

JUDICIAL ETHICS COMMITTEE  
Advisory Opinion 94-3

SEP. 16 1994

**ISSUE:** A judge's spouse is a candidate for election to the State Legislature. Because of this fact, the judge has sought guidance with respect to the provisions of Canon 5(A)(1) of the Code of Judicial Conduct.

Canon 5(A)(1) provides as follows:

**CANON 5**  
**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 an 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.

In light of these provisions, we have been asked to answer the following specific questions:

1. May the judge join the judge's spouse at social or community events at which the spouse engages in any political activity, for example, a community fair, a local church bean supper, the local parade? May the judge attend campaign "coffees" with the spouse? Since in a real sense a campaign for public office is a nearly full-time activity for any candidate, any social or community gathering presents an opportunity for campaigning. Under what circumstances, if any, would the judge's attendance with the judge's spouse at any kind of meeting or event be deemed attendance at a political gathering under Canon 5(A)(1)(d) or engaging in political activity under Canon 5(A)(1)(f)?

DISCUSSION: In general, we note that the provisions of Canon 5(A)(1) apply to all judges and do not contain any exceptions where the spouse of the judge or any other close relative becomes a candidate for public office. In our view, this means that the judge may not campaign on behalf of the spouse. Moreover, the judge should not attend a campaign "coffee" under any circumstances as such an event would be a political gathering specifically prohibited by Canon 5(A)(1)(d). On the other hand, a judge cannot be expected to avoid all appearances in public with the judge's spouse for the duration of the campaign.<sup>1</sup> Thus, even though a judge's spouse is a candidate for public office, Canon 5(A) should not be interpreted to forbid the judge from such activities as attending church services, going to social events, and listening to concerts with his or her spouse.

However, it is our view that if the judge's presence at any social or community event is motivated in any way by the spouse's candidacy, the judge should not attend the event. In other words, the judge should not attend any social

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<sup>1</sup>The Advisory Committee's Note to Canon 5 states that it is intended to prohibit incumbent judges "from engaging in political activity that involves organizational leadership, public appearances, or fundraising." (emphasis added). It is our view that this refers to public appearances that specifically involve political activity, not all public appearances where candidates might be present.

or community events with his or her spouse unless the judge has a reason for attending that is not related to the spouse's candidacy and unless the judge would have attended the event even if the spouse were not a candidate for public office.

The remaining question relates to the judge's conduct if, under the guidelines stated above, the judge does attend a non-political event such as a community fair or a local church supper and the judge's spouse is also present. We recognize that such events necessarily present an opportunity for the spouse to engage in some amount of campaigning. Indeed, it is possible that the spouse will be approached by prospective voters even if the spouse does not intend to do any campaigning at the event. Under these circumstances, the judge should be careful not to participate in any activity that could be seen as campaigning on behalf of the spouse. In other words, while the judge may attend a local parade, the judge should not march along beside the judge's spouse under a campaign banner. If the spouse decides to campaign at a community fair, the judge can attend the fair (assuming the judge would have gone in any event) but should not "work the crowd" with the spouse.

We recognize that this may lead to some situations where the line is difficult to draw. In such situations, we believe that the judge should err on the side of caution and avoid any activity that could be construed as campaigning on behalf of the spouse.

**2. What kinds of activities by the judge would be deemed to be an endorsement under Canon 5(A)(1)(b)? For example, can the judge ride in a car with a campaign bumper sticker? Can the family place a campaign sign for the spouse in front of the house?**

DISCUSSION: Like the rest of Canon 5(A)(1), subsection (b), which prohibits political endorsements, does not make any exception for spouses or other relatives. The judge should not place a campaign bumper sticker on the judge's car or on any family vehicle that the judge uses.<sup>2</sup> The judge should not permit a campaign sign to be placed in front of the judge's house as this implies an endorsement by both house-holders.

**3. With respect to Canon 5(A)(1)(e), may the judge make direct contributions to the spouse's campaign? May the spouse pay for the campaign expenses out of a joint bank account?**

DISCUSSION: By the express terms of Canon 5(A)(1)(e), a judge may not make contributions to political candidates. No exception is made for spouses or other close relatives. Moreover, the spouse should not pay for campaign expenses out of a joint bank account since that account presumably includes funds contributed by the judge and certainly constitutes money over which the judge shares control.

**4. May the judge be present at political events such as campaign strategy meetings or constituent events which are held in the judge's home? If the judge may not attend such a meeting, must the judge leave the house when events are scheduled there or avoid greeting or speaking to guests?**

DISCUSSION: The judge should not attend such events since they constitute political gatherings. Assuming that the physical layout of the house is such that the

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<sup>2</sup>We would not go so far, however, as to suggest that the judge may not ride in any vehicle to which a campaign bumper sticker is attached, since this would prohibit the judge from accepting rides from anyone who happened to have placed a bumper sticker on his or her vehicle. It is only an endorsement by the judge if a sticker is placed on the judge's car or a family vehicle that the judge uses.

judge is able to absent himself or herself in another part of the house, separated from the political gathering, the judge is not required to leave the house when such events are scheduled but should not mingle with the persons attending the political gathering or greet visitors when a political event is planned.

**5. May the judge be identified as the spouse of the candidate in campaign literature? May the judge be identified in such literature by the judge's employment, i.e., as a judge?**

DISCUSSION: The judge may be identified by name or photograph in campaign literature but should not be identified as a judge. We do not believe that the judge's spouse has to pretend to be unmarried for the duration of the campaign. On the other hand, identification of the judge as a judge in campaign literature implies a judicial endorsement.

**6. May the judge undertake activities to assist the judge's spouse such as compiling mail or phone lists, stuffing envelopes, or driving the spouse to events or other activities?**

DISCUSSION: No. Compiling voter or contribution lists, stuffing envelopes, or driving the candidate would constitute political activity in violation of Canon 5(A)(1)(f).