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January 19, 2024

Canons of Ethics: Judicial Scrutiny of Judges

by

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Equal justice under law is the cornerstone of the judicial system of this state and our nation. Without a fundamental belief that judges will be fair and impartial in their decisions, our faith in the judiciary is destroyed. The judicial race between Michael Johnson and Mark Fickes for a seat on the Alameda County Superior Court has raised serious concerns about the judicial ethics required of all judges.

According to news reports, the Alameda County Democratic Party Central Committee (Committee) recently voted overwhelmingly to endorse the candidacy of Fickes, a current Alameda County Court Commissioner, after he publicly stated that he voted for the current Alameda County District Attorney. Moreover, the news report further indicated that after the statement was made, several people applauded and one shouted, "Yes!" While judges as well as commissioners have a right to participate in the electoral process, there are canons of judicial ethics that limit, for obvious reasons, their ability to reveal how they voted. The purpose of this rule is to uphold the "the integrity and independence of the judiciary" to avoid precisely what happened here. Clearly, Commissioner Fickes, by indicating how he voted in the District Attorney's race, intended to reveal that he preferred a particular candidate which directly contradicts what the canons of ethics prohibits—appearance of impropriety and a lack of independency in the judicial system.

We fully agree with LaDoris Hazzard Cordell, a former Santa Clara County Superior Court Judge and noted judicial scholar, who stated in the news article that "Everybody who wears in that robe is required to know those canons and to know the rules-there's no excuses." The canons of ethics apply, according to Judge Cordell, to both judges and commissioners. Therefore, Commissioner Fickes was acutely aware that by revealing that he voted for the current district attorney would win him favor with the Committee of which the District Attorney is a voting member. To be sure, an appearance of "impropriety" could not be more evident to anyone who believes a judge should be impartial. Commissioner Fickes pandered to the Committee and the District Attorney-- which annihilated the required appearance of impartiality and independence.

A quick review of the Alameda County Superior Court Rules (local rule 2.0) specifically states that: "it is the policy of the court to provide an environment free of all types of bias, prejudice, any kind of discrimination or unfair practice." Moreover, according to this rule: "All judges, commissioners, referees, court officers and court attachés, shall perform their duties in a manner calculated to prevent any such conduct, either by court personnel or by those appearing in court in any capacity." Here, Commissioner Fickes failed this basic test of the kind of honesty and fairness expected of a Commissioner or judicial candidate.

On the other hand, Michael Johnson adhered to the canons of ethics and the Alameda County Superior Court Rules when he was given the same opportunity to reveal who he voted for in the district attorney's race. Unlike Commissioner Fickes, Johnson refused to pander to the demand of the Committee because he knew that this inquiry was improper for a person, running to become a Superior Court Judge, to answer.

The voters of Alameda County have a clear choice of two candidates for the Alameda County Superior Court. One candidate, Commissioner Fickes, apparently does not believe the canons of ethics or the Superior Court rules require judicial officers to respect the appearance of impropriety and impartiality. The other candidate, Michael Johnson, apparently feels strongly that the canons of ethics do require impartiality and independence of the judiciary.

We, as residents of Alameda County, encourage the voters to scrutinize these two judicial candidates and select the one who adheres to the canons of ethics which, of course, is Michael Johnson. Nothing is more sacred than fairness, independence, and impartiality in our justice system.

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