

JUDICIAL ETHICS COMMITTEE

ADVISORY OPINION NO. 05-02

November 8, 2005

The Committee has been asked whether Canon 3B(5) of the Canons of Judicial Ethics is violated when all those convicted of misdemeanors are placed on supervised probation “at least until they pay their court costs.” Then, according to the inquiry, “the great majority would be relieved of supervision.” Further, the inquiry asks if this procedure amounts to utilizing a criminal penalty to collect a debt which, according to Tennessee Code Annotated section 40-24-105, is supposed to be collected as a civil judgment.

DISCUSSION

We will consider the questions presented in the inquiry.

Canon 3B(5) provides as follows:

A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials, and others subject to the judge's direction and control to do so.

The Committee concludes that the situation described by the inquiry does not violate this section. Although an effect of the policy may be to increase amounts collected on fines and costs, it remains that defendants convicted of misdemeanors are treated equally in that all are put on supervised probation. The fact that “the great majority” of defendants who later pay their fines and court costs are placed on unsupervised probation does not, in our view, result in a violation of Canon 3B(5). We note it is not automatic that every defendant will be moved from supervised to unsupervised probation upon payment of the fine and costs. Further, we note it is common that greater responsibilities are placed on a defendant until payment of fine and costs, such as additional court appearances to seek extensions of time to pay these debts. Further, it would appear that the possibility of moving from supervised to unsupervised probation might encourage defendants to seek employment, which could inure to their benefit. For these same reasons, we conclude that Tennessee Code Annotated section 40-24-105 is inapplicable to this situation.

FOR THE COMMITTEE:

ALAN E. GLENN, JUDGE

CONCUR:

CHANCELLOR THOMAS R. FRIERSON, II

JUDGE CHERYL A. BLACKBURN

JUDGE JAMES F. RUSSELL

JUDGE BETTY THOMAS MOORE