

## **WHEN A FAMILY MEMBER IS RUNNING FOR POLITICAL OFFICE**

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*This article should be compared to the current code of judicial conduct of your state, commonwealth, or territory. The Judicial Family Institute has removed the names of disciplined judges from this article.*

The code of judicial conduct in most jurisdictions prohibits a judge from publicly endorsing a candidate for public office, and the judge's kinship to a candidate is not "a sufficient reason for removing the undesirability of such campaign activity." Alabama Advisory Opinion 82-142. A new comment added to the American Bar Association Model Code of Judicial Conduct in 2007 explains:

Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition ... against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

Thus, a judge should not publicly campaign on behalf of a family member/candidate in any way. California Advisory Opinion 49 (2000). A judge may not on behalf of a relative who is a candidate:

- give speeches (Alabama Advisory Opinion 82-142; Ohio Advisory Opinion 2001-1);
- solicit votes (Michigan Advisory Opinion JI-30 (1990));
- solicit funds or support through personal appearances, by telephone, or through the media (Louisiana Advisory Opinion 52 (1981));
- inform friends of the relative's candidacy even without soliciting votes or support (Florida Advisory Opinion 87-22);
- hand out campaign literature (Alabama Advisory Opinion 82-142; or
- solicit persons to display campaign signs in their yards, erect those signs, or hand out campaign signs or posters (Michigan Advisory Opinion JI-30 (1990); West Virginia Advisory Opinion (February 25, 1994)).

But see New Mexico Advisory Opinion 96-2 (judge may solicit signatures for his spouse's nominating petition and assist the spouse in door-to-door campaigning as long as the judge does so as a private person outside of his normal business hours).

A judge is also prohibited from displaying support for a relative's candidacy by, for example, wearing a campaign button in public or in chambers or maintaining a relative's campaign sign in chambers, in plain view. Ohio Advisory Opinion 2001-1. A judge may not drive a car that displays her spouse's campaign sticker even if the car is normally driven by the spouse and even if the title for the car is in the spouse's name. Delaware Advisory Opinion 2008- 1; Florida Advisory Opinion 87-22; Michigan Advisory Opinion JI-30 (1990). Cf., New York Advisory Opinion 06-94 (judge may drive a car registered in the spouse's name when it is necessary or particularly convenient even if the car displays a bumper sticker supporting the spouse's candidacy).

The restriction extends to behind-the-scenes activities in support of a relative's campaign. Therefore, a judge may not:

- do "leg work" for the campaign (Florida Advisory Opinion 87-22);
- compile voter or contribution lists (Maine Advisory Opinion 94-3);
- stuff envelopes (Maine Advisory Opinion 94-3);
- drive the candidate to events (Maine Advisory Opinion 94-3); or
- deliver or pick up campaign materials from printers or commercial advertisers (West Virginia Advisory Opinion (February 25, 1994)).

But see Michigan Advisory Opinion JI-30 (1990) (judge may perform behind-the-scenes campaign activities for candidates including relatives, such as stuffing envelopes, participating in voter registration drives, placing ads, writing speeches, and building yard signs); South Carolina Advisory Opinion 9-2002 (judge may drive his wife to set up signs for her campaign). Finally, a judge may not act or appear to act as a political advisor for a family member's campaign. Delaware Advisory Opinion 2008-1; New Hampshire Advisory Opinion 78-3;

Application of . . . , 351 A.2d 740 (New Jersey 1976); New York Advisory Opinion 92-129. But see Massachusetts Advisory Opinion 03-8 (judge may discuss with his son in the privacy of the parent/child relationship the association of various individuals in the son's campaign for city council; public issues of concern in the community; sources for information that might be useful for his campaign; financial contributions from family members; the son's performance in public campaign events; positions taken on campaign issues; and the performance of other candidates).

## **Use of the judge's home**

Most opinions on the issue advise that a judge's spouse may use the home they jointly own as headquarters for the spouse's campaign and, as long as the judge does not attend or participate, hold a fund-raiser, campaign strategy meeting, or constituent event at the home. See Florida Advisory Opinion 87-22; New York Advisory Opinion 06-147; Washington Advisory Opinion 86-8; U.S. Advisory Opinion 53 (1998). But see Delaware Advisory Opinion 2008-1 (judge whose spouse is running for the general assembly should not permit any campaign-related activity in the home they share); Michigan Advisory Opinion JI-30 (1990) (campaign events for a spouse/candidate may not be held at a judge's home or at other property owned jointly by the judge and the spouse/candidate). To disassociate himself from any political event held in the judge's home, the judge should not be identified on invitations (Washington Advisory Opinion 86- 8), assist in the preparations (Washington Advisory Opinion 86-8), or serve as host by greeting guests, mingling with visitors, pouring coffee, or serving cake. Florida Advisory Opinion 87-22.

