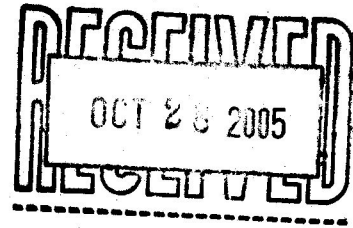


JUDICIAL ETHICS COMMITTEE
Advisory Opinion 05-4
Issued: October 25, 2005



Issue

May a Maine Probate Judge appear in public in support of her husband, who will be seeking the Republican nomination for Governor.

Statement of Facts

The inquiring Judge is married to a gentleman who proposes to seek the Republican nomination for Governor in the upcoming elections. The Judge has inquired as to whether she could appear at his announcement as being supportive of her husband, if she makes no comment in her position as Probate Judge and appears in her non-judicial position, i.e., as the wife of the candidate.

The Code

Canon 5 of the Maine Code of Judicial Conduct. A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity.

(A) Political Conduct of Incumbent Judges.

(1) A judge shall not:

- (a) act as a leader or hold office in a political organization;
- (b) publicly endorse or publicly oppose a candidate for public office;
- (c) make speeches on behalf of a political organization;
- (d) attend political gatherings;
- (e) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or purchase tickets for political party dinners or other functions; or
- (f) engage in any other political activity except as authorized under any other section of this Code or on behalf of measures to improve the law, the legal system, or the administration of justice.

Section 1 Applicability

A. **In General.** Every justice, judge, active retired justice, and active retired judge of the Supreme Judicial, Superior, District, and Administrative courts shall comply with all provisions

of this Code. Every judge of probate shall comply with this Code except as provided in subsection B(1) below.

B. Judges of Probate. A judge of probate

(1) is not required to comply

(a) except while serving as a judge, or as to matters pending in the judge's court, with Canons 3B(9) and 4C(1); and

(b) at any time with Canons 4D(3), 4E(1), 4F, 4G, 4H, and 5A(1)(a)-(d).

(2) shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

C. Candidates for Judicial Office. This Code is applicable to candidates for judicial office in accordance with Canon 5D, provided that a successful candidate for judicial office shall comply with all provisions of this Code between the time of confirmation of appointment or certification of election and swearing in.

Judges of Probate are explicitly subject to the Code of Judicial Conduct, except for a few narrowly defined exceptions: In re: Dunleavy, 2003 Me. 124; 838 A.2d. 338.

Discussion

From the foregoing, we can see that the applicability provision allows a Judge of Probate, as distinguished from other judges, to attend political gatherings, speak on behalf of a political organization, publicly endorse or oppose a candidate, and even act in conjunction with or lead a political organization.

That being true, there is no necessity for the Judge standing mute at her husband's announcement.

Although excused from Canon 5A(1)(a)-(d), the probate judge remains subject to Canon 5A(1)(e) and therefore cannot solicit contributions to her husband's campaign. The Judge's inquiry makes clear, however, that she has no intention of soliciting campaign contributions.

Conclusion

The Probate Judge may attend the upcoming announcement of her husband's candidacy for Governor in her non-judicial capacity, and may speak freely.