

JUDICIAL ETHICS COMMITTEE

ADVISORY OPINION NO. 03-04

An inquiry has been presented for the Committee's review and consideration which addresses the question of whether a General Sessions Judge must resign from office upon becoming a candidate for a state court judgeship.

Canon 5(A)(2) of the Code of Judicial Conduct specifically provides that:

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.

No case law or prior opinion of the Committee addresses this issue. By implication, the Canon infers that a judge is allowed to retain office as a judge while running for any judicial office. No other Canon or law mandates a resignation of a judge who becomes a candidate for a judicial office. By contrast, emphatically and clearly, resignation is required if the judge becomes a candidate for a *non-judicial* office.

The Committee opines that a General Sessions Judge may retain office as General Sessions Judge and shall not be required to resign from that judicial office during the time that he or she becomes a candidate and seeks a state court judgeship.

FOR THE COMMITTEE:

THOMAS L. MOORE, JUDGE

CONCUR:

JUDGE DAVID G. HAYES
CHANCELLOR THOMAS R. FRIERSON II
JUDGE CHERYL A. BLACKBURN
JUDGE JAMES F. RUSSELL