The Ohio advisory committee stated that a judge whose spouse is a candidate for elected public or judicial office may allow campaign signs promoting the spouse's candidacy to be placed on real estate jointly owned by the judge and her spouse. Ohio Advisory Opinion 2000-1. The committee explained: "Placement of a spouse's campaign sign on property co-owned by a judge and spouse does not constitute a 'public endorsement' by the judge." See also New York Advisory Opinion 06-94 (judge is not obligated to discourage her spouse from displaying a campaign sign supporting his own election on the lawn of their marital residence).

## **Campaign literature**

In most states, a family member's campaign materials may include the judge's name or include the judge in a family photograph as long as there is no reference to the judge's title or position. See California Advisory Opinion 49 (2002); Colorado Advisory Opinion 05-5; Florida Advisory Opinion 07-13; Kansas Advisory Opinion JE-3 (1984); Maine Advisory Opinion 94-3; New Mexico Advisory Opinion 96-2; New York Advisory Opinion 06-94; South Carolina Advisory Opinion 2003-14; Vermont Advisory Opinion 2728-10 (2004); Washington Advisory Opinion 02-2; West Virginia Advisory Opinion (December 30, 2002). But see Alabama Advisory Opinion 82-143 (family member's campaign materials cannot use the relative/judge's picture); Texas Advisory Opinion 180 (1995) (family member's campaign materials cannot use the relative/judge's name and title).

In some states, a family member's campaign literature may identify the candidate's relative as a judge as long as the judge's office or title are not used or his or her judicial duties discussed, the occupations of other family members are also identified, and the judge is not pictured in robes. Massachusetts Advisory Opinion 99-16; New Mexico Advisory Opinion 89-2; Ohio Advisory Opinion 2001-1.

The Massachusetts advisory committee stated that, if a judge participates in an interview related to her husband's campaign for the United States Senate, the judge should keep the interview brief, limit her remarks to personal matters about marriage and family, and avoid focusing on judicial duties or weighing in on issues in the campaign or why the voters should vote for her husband. Massachusetts Advisory Opinion 99-16. Although the judge may be identified as a judge, the opinion cautioned, the judge should not allow the interviewer to use her title as a manner of address, appear in judicial robes, or conduct the interview at the courthouse. If the interviewer asks a question that the judge should not answer, the committee advised, the judge should change the subject or stop the interview no matter how awkward.

## **Events**

Whether a judge can escort his spouse to political events when the spouse is a candidate varies from state-to-state, depending, at least in part, on whether the judge is prohibited by the code from attending political events.

In some states, a judge may attend political events with a spouse/candidate, including fund-raisers. For example, the Kansas advisory committee stated that a judge whose spouse is a candidate for a county office may accompany her to fund-raisers for her campaign or for her political party, purchase tickets for and attend functions of her political party, and attend candidate forums. Kansas Advisory Opinion JE-62 (1996). Accord California Advisory Opinion

49 (2000); Illinois Advisory Opinion 96-12; Michigan Advisory Opinion JI-30 (1990); South Carolina Advisory Opinion 2003-14.

In other states, a judge may accompany a spouse/candidate to a campaign event other than a fund-raiser. For example, the Washington judicial ethics committee advised that a judge may attend a campaign event for his spouse if the event is not a fund-raiser, is not sponsored by a political organization, and is not attended only by members of a particular political organization. Washington Advisory Opinion 02-2. See also New Mexico Advisory Opinion 89-2 (judge may attend non-fund-raising political functions with spouse); Texas Advisory Opinion 180 (1995) (judge may attend campaign functions with spouse); West Virginia Advisory Opinion (February 25, 1994) (judge may attend campaign rallies and social functions with spouse). Advisory opinions are split on whether a judge may attend events such as campaign announcements or post-election celebrations for a family member's campaign. Compare Colorado Advisory Opinion 05-5 (should not attend campaign kick-off) and New York Advisory Opinion 06-147 (may not attend spouse's post-election "festivities") with Maine Advisory Opinion 05-4 (may attend and speak in non-judicial capacity at spouse's announcement of candidacy for governor); Pennsylvania Informal Advisory Opinion 1/11/05 (may appear next to spouse at announcement of candidacy for judicial office); South Carolina Advisory Opinion 2003-14 (may attend spouse's announcement of candidacy and be present on election night as long as the judge makes clear that she is not present in a judicial capacity and is not supporting the spouse's candidacy).

Even those advisory committees that allow a judge to escort his spouse to campaign events note that the judge should take certain precautions:

- If the judge is introduced, the judge's position may not be mentioned. Kansas Advisory Opinion JE-62 (1996); Louisiana Advisory Opinion 52 (1981); New Mexico Advisory Opinion 89-2; Washington Advisory Opinion 02-2.
- The judge's appearance must be discreet and low-profile. West Virginia Advisory Opinion (June 19, 1991).
- The judge may not make comments that concern the candidate's position relating to the judiciary. New Mexico Advisory Opinion 89-2).
- The judge may not solicit votes or financial support for the spouse. Louisiana Advisory Opinion 52 (1981).
- The judge may not speak on behalf of or endorse the spouse's candidacy. Texas Advisory Opinion 180 (1995); Washington Advisory Opinion 02-2.

## **Community events**

In some jurisdictions, a judge may not accompany a spouse/candidate to any political event such as cocktail parties in support of the candidacy (Colorado Advisory Opinion 05-5) or non-partisan "meet and greet" campaign gatherings at the judge's home and the homes of friends and neighbors (Florida Advisory Opinion 07-13). The Massachusetts advisory committee stated that prohibited events are those "that are partisan in nature, that is, designed to enhance the electability of, to pay homage to, to rally support behind, or to raise funds for, a particular candidate," or to show solidarity against the opposing party. Massachusetts Advisory Opinion 99-16 (judge may not attend a cook-out hosted by her husband's campaign for members of the general assembly, state political party committee, or labor leaders even if the judge's husband is running for an office in another state and the event is not a fund-raiser). Accord New York Advisory Opinion 06-147 (judge may not escort his spouse to an out-of-state partisan dinner hosted by a high-ranking congressional leader that is paid for out of the congressional leader's

campaign funds); Vermont Advisory Opinion 2728-10 (2004) (judge may not attend spouse's strategy sessions with supporters and advisors). See also Delaware Advisory Opinion 2008-1; Application of . . . , 351 A.2d 740 (New Jersey 1976).

Even those advisory committees that prohibit a judge from escorting her spouse/candidate to any political event allow a judge to attend events with her spouse that are essentially civic, social, religious, community, cultural, or recreational even if the spouse engages in some personal campaigning during the events if the judge would have attended the event if her spouse were not a candidate. The Massachusetts judicial ethics committee stated that a judge whose spouse was running for office could, for example, attend purely ceremonial events with a spouse/candidate (e.g., a state funeral, an inauguration, or a swearing-in ceremony) and may attend a candidate forum sponsored by Common Cause that was not designed to garner support for one candidate but to inform the electorate of the positions of all the candidates. Massachusetts Advisory Opinion 99-16. See also New York Advisory Opinion 00-75 (judge may accompany spouse to a meeting of a fraternal organization and to a public forum not sponsored by political organizations); Vermont Advisory Opinion 2728-10 (2004); Washington Advisory Opinion 02-2.

When attending a community event, the judge should be careful not to be introduced by title or to participate in any activity that could be seen as campaigning on behalf of the spouse, such as speaking, carrying a sign, passing out literature, or encouraging people to vote for her spouse. Vermont Advisory Opinion 2728-10 (2004). For example, while a judge may attend a local parade or community fair, the judge should not march beside her spouse under a campaign banner or work the crowd with him. Maine Advisory Opinion 94-3. See also New York Advisory Opinion 06-147 (judge may march in a parade with other dignitaries and judges but not with his campaigning spouse). If the line is difficult to draw, the judge should err on the side of caution and avoid any activity that could be construed as campaigning on behalf of his spouse. Maine Advisory Opinion 94-3.

## **Campaign contributions**

Whether a judge can make a financial contribution to the campaign of a spouse or other family member depends on the jurisdiction's rule regarding political contributions by judges. In Michigan, for example, where a judge is permitted to contribute to a political candidate at any time, the Michigan advisory committee stated that a judge may personally contribute to her spouse's campaign. Michigan Advisory Opinion JI-30 (1990).

In contrast, in states where a judge is prohibited from political activity (except while a candidate for office), a judge cannot contribute to her spouse's campaign for political office. See Delaware Advisory Opinion 2008-1; New York Advisory Opinion 00-75. Cf., Florida Advisory Opinion 87-22 (spouse/candidate may withdraw funds from a joint account and place it into a campaign account).

In addition, a judge's spouse may not knowingly accept campaign contributions from attorneys or litigants who are appearing or are likely to appear before the judge. Delaware Advisory Opinion 2008-1. See also Application of . . . , 351 A.2d 740 (New Jersey 1976) (contributions to a judge's spouse's campaign from attorneys or litigants who are appearing or may appear before the judge "would be particularly offensive from an ethical standpoint").

The Delaware committee further advised that a judge should recuse from any matter involving

an individual or entity that the judge discovers has contributed to her spouse's campaign. Delaware Advisory Opinion 2008-1. The committee acknowledged that there may be instances where the spouse's campaign receives a contribution from an individual or entity that has appeared or likely may appear before the judge without knowing that this is the case or that a litigant may appear before the judge without the judge knowing that the litigant has supported the spouse's campaign. The committee concluded, however, that the canons prohibit only knowing or reckless violations.

This article like all other ethics articles on the Judicial Family Institute (JFI) website should be compared to the current code of judicial conduct of your state, commonwealth, or territory. "No judicial conduct commission has jurisdiction over non-judge family members" according to Cynthia Gray, Director of the Center for Judicial Ethics 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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