

HOUSE BILL ANALYSIS

HJM 4004

Brief Description: Petitioning the Washington Supreme Court to rewrite Canon Seven of the Code of Judicial Conduct.

Sponsors: Representatives Bush, Sheahan, Sheldon, Carrell, Cairnes, Talcott, McDonald, Boldt, Mulliken, McMorris, Smith, Lambert, Wensman, Pennington, Koster, Backlund, Cooke, Johnson, Mielke, Delvin, Robertson and Thompson.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Trudes Hutcheson (786-7384).

Background: The state supreme court established the Code of Judicial Conduct (CJC) to provide guidelines and standards for the ethical conduct of judges and judicial candidates. A judge or judicial candidate who violates any provision of the code may be reprimanded, suspended, or removed.

The purpose of the CJC is to maintain the public's confidence in the fairness and impartiality of the judiciary. Therefore, the CJC prohibits judges from engaging in certain activities that have the appearance of partiality. For example, Canon 4 of the CJC allows a judge to engage in activities concerning the law, the legal system, and the administration of justice, only if the activity does not cast doubt on the judge's capacity to decide impartially any issue that may come before the court. Canon 5 allows a judge to participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality. In addition, a judge should not serve as an officer for an organization if it is likely that the organization will be involved in proceedings that may come before the court. A judge should disqualify himself or herself from a proceeding when his or her impartiality might reasonably be questioned.

Canon 7 provides that judges and candidates for judicial office shall not, among other things: (a) make speeches for a political organization; and (b) make statements that commit or appear to commit the judge or candidate with respect to cases, controversies, or issues that are likely to come before the court.

The CJC is subject to constitutional restraints, including the First Amendment right to free speech. Generally, if the speech is protected by the First Amendment, the state can interfere or regulate that speech only if: (a) there is a compelling state interest to regulate; and (b) the regulation is narrowly tailored so it is as least intrusive as possible. Although there are a few cases involving different sections of Canon 7,

there is no case that holds Canon 7 is unconstitutional. Federal courts determining the constitutionality of similar judicial codes in other states are divided in their decisions.

Summary of Bill: The Legislature declares that judicial candidates and judicial officers have the rights established under the constitution, including the right to free speech. The Legislature also declares that the voters need adequate information to make intelligent decisions when voting, and many voters are frustrated by the restrictions placed upon the speech of judicial candidates and judicial officers. Because of these restrictions, the current provisions of the CJC are detrimental to the state's system of electing judges.

The Legislature petitions the state supreme court to rewrite Canon 7 of the CJC and any other provision of the code to allow judicial candidates and judicial officers to speak freely and without fear of governmental retaliation on issues that are not then before the court.

Fiscal Note: Not requested.

Office of Program Research