

**Colorado Supreme Court  
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2008-2  
(Finalized and Effective April 4, 2008)**

**ISSUE PRESENTED**

The requesting judge wished to attend February's political party caucuses at which record numbers of Coloradoans turned out to help determine the presidential nominees for both of the major political parties. Ultimately, he did not attend the caucuses, but would like to do so in the future. In addition, he wishes to vote in the upcoming primary elections. He asks whether, under Colorado's Code of Judicial Conduct, a judge may attend a political party caucus or vote in a primary election. If not, he questions whether such a prohibition violates his First Amendment rights.

**CONCLUSIONS**

A judge may not attend or participate in a precinct caucus; however, a judge may vote in a primary election.

Constitutional questions are beyond the scope of this Board's authority; consequently, the Board renders no opinion on the First Amendment issue.

**APPLICABLE CANONS OF THE CODE OF JUDICIAL CONDUCT**

Canon 7A(1)(b) prohibits a judge from making speeches for a political organization or candidate, or publicly endorsing a candidate for public office.

Canon 7A(1)(c) prohibits a judge from attending a partisan political gathering.

Canon 7A(1)(d) prohibits a judge from engaging in any other political activity except on behalf of measures to improve the law, the legal system, the administration of justice or the role of the judiciary as an independent branch of government.

**DISCUSSION**

Colorado uses a merit-based method to select its judges, deliberately removing the selection process from the partisan political arena. Once a judge is sworn in, Colorado's Canons of Judicial Conduct require the judge to maintain distance from partisan political activity in order to preserve the judge's impartiality and independence. As this Board said in an earlier opinion:

The Code sets high standards for judicial conduct, and it proscribes judges from partaking in activities in which the ordinary citizen may freely

indulge. The reach of the Code extends beyond judges' professional obligations and into their nonjudicial lives. Judges must not only be impartial, but they also must conduct themselves in such a way that the public can perceive and continue to rely upon their impartiality. . . . Canon 7A governs political conduct, and generally prohibits a judge from having any involvement in political matters, whether partisan or nonpartisan.

*C.J.E.A.B. Advisory Opinion 2005-05* (November 25, 2005).

A judge's attendance at a precinct caucus would necessarily involve a judge in partisan political activity, in violation of Canon 7A(1)(c), and participation in the caucus would offend Canon 7A(1)(b)'s prohibition against publicly endorsing candidates for office. A "precinct caucus" as defined by the Uniform Election Code of 1992, C.R.S. § 1-1-101 *et seq.*, is a meeting organized by a political party, under the rules and regulations of the party, and at which only those electors affiliated with the political party that organized the meeting may vote. C.R.S. § 1-1-104(34); C.R.S. § 1-3-101. Since, by definition, a caucus is a partisan political gathering, and a judge's attendance indicates that he or she may be, or quite likely is, an elector, the judge's attendance at the caucus would violate Canon 7A(1)(c). Furthermore, since the usual manner of conducting business at a precinct caucus is by open forum discussion, the judge's participation implies public endorsement of a candidate for office in violation of Canon 7A(1)(b).

In contrast, a judge's participation in a primary election does not involve the judge in partisan political activity in the sense that the judge is seen to be publicly endorsing a candidate. On the contrary, a primary election is not an open political gathering but rather is a secret ballot election organized and run by election officials employed by the state and subject to the requirements of the election code. C.R.S. § 1-1-104(32); C.R.S. § 1-4-101. Notably, the election process is designed to guarantee the anonymity of a voter's choice of party and preferred candidates. C.R.S. § 1-4-101(2),(4). As noted in *Wash. Ad. Op.* 92-04, this process protects a judicial officer who participates in a primary election from the appearance of endorsing either a party or a candidate. Although a participant in a primary election must be affiliated with a political party, the voter's private registration of the voter's affiliation does not rise to a public endorsement of the political party. Additionally, all expenses incurred in the preparation or conduct of the primary election are paid out of state or county treasuries. C.R.S. § 1-4-103(5). Thus, it is the Board's opinion that a judge may participate in a primary election without violating the Code of Judicial Conduct.

The Board is aware that the 2007 A.B.A. Model Code of Judicial Conduct explicitly permits a judge to participate in either a caucus or a primary election. Canon 4.1, Comment 6. Although the Colorado Supreme Court has established a committee to recommend whether Colorado should adopt the new ABA Model Code in whole or in part, it is not currently in force in this state, and thus it does not alter the Board's analysis of the question under the existing Colorado Code of Judicial Conduct.

We do not render an opinion on the question of a judge's First Amendment rights as they are affected by the prohibitions found in Canon 7A. The scope of this Board's authority is set forth in the Chief Justice Directive that created the Board, CJD 94-01 as amended. The Board is to provide "opinions concerning the compliance of intended, future conduct with the Colorado Code of Judicial Conduct." CJD 94-01, I. The CJD specifically directs that an opinion of the Board shall "not address other issues of law . . ." CJD 94-01, XI(A). Thus, this Board has no authority to issue an opinion concerning the constitutionality of the Code of Judicial Conduct.

**FINALIZED AND EFFECTIVE** by the Colorado Judicial Ethics Advisory Board this 4th day of April, 2008.