

ADVISORY OPINION

Code of Judicial Conduct Canon 5 Application

#2-93

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

The issue is whether the Code of Judicial Conduct prohibits a judge's spouse from holding office in the central committee of a political party; the broader issue is the applicability to judicial spouses of the restrictions on judges' political activities.

ANALYSIS

The Code of Judicial Conduct prohibits a judge from acting as a leader in a political organization, Canon 5A(1)(a), and from running for non-judicial elective office, Canon 5A(2). And, Indiana's Code of Judicial Conduct, as amended effective March 1, 1993, states that judges may not permit their employees to be candidates for or hold positions as officers of a political party's central committee or any non-judicial elective office. The goal, of course, is to protect the judicial identity from appearances of partisanship and partiality. The question here is whether a judicial spouse who may, in fact, be identified with the judge more closely than some employees, is subject to the same restrictions.

Judicial spouses are not personally bound by the Code in the sense that, unlike their spouses, they are not subject to the Supreme Court's jurisdiction for Code violations. See, Application, Code of Judicial Conduct (1993). And, unlike its treatment of court employees, the Code does not confer a duty on the judge to exercise a superior's control over the independent political activities of a spouse. Clearly, the difference relates to the direction and control the judge is presumed to exercise with employees.

Thus, technically, the Code does not prohibit any areas of political activity by a judicial spouse, other than acts done on the judge's behalf. See, Canon 5A(3)(a). However, enormous difficulties are forecast for the judge and party officer who are husband and

wife. A family which chooses to combine a judicial career with political endeavors takes on a particularly heavy burden to protect the judge and the judicial office from appearances of political bias, and it is possible that the judge will be answerable if there exists anything less than a clear division between the political activities of the spouse and the judicial office.

Nonetheless, depending upon their interests and occupations, judicial spouses may not be willing to restrict their political activities, and some will choose to offer valuable public service as leaders of their parties. The Commission can advise only that an arrangement involving the role of a judicial spouse as an officer of a party's central committee is undesirable but is not a violation of the Code of Judicial Conduct.

CONCLUSION

Judicial spouses are not personally bound by the Code of Judicial Conduct and its restrictions on political activities. Although it is an undesirable arrangement for a judicial spouse to hold office in a political party's central committee, the arrangement in itself does not constitute a violation of the Code of Judicial Conduct.