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ADDENDUM  
FORMAL ADVISORY OPINION #02-93  
MARCH 31, 1994

QUESTION PRESENTED

The Commission recently issued formal Advisory Opinion #02-93, which does not mention Canons 4C(1) or 5A(1)(b). How, if at all, do these Canons affect Advisory #02-93, and more particularly, how are they applicable to a judge testifying at Senate confirmation hearings of executive appointments?

DISCUSSION

Canon 4C(1) provides:

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.

This Canon prohibits appearance at public, legislative or executive hearings except on matters concerning the legal system or administration of justice. On the other hand, participation by judges in the judicial selection process is specifically addressed in Canon 2B, which is referred to in Advisory #02-93. Therefore, this Commission concludes that although judges may testify at Senate confirmation hearings, such participation is discouraged and is permitted only with special caution. A Senate confirmation hearing is clearly that part of the judicial selection process which involves the legislature and, to the extent that such hearing is used for public endorsement, is considered political. A judge testifying at such a hearing is particularly susceptible to giving an appearance of personal and voluntary involvement in political activities which are generally prohibited. Such an appearance is also

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susceptible to creating an impression that a judge is inappropriately lending the prestige of judicial office to a political appointment. Considering these factors, although it is not prohibited, a judge should not freely testify at Senate confirmation hearings. When a judge does so testify for whatever reasons the judge feels is necessary, the cautions and limitations described in Advisory #02-93 must be observed.

As to Canon 5(A)(1)(b) which provides:

A judge shall not:

- (b) publicly endorse or publicly oppose a candidate for public office [.]

The Commission views this Canon as inapplicable to the subject of character testimony at public hearings. That is, Canon 5(A)(1)(b) is a prohibition against public endorsement or opposition to candidates running for elective office. It is not applicable to the subject matter covered in Advisory #02-93, involving character testimony in court, at Senate confirmation hearings, or at judicial selection commission activities.

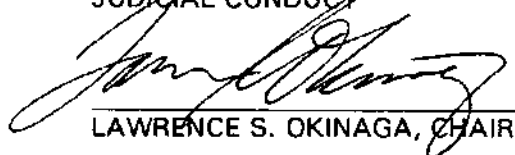
**CONCLUSION**

In Advisory #02-93, this Commission concluded:

2. At a Senate confirmation hearing -  
Character testimony is permissible, but a judge must be sensitive to possible misuse of the prestige of office and involvement in the political process.

In view of the inquiry about this conclusion, the Commission feels it should clarify that such testimony is discouraged and in any event, special caution should be exercised when a judge decides to testify at a Senate confirmation hearing.

FOR THE COMMISSION ON  
JUDICIAL CONDUCT



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