judge before that person becomes a judicial candidate. This question appears not have been addressed in any earlier JQC Advisory Opinion. For the reasons set forth below, the Hearing Panel concludes that such conduct is not governed by the Code.

It is alleged that a candidate for judicial office in Georgia has engaged in conduct arguably violative of the Code. However, it appears that the alleged misconduct occurred *before* the individual became a judicial candidate. A complaint concerning this conduct has been presented to the Investigative Panel.

The Code of Judicial Conduct applies to “[a]nyone ... who performs a judicial function under the Constitution and laws of Georgia” as well as to “any person who is a judicial candidate for any such office.” Application, Code of Judicial Conduct. A “judicial candidate” is any person “seeking selection for or retention in judicial office by election or appointment.” Terminology, Code of Judicial Conduct. One becomes such a candidate as soon as one

(i) appoints or forms a campaign committee, (ii) makes a public announcement of candidacy, (iii) declares, files or qualifies as a candidate with the election or appointment authority, or (iv) authorizes solicitation or acceptance of contributions or support.

Id. Once the Code is applicable to an individual, that individual must *immediately* comply with all of the Code's provision (except for Rules 3.8 and 3.1(B) – (F)). Application, Section C.

What this examination of the Code makes clear is that someone who is not yet a judicial candidate (and not already a judge) is not governed by the provisions of the Code. To be clear, the complained-of conduct may be proper fodder for campaign material and may adversely affect the now-candidate's campaign. It also may have violated one or more laws of Georgia. The Code of Judicial Conduct, however, is not implicated by the conduct of non-judges who have not yet become judicial candidates. Consequently, the Investigative Panel is without jurisdiction to consider complaints that present only conduct that occurred before an individual -- who is not already a judge -- became a judicial candidate.¹

¹ This Opinion does not address the specific facts that gave rise to the complaint to the Investigative Panel. They are, appropriately, not known to the Hearing Panel. It is for the Investigative Panel to determine whether the individual in question, now purportedly a judicial candidate, was a judicial candidate, as defined by the Code, when the complained-of behavior occurred.