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qualified judiciary and
a fair system of justice

JUDICIAL CONDUCT REPORTER

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Embroidment *by David M. Rothman*

If one had to choose the most common source of disciplinary trouble for trial judges, it would be the loss of decorum, appropriate demeanor, and abuse of authority in the performance of judicial duties. An important contributing factor is the danger of what is referred to as “embroidment.” For a variety of reasons, judges sometimes have difficulty maintaining the necessary professional distance between themselves and the attorneys, the parties, or the causes before them.

Embroidment is the process by which the judge surrenders the role of impartial factfinder/decisionmaker, and joins the fray. This can manifest itself in improper *ex parte* communications out of a need to “expedite” the case, acceding to improper procedures under an intense need to move the calendar, attempting to see to it that a certain result prevails out of a misguided perception of the judicial role, abusing the power to impose contempt and other sanctions out of a perception by the judge that his or her power is being challenged, or simple loss of self control. *See, e.g., California Commission on Judicial Performance Annual Report, Advisory Letter 24, at page 19 (1993), and California Commission on Judicial Performance Annual Report, Private Admonishment A, at page 9 (1991).*

Defining “embroidment”

In reversing a judge’s contempt adjudication, the United States Supreme Court provided a description of the distinguishing features of embroidery:

The record discloses not a rare flare up, not a show of evanescent irritation — a modicum of quick temper that must be allowed even judges. The record is persuasive that, instead of representing the impersonal authority of law, the trial judge permitted himself to become personally embroidered with the petitioner. There was an intermittently continuous wrangle on an unedifying level between the two. For one reason or another, the judge failed to impose his moral authority upon the proceedings. His behavior precluded that atmosphere of austerity which should especially dominate a criminal trial, and which is indispensable for an appropriate sense of responsibility on the part of court, counsel and jury.”

Offutt v. United States, 348 U.S. 11, 17 (1954).

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When a Family Member Supports a Political Candidate *by Cynthia Gray*


Although judges generally are restricted from supporting candidates for political office, members of a judge’s family may publicly and actively participate in election campaigns as long as their participation is independent from the judge. A family member’s support may include working as a volunteer or paid employee in a political campaign (*Arkansas Advisory Opinion 2002-6*); serving as a campaign manager or on a campaign committee (*Kansas Advisory Opinion JE-61 (1996)*; *New York*


Advisory Opinion 91-85; *Pennsylvania Informal Advisory Opinion 10/1/04*); endorsing a candidate (*California Advisory Opinion 49 (2000)*; *Illinois Advisory Opinion 06-2*; *Maryland Advisory Opinion 108 (1986)*); and soliciting funds (*California Advisory Opinion 49 (2000)*; *Illinois Advisory Opinion 06-2*; *Maryland Advisory Opinion 108 (1986)*; *South Carolina Advisory Opinion 33-2001*). In


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Recent Judicial Ethics Advisory Opinions


 A judge may meet with a special interest group but is not required to do so. The judge should require the group to specify in writing the purpose of the meeting. If the purpose is not improper and the judge wishes to grant the request, the judge should establish ground rules in writing and consider whether to include other individuals or groups, whether to have a record made, and where to hold the meeting. At the meeting, the judge should ensure that the group is not given any impression that it is in a special position to influence the judge and should not engage in ex parte communications regarding any pending or impending matters. *Colorado Opinion 08-1*.


 Judges may meet with lawyers to discuss improving the court system even when those lawyers are involved in matters before the judges but should not discuss those matters with them and should limit discussions to administrative issues unless all relevant interests are given an opportunity to be heard. *New York Opinion 07-188*.


 A judge who is president of an ethnic judges' association may join with officers of an ethnic bar association to meet with law school deans and executive and legislative branch officials to express concern about the downward trend in minority representation within the legal profession and to advocate for increased diversity. *New York Opinion 07-170*.


 A judge who presided over a high-profile criminal trial may not discuss with a journalist who is writing a book about the crime her impressions as the trial judge, her thoughts about the case "in the context of those times," how she approached the case, any "color or context" she might be able to provide, or anything else that "stood out" for her if it would reveal information about the adjudicative process that is outside the public record. The judge may discuss administrative matters, such as any concerns she may have had about managing a high profile matter, including security and media concerns, steps she took to address these concerns, court procedures, general legal principles, or what may be learned from the public record. *Massachusetts Opinion 08-1*.


 A judge should not create, maintain, and/or produce information about court cases specifically and exclusively for the district attorney's office. *New York Opinion 07-115*.


 A judge should not review a transcript from an unrelated proceeding to determine if a witness committed perjury. *South Carolina Opinion 2-2008*.


 When an attorney had admitted under oath during a hearing on a petition to dissolve a professional corporation that he committed perjury when executing tax documents, the judge should report the attorney to the appropriate attorney disciplinary committee. *New York Opinion 07-129*.


 A judge should not preside over a "teen court" proceeding if the judge would determine guilt or impose sanctions or other dispositions but may participate in a youth court program as an advisor or supervisor. Even if his participation is advisory, a judge may be required to disqualify himself if a minor is subsequently prosecuted for failing to successfully complete or comply with the youth court disposition. *Illinois Opinion 07-6*.

 A presiding circuit judge may not sign a letter to male leaders of his community encouraging them to join and support an organization called "Men Against Domestic Violence" and endorsing a domestic violence manual for businesses' human resources departments. *Alabama Opinion 07-885*.

 A judge may not, shortly after taking office, represent a client in a federal court in another state in a sentencing hearing or through mediation in a state court lawsuit in which liability is not contested and the only remaining issue is the dollar amount of settlement. A new judge may refer cases to other attorneys with the clients' consent, and, if permissible under the law relating to referrals, collect referral fees after taking office for work performed and referrals made prior to taking office. *Texas Opinion 293 (2007)*.

 A judge may advocate for passage of a bond resolution to fund a new court facility by writing an op-ed article for the local press, speaking at public informational forums, and publicly explaining the need for the new facility. *New York Opinion 07-109*.

 A judge may accept a position from a private consulting firm that administers contract seminars and judicial education on behalf of the U.S. State Department to teach and lecture foreign judicial officials in their native country. *North Carolina Opinion 07-4*.

 A judge may serve on the membership committee of the National Council of Juvenile and Family Court Judges. *Delaware Opinion 2007-4*.

The Center for Judicial Ethics has links to the web-sites of judicial ethics advisory committees at www.ajs.org/ethics/eth_advis_comm_links.asp

Political Party Caucuses and Primaries/ Inaugural Events

Several judicial ethics committees have advised that a judge may not participate in a political party caucus but may vote in a political party primary.

Noting that the state code of judicial conduct prohibits a judge from attending a political gathering, the Nebraska advisory committee concluded that “the circumstances and procedures of a political party caucus give rise to the conclusion that such a caucus is a ‘political gathering’” because “it is a public meeting used to elect delegates who will vote for the selection of the party’s presidential nominee.” Further noting that caucus participants publicly endorse a candidate for public office by “simply standing or congregating” with others favoring that candidate, the committee stated that participating in a caucus would constitute a public endorsement of a candidate in violation of the code. *Nebraska Advisory Opinion 08-1. Accord Colorado Advisory Opinion 2008-2; Utah Formal Advisory Opinion 02-1; Washington Advisory Opinion 08-1.*

Acknowledging that the code expressly allows a judge “to participate in the political process as a voter,” the Nebraska committee concluded “this comment addresses voting in an election where ballot secrecy is preserved and is not applicable to a public caucus process.” One member of the committee dissented, arguing that, if a state employs caucuses rather than secret ballot voting, “it should not be counted as a prohibited endorsement, because there is no other way to vote.”

Party primary

In contrast, a judge may participate in a primary election. The Utah judicial ethics committee distinguished primaries from caucuses by noting that participation in a primary “would be witnessed by relatively few and would have no impact on the perceived impartiality of the judiciary.”

Registering with a political party is largely a private act, known only to the judge and the individual or individuals accepting the judge’s application. Although the information then becomes public, such information is rarely sought out or disclosed.

The election process is also relatively private. A judge appearing at a polling place will be seen by few people and the perception of the appearance is most likely to be recognition of the fact that the judge is participating in an election process, and not a perception that the judge is tied to any political ideology.

Utah Formal Advisory Opinion 02-1. The opinion emphasized that the “public recognizes the rights of judges as cit-

izens and understands that a judge’s participation in that process does not have significant meaning related to the integrity and partiality of the judiciary,” adding “the political proclivities of a judge are not so closely watched by the public that reasonable conclusions could be drawn from a judge’s participation in the primary election process.” The Utah committee also noted the potential for disenfranchisement if judges were prohibited from participating in primary elections.

Reaching the same conclusion, the Colorado advisory committee emphasized that primary elections are designed to guarantee the anonymity of a voter’s choice of party and preferred candidates and that participation does not give rise to a public endorsement of the political party. *Colorado Advisory Opinion 2008-2.* The opinion noted that primary elections are run by state election officials and all expenses are paid by the state or county. *Accord Washington Advisory Opinion 08-1.*

After the Virginia advisory committee issued an opinion stating that judges could not vote in primary elections (*Virginia Advisory Opinion 99-6*), the state supreme court adopted commentary to the code of judicial conduct to specifically allow that conduct. The comments explain:

A judge may vote in a primary election conducted by the State Board of Elections that is open to all registered voters qualified to vote Voting in such a primary election does not constitute attending a “political gathering” . . . or constitute engaging “in any other political activity” The act of a judge voting in a primary election is the discharge of an honorable civic duty and an obligation of responsible citizenship.

The statutory requirements for voting in a primary election distinguish voting in a primary election by a judge from a “political gathering” . . . because there is no registration by political affiliation, no loyalty or political party oath required to vote, and no pledge of support for any person or political group.

Comment 6 to Rule 4.1 of the 2007 American Bar Association *Model Code of Judicial Conduct* provides:

Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited

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Embroidment *continued from page 1*

The following are a few examples of embroidery.

Loss of professional distance related to victims. During trial in a sexual assault case, the judge suggested to counsel that he meet with the victim to commend her courage in testifying. Because of the defense counsel's objection, the judge did not do so. After the verdict, however, the judge met with the victim, commended her bravery, and told her she could be part of his family. He offered to help her, including offering a letter of recommendation to college. In another case, the judge met with a sexual assault victim after the sentencing, praised her bravery, and offered to help her. In both of these situations, the cases were still pending.

The case is an illustration of embroidery, and the California Commission on Judicial Performance found that the conduct impaired public confidence in the integrity and impartiality of the judiciary and publicly admonished the judge. *Inquiry Concerning Harris*, Decision and Order (California Commission on Judicial Performance March 23, 2005) (cjp.ca.gov/pubdisc.htm).

Bias against a lawyer. In December 1999, the conservator of a person and estate filed an accounting in which the conservator requested, among other things, attorney's fees and costs. Mr. H, the attorney, submitted a request of \$63,820 supported by a declaration and time records. His declaration included critical comments of the superior court's "practices" in "cutting" fees and the impact that this could have on appropriate advocacy. The judge approved all requests in the conservator's petition except the attorney's fees. Even though there were no objections to the full attorney's fee request, the judge repeatedly deferred this issue for many months, and finally, in December of 2000, while Mr. H was on vacation, the judge approved \$11,134.71 of the requested fees.

In reversing the judge's decision concerning the fees, the Court of Appeal found that "the one clear impression that emerges from this record is that there was palpable animosity between the trial court and [Mr. H].... The trial court took this outspoken commentary [on the practice of cutting fees] as a personal affront and stated that [Mr. H] was ascribing elder abuse to the court, even saying that the court would circulate [Mr. H's] remarks to other judges. Although [Mr. H's] commentary was accusatory and immoderate, he was nonetheless entitled to have his fee request decided by an unbiased court...." *In re Estate of Feist v. Hankin* (December 27, 2001) [unpublished opinion], quoted in *Matter Concerning Letteau*, Decision and Order (California Commission on Judicial Performance May 20, 2004) (cjp.ca.gov/pubdisc.htm). The disciplinary decision of the Commission noted that from June 2, 2000 onward, the judge repeatedly made comments "displaying hostility and animos-


ity toward" Mr. H., and that the judge never gave a reason for the substantial reduction in fees. The Commission publicly admonished the judge for this and other misconduct.

Anger at lawyer prejudiced the client. A defendant was before the court on a probation violation (failure to show proof of attendance at 12-step meetings) in a domestic violence case. The judge found the defendant in violation of probation without holding a hearing in spite of a demand for hearing and over the objection of defense counsel, a deputy public defender. The judge advised that he had found the defendant in violation and was going to sentence him to 90 days in jail. When protests from counsel continued, the exchange between counsel and the judge "escalated" with "raised voices." The judge then evicted counsel from the courtroom ("Deputy Robinson, take her [counsel] outside"), and immediately sentenced the defendant. The Commission found:

Judge Ross became angry and humiliated Mr. [S, the defendant] by calling him a pathological liar in open court. This unjudicial behavior manifested embroidery and had the further prejudicial effect of depriving Mr. [S] of an impartial judge. None of these prejudices to the defendant was undone by the subsequent events."

Inquiry Concerning Ross, Decision and Order (California Commission on Judicial Performance November 16, 2005) (cjp.ca.gov/pubdisc.htm). The Commission removed the judge for this and other misconduct.

Self awareness, the need for professionalism, and "seeing the ice on the road"

It is easy to suggest the importance of self awareness, but hard to achieve it. It is really a matter of learning to see the "ice on the road," and developing mindfulness of who you are and what your legitimate goals and objectives are (quoting from lecture to the 1987 California Judicial College by Richard Friedman, M.D.) 

David M. Rothman is a retired judge of the Los Angeles Superior Court. This article is an excerpt from the third edition of his book California Judicial Conduct Handbook, published by the California Judges Foundation and California Judges Association. For information about purchasing the book, contact the California Judges Association at (415) 263-4600. (The cost of the book, \$169.95, includes tax and shipping. All proceeds go to the costs of reproducing the book; neither the author nor the