



WHEN A FAMILY MEMBER SUPPORTS A POLITICAL CANDIDATE

(Includes sections on use of the judge's home, campaign signs, and contributions)

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(The Judicial Family Institute has removed the names of disciplined judges from this article.)

Although judges generally are restricted from supporting candidates for political office, members of a judge's family may publicly and actively participate in election campaigns as long as their participation is independent from the judge. A family member's support may include working as a volunteer or paid employee in a political campaign (Arkansas Advisory Opinion 2002-6); serving as a campaign manager or on a campaign committee (Kansas Advisory Opinion JE-61 (1996); New York Advisory Opinion 91-85; Pennsylvania Informal Advisory Opinion 10/1/04); endorsing a candidate (California Advisory Opinion 49 (2000); Illinois Advisory Opinion 06-2; Maryland Advisory Opinion 108 (1986)); and soliciting funds (California Advisory Opinion 49 (2000); Illinois Advisory Opinion 06-2; Maryland Advisory Opinion 108 (1986); South Carolina Advisory Opinion 33-2001). In addition, a member of a judge's family may:

- walk precincts, participate in telephone polling, staff campaign headquarters, and solicit voters (California Advisory Opinion 49 (2000));
- participate in door-to-door campaigning (South Carolina Advisory Opinion 33-2001);
- hand out campaign materials and recommend to people that they vote for a candidate (Texas Advisory Opinion 170 (1994)); or
- display election signs and have a campaign party at his or her law office (Florida Advisory Opinion 94-21).

However, family members should take "every precaution to insulate the judge from direct or indirect involvement" in campaign activity (Kansas Advisory Opinion JE-37), to ensure that the family member's participation is not misunderstood as "surrogate judicial participation" (Maryland Advisory Opinion 108 (1986)), and to avoid any suggestion or hint that the judge supports the candidate (Arkansas Advisory Opinion 2002-6). For example, the South Carolina advisory committee stated that, when a judge's husband is soliciting funds and participating in door-to-door campaigning for a candidate, he may not introduce himself as the judge's spouse. South Carolina Advisory Opinion 33-2001.

The California advisory committee imposed on the judge the responsibility of ensuring that, when a family member endorses a candidate, for example, the judge's name and title are not used and the endorsement does not imply that the judge shares the family member's view. California Advisory Opinion 49 (2000). Similarly, the New York judicial ethics committee stated that a judge should make a concerted effort to convince his wife not to refer to the judge in a letter to friends expressing her support for and soliciting their support for a candidate for the United States Congress. New York Advisory Opinion 06-142.

Use of the judge's home

Several advisory opinions prohibit a judge from allowing his or her spouse to hold gatherings in support of a candidate in the judge's home. The Kansas advisory committee, for example, stated that a judge may not permit his wife to host a "Come over and meet the Governor" party in their home, owned in joint tenancy, in an election year when the governor was an announced candidate for re-election even if there would be no fund-raising and the judge would not take part in the event. Kansas Advisory Opinion JE-33 (1990). See also Texas Advisory Opinion 284 (2001) (judge's spouse may not host a fund-raiser for a judicial candidate in the judge's home).

Other committees, however, advise that a judge may allow his or her spouse to host political events in the home in which they reside but that the judge must take reasonable steps to dissociate himself or herself from the event. For example, the California judicial ethics committee advised that, whenever a judge's spouse intends to use the family home for a non-judicial political fund-raiser or meeting, the judge should review with the spouse the ethical constraints on the judge to avoid the appearance that the judge is engaging in fund-raising or endorsing the candidate. California Advisory Opinion 49 (2000). The committee specified that the judge's name should not be used in any invitation or announcement, and the judge should not be present.

Similarly, the Wisconsin judicial ethics committee advised that a judge should be careful not to be seen by those attending a political fund-raiser hosted by the judge's wife in their home. Wisconsin Advisory Opinion 97-2. However, the committee stated, a judge is not required to leave the house, unless its layout is such that the judge would probably be seen by those attending, and could assist his wife by performing household cleaning tasks, caring for their children, preparing food, and replenishing refreshments as long as the attendees do not observe the judge. See also South Carolina Advisory Opinion 14-2006 (judge's spouse may host a party for a political candidate at their home as long as the judge does not attend and judge's name is not used); West Virginia Advisory Opinion (May 7, 2002) (judge's personal residence may be used by the judge's spouse for political fund-raising events as long as the judge is not present during fund-raising and does not otherwise participate).

In states where a judge may attend political gatherings, a judge may attend an event hosted by the judge's spouse for a political candidate in their home. Illinois Advisory Opinion 01-9. However, the Illinois committee warned that the judge should not in any manner act as a sponsor or lend his or her name or office to the event.

Campaign signs

Several judicial ethics committees have advised that a judge should not permit his or her spouse to place a sign endorsing a political candidate on property they jointly own as the sign implies an endorsement by both house-holders. See Arkansas Advisory Opinion 06-3; Florida Advisory Opinion 06-11; South Carolina Advisory Opinion 33-2001.

In contrast, the Illinois advisory committee stated that a judge's spouse may display a campaign sign in the yard of their home. Illinois Advisory Opinion 06-2. The committee acknowledged "that some members of the public, upon observing a sign placed by a spouse on jointly held property, may erroneously conclude that the spouse's independent political act is the act of the judge," but noted "this will not be true in all cases and certainly will not be true when the spouse has a higher community or political profile than the judge. Emphasizing "the accepted view that married individuals remain individuals with separate property rights and beliefs," the committee concluded that the possibility that "some people will misinterpret the campaign sign as a

prohibited political endorsement by the judge ... does not justify curtailment of a spouse's right to political expression."

Other committees acknowledge that, once a judge has "strongly urged" his or her spouse not to place a sign at their joint residence, he or she is not required to take further action. New York Advisory Opinion 07-169. See also California Advisory Opinion 49 (2000) (judge should discourage family members from displaying residential lawn or window signs in a manner that may imply that the judge endorses the non-judicial candidate).

Candidate bumper stickers raise similar concerns. The California advisory committee stated that a judge is not obligated to take any action concerning a bumper sticker placed on a vehicle if a family member is the primary user of the vehicle, but the judge should not drive the vehicle. If both regularly use the vehicle, however, the committee advised, the judge should not allow a bumper sticker on the vehicle. California Advisory Opinion 49 (2000). See also Florida Advisory Opinion 06-11 (judge may not operate a car solely owned by the judge's spouse that displays a sign supporting a candidate); Illinois Advisory Opinion 06-2 (judge's spouse may display a bumper sticker on a vehicle jointly owned by the spouse and the judge and driven by the spouse).

Contributions

Members of a judge's family may contribute to a candidate, but the judge should not participate in the decision to make the contribution or use the family member's freedom to channel funds to a candidate. California Advisory Opinion 49 (2000). Judges have been disciplined for failing to make that distinction.

At the office of the Indiana Democratic Party, a judge stated to the campaign manager for a candidate for Secretary of State, "Hi. I'm [name omitted]. I want to give you \$100, but, I want you to put it in my wife's name because I'm a sitting judge and I'm not supposed to be doing this." The judge wrote "on behalf of [his wife's name]" on the check he gave to the campaign organization but knew that he would also be identified as a contributor. The Indiana Supreme Court publicly reprimanded the judge . . . 579 N.E.2d 75 (Indiana 1991). The Nebraska Commission on Judicial Qualifications publicly reprimanded a judge who had actively facilitated a campaign contribution by her husband to a candidate. . . . (October 7, 2002). The judge had been approached by an attorney who practiced before her and who was a candidate for city council. The candidate stated, "I know you can't give me money for my campaign, but maybe your husband can give me money." The judge agreed to talk to her husband and subsequently delivered a brochure from the candidate to her husband. The judge's husband signed a check for \$50 payable to the candidate's campaign, on a joint account with the names "[both names omitted]" printed on it. Several days later, when the judge saw the candidate in the courthouse, she said "I have something for you." He accompanied her to her office, and she handed him the check.

The judge testified that she was unaware of a Nebraska judicial ethics opinion (Nebraska Advisory Opinion 96-6) advising that a spouse could make a political contribution only from an account containing the spouse's separate funds and that she did not know what the index to the ethics opinions looked like. The Commission found that, notwithstanding her intent and her belief that the contribution was from her husband, the judge violated the prohibition on engaging in inappropriate political activity and contributing to a political organization or candidate, noting that because of the comingling of their funds, the contribution could not be considered to be from the husband's funds alone. See also in . . . 351 A.2d 740 (1976) (use of any portion of

marital assets for campaign contribution suggests at least indirect involvement of the judge); . . . 595 S.W.2d 270 (Missouri 1980) (given the “closely woven business and political aspects” of the judge and his wife, Missouri commission did not believe contributions by the judge’s wife to a gubernatorial candidate were independent acts of which the judge was unaware).

A judge’s spouse may make financial contributions to a candidate for political office from the spouse’s separate account but not from a joint account. Colorado Advisory Opinion 06-4; Kansas Advisory Opinion JE-13 (1985); Nebraska Advisory Opinion 96-6; New York Advisory Opinion 95-138; New York Advisory Opinion 98-22; South Carolina Advisory Opinion 33-2001; West Virginia Advisory Opinion (June 19, 1991); West Virginia Advisory Opinion (August 28, 1995). The Delaware code of judicial conduct provides that the checks by which a judge’s spouse makes a campaign contribution “shall not include the name of the judge.” Several advisory committees concur. See Pennsylvania Informal Advisory Opinion 99-6-1; New York Advisory Opinion 98-111. But see California Advisory Opinion 49 (2000) (judge’s spouse may contribute from a community property joint account without noting that the contribution is from the spouse alone or crossing the judge’s printed name off the check).

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"No judicial conduct commission has jurisdiction over non-judge family members" according to Cynthia Gray, Director of the Center for Judicial Ethics, now of the National Center for State Courts.

An Ethics Guide for Judges and Their Families by Cynthia Gray is available free online through the National Center for State Courts at (<http://www.ncsc.org/Topics/Judicial-Officers/Ethics/Center-for-Judicial-Ethics/CJE-Publications.aspx>)

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