

MEMORANDUM

To: _____, Judicial Ethics Committee

From:

Date: October 11, 1995

Re: **A.O. 10**, Canon 5

The Chief Trial Court Law Clerk has provided me with copies of (1) your letter to _____ dated September _____, 1995, and (2) _____ letter to Justice _____ dated _____, 1995. My understanding is that you are requesting **information** concerning a possible relationship between the Vermont primary elections and A.O. 10 (Code of Judicial Conduct).

Attention is directed toward A.O. 10 Canon **5A(1)(d)**, which states: "A judge shall not participate in political caucuses or meetings." Mr. _____ letter asserts, without analysis, that Canon 5 "appears to be in conflict with the Voter Rights Act and the U.S. Constitution."

Please note that it is difficult to provide clear advice where the issue has not been narrowed by any case or controversy. Cf. Aranoff v. Bryan, 153 Vt. 59, 66 (1989) (factual record necessary to provide "proper setting? for evaluation of constitutionality of Canon 6 of Law Clerk Code of Conduct). Moreover, it is simply not possible to research the asserted conflict, when no specific issue has been **identified, and** no analysis has been provided.

If there is concern that a full-time law judge might have to waive some voting rights in order to perform as a judge, the short answer is that "the burdens imposed by the Canons of Judicial Conduct upon those who accept judicial office are extremely high. 'The Canons of Judicial Conduct are standards measuring fitness for judicial office and therefore embrace tests of behavior relating to integrity and propriety that condemn actions in which the average citizen can freely indulge without consequence.'" In re Mandeville, 144 Vt. 608, 609 (1984) (quoting In re Douglas, 135 Vt. 585, 592 (1977)).

Noting that the question comes from _____ if the question concerns voting rights of Assistant Judges, the short **but** complete answer is that Canon **5A(1)(d)** does not apply to Assistant Judges. See A.O. 10, Application section B(1), at 218. Assistant Judges are "continuing part-time judges" under A.O. 10, Terminology [4], at 197. See also Canon 5 reporter's notes at 216 (probate **and** _____

assistant judges are excepted from the operation of **Sections 5A(1)(a)-(e)**; and Application Section, reporter's notes at 219 (probate and assistant judges are continuing part-time judges). The Application Section "**strike[s]** a balance between participation by the part-time judge in the professional and civic life of the community and preservation of the impartiality and integrity of the judiciary." reporter's notes at 220.

As a separate matter, the Code of Judicial Conduct does not apply to those with adjudicatory powers in the executive branch of government. In re Crushed Rock, Inc., 150 Vt. 613, 623 (1988).

The prohibitions against political activity by appointed judges are designed to prevent the appearance of political partiality in judicial actions and the appearance of judicial influence on political activity. Canon 5, reporter's notes at 216. This is consistent with the Preamble, **which begins:** "Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. . . . " A.O. 10, Preamble [1], at 196. This is all consistent with the Separation of Powers doctrine, Chapter II, § 5 of the Vermont Constitution., See, e.g., Kennedy v. Chittenden, 142 Vt. 397 (1983) (improper for judiciary to exercise powers beyond constitutional function).