

May 8, 2006

Circuit Judge Marion Humphrey
Sixth Judicial District, First Division
401 West Markham, Room 420
Little Rock, AR 72201

RE: Advisory Opinion 2006-02

CORRECTED OPINION

Dear Judge Humphrey:

You have asked this committee to examine Canon 5(A)(1)(b), which states that a judge shall not . . . “publicly endorse or publicly oppose another candidate for public office.” You state that you wish to publicly endorse a judicial candidate and another candidate in the May 2006 elections.

In particular, you ask us to evaluate the Canon in light of *Republican Party of Minnesota vs. White*, 416 F.3d 738 (8th Cir. 2005) *cert. denied* by *Dimick v. Republican Party of Minnesota*, 126 S. Ct. 1165 (2006). That splintered opinion held other aspects of Minnesota’s Canon 5 (A)(1) unconstitutional. See David B. Bogard, *The Lifting of Judicial Speech Restraint*, 26 U.Ark Little Rock Law Review 1 (2003).

We respectfully decline to engage in that constitutional interpretation. Our guidelines expressly state: “The opinion shall not address issues of law. . .” Our task is to interpret the Code of Judicial Conduct and to apply it to factual patterns not previously considered. It is not our role to hold that a provision of the Code is unconstitutional. Nor is it our role to rewrite the Code. That task rests with the judiciary. See Kansas Judicial Ethics Advisory Panel Opinion JE 139 (April 17, 2006).

Further, the Arkansas Supreme Court has on occasion modified the Code without a formal request or without the opportunity for public comment. If so inclined, the Supreme Court may respond to the federal decisions.

For the committee,

Howard W. Brill