

ADVISORY OPINION

Code of Judicial Conduct Canon 4

#2 - 14

The Indiana Commission on Judicial Qualifications issues the following advisory opinion concerning the Code of Judicial Conduct. The views of the Commission are not necessarily those of a majority of the Indiana Supreme Court, the ultimate arbiter of judicial disciplinary issues. Compliance with an opinion of the Commission will be considered by it to be a good faith effort to comply with the Code of Judicial Conduct. The Commission may withdraw any opinion.

ISSUE

To what extent may judges and judicial candidates participate in the political activities or campaigns of family members?¹ For example, can a home jointly owned by the judge and a candidate-spouse be used for campaign events for the spouse's campaign? May a judge be featured in promotional materials for (or make a financial contribution to) a relative's campaign?

ANALYSIS

The ability of a judge or judicial candidate to support a family member's campaign is addressed in Comment 5 to Rule 4.1 of the Indiana Code of Judicial Conduct:

Family members of judges and judicial candidates (defined as a "spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship") are not bound by the Code of Judicial Conduct, and are free to engage in their own political activities, including running for public office. Nonetheless, a judge or judicial candidate must not be publicly associated with a family member's political activity or campaign for public office except that a judge may, as a family member, accompany a member of the judge's family at events related directly and solely to that person's candidacy 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 the prestige of judicial office is being used to support any family member's candidacy or other political activity (emphasis added).***

The key in analyzing whether certain behavior would violate the Code of Judicial Conduct is whether it appears, to the casual bystander, to use the judge or judicial candidate's prestige of office to further the family member's political activity.

¹ For purposes of this Advisory Opinion, the Commission assumes that the judge or judicial candidate either is not in his or her election cycle or is not running in the same election cycle as the candidate-spouse. Judges or judicial candidates who are running in the same election cycle as the candidate-spouse are advised to look to Rule 4.2 of the Code of Judicial Conduct for guidance, but to still be mindful of their ethical obligation to not use the prestige of judicial office to further the candidate-spouse's campaign.

Although the Commission has previously addressed limits on the ability of a judge's spouse to engage in political activities, this advisory opinion did not explore the ability or propriety of the judge to assist in these activities. *Ind. Comm'n on Jud. Qual. Op. #2-93*.

Can a home jointly owned by the judge and a candidate-spouse be used for campaign events?

This question has divided various ethical bodies. The more conservative approach, espoused by the State Bar of Michigan Ethics Committee, states that a candidate-spouse's campaign events may not be held at a home or other property jointly owned with the judge. *Mich. Adv. Op. JI-30 (1990)*. However, Washington has held it permissible for campaign events to be held in a jointly-owned home so long as the judge does not participate in these events, does not assist in preparations, is not present for any campaign fund-raisers held in the home, and is not identified on invitations. *Wash. Adv. Op. 86-8*. Florida's advisory committee has taken the same approach, stating that it is permissible for the candidate-spouse to hold meetings in the family home if the judge does not actively serve as a host. *Fla. Adv. Op. 87-22*.

A similar question arises with campaign signs placed outside a home. Oklahoma has held that, although a judge should discourage the candidate-spouse from placing a campaign sign in the yard of their jointly-owned home, this action is permissible if it is made clear that placement is the spouse's decision, not the judge's. *Okl. Jud. Ethics Adv. Panel, Jud. Ethics Op. 2000-7*. As a practical matter, it is unclear how a judge would convey that a yard sign was placed at the behest of the judge's spouse and not the judge – therefore, any placement of yard signs or other public indications of support toward a candidate are best avoided.

Judges who face these issues should ask themselves whether the use of jointly-owned property would appear, to the average bystander, to be an impermissible abuse of the judge's prestige. While the Commission believes that a blanket prohibition on use of any jointly-owned property is not necessary, the Commission thinks it imprudent for a judge to publicly assist² the candidate-spouse in preparations for an event hosted in their home, as such conduct may give members of the public the perception that the judge is using the prestige of judicial office to promote his/her spouse's campaign. Further, if the jointly-owned property is heavily decorated with vestiges of the judge's career, it may be wise to move campaign events elsewhere.

May a judge appear in promotional photos with a campaigning family member?

Most states agree that a judge may publicly provide factual information about the candidate-spouse's background or family (but not the candidate's qualifications for office). *See Mich. Adv. Op. JI-30 (1990); Mass. Adv. Op. 99-16*. However, several states have taken a conservative approach to the judge's role in a family member's campaign by barring any use of the judge's picture, name, or title in campaign materials. *See Ala. Adv. Op. 82-143, Texas Adv. Op. 180 (1995)*. On the other end of the spectrum, several states have held that the judge can be identified by his or her title in campaign promotional materials so long as these materials also identify the occupations of all other family members featured. *New Mexico Adv. Op. 89-2; Ohio Adv. Op. 2001-1; Mass. Adv. Op. 99-16*.

²This advice does not prohibit a judge from providing behind-the-scenes assistance to a candidate-spouse's or family member's campaign, such as preparing envelopes for campaign materials to be mailed to potential voters or donors.

The majority of states that have spoken on this issue take a middle ground – permitting the use of the judge’s name or photograph in a family member’s campaign materials, but only if the judge is not specifically identified as “judge” and no other reference is made to the judge’s title or position. *Kansas Adv. Op. JE-3*; *Fla. Adv. Op. 90-7*; *New York Adv. Op. 04-41*; *Vt. Adv. Op. 2728-10 (2004)*; *Col. Adv. Op. 05-5*.

The Indiana Commission on Judicial Qualifications supports the middle ground approach, as this provides the best balance between a judge’s family duties and professional ethical obligations. Accordingly, the Commission opines that a judge, consistent with the Code of Judicial Conduct, may be named or have his/her photograph in a family member’s campaign materials so long as no reference is made to the judge’s title or position; the judge is not pictured in his or her robe in the campaign materials; and the judge appears in such materials simply as a member of the candidate’s family.

CONCLUSION

Judges hold an esteemed role in our society and command respect by virtue of their office. Because of this, avoiding the appearance of abuse of judicial power or prestige is just as important as avoiding *actual* abuses of power. Judges whose spouses or close family members are running for political office must conduct themselves deliberately and take all reasonable efforts to minimize any effect on these respective campaigns.