

**JUDICIAL ETHICS COMMITTEE  
ADVISORY OPINION NO. 10-01**

**September 30, 2010**

The Judicial Ethics Committee has been asked to provide an opinion as to whether judges may speak and write on the following, or related, topics:

- (1) the history, background, or interpretation of Article VI, Sections 3 and 4 of the Tennessee Constitution;
- (2) the Tennessee General Assembly's power to prescribe the manner in which Tennessee's judges will be selected and elected; and
- (3) the pros and cons of the methods used in other jurisdictions to select and elect judges.

Several of the Canons of Judicial Conduct are relevant to this inquiry. Tennessee Supreme Rule 10, Canon 4B, sets out the topics upon which a judge may ethically speak:

Avocational Activities. A judge may speak, write, lecture, teach, and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice, and non-legal subjects, subject to the requirements of this Code.

The Commentary to this section explains the rationale for allowing judges to speak on these topics:

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary, and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

Section 4C(1) explains that, as to these topics, judges may appear before public hearings as well as consult with executive and legislative bodies and officials:

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system, or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

In brief, this committee is asked whether judges are permitted to speak and write as to the history, background, or interpretation of certain sections of the Tennessee Constitution; as to the power of the Tennessee General Assembly to prescribe the manner in which judges are selected and elected; and the pros and cons of different methods of selecting judges. It is clear that each of these topics is within the scope of Canon 4B and, as the Commentary to that section states, judges are, in fact, encouraged to speak and write on these and similar topics regarding the law. In this regard, the Code of Judicial Conduct does not limit the forums. Therefore, judges may speak and write on these topics for members of the legislature, the executive branch officials, bar groups, as well as other forums.

FOR THE COMMITTEE:

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ALAN E. GLENN, JUDGE

CONCUR:

CHANCELLOR THOMAS R. FRIERSON, II  
JUDGE CHERYL A. BLACKBURN  
JUDGE JAMES F. RUSSELL  
JUDGE BETTY THOMAS MOORE  
JUDGE PAUL B. PLANT  
JUDGE SUZANNE BAILEY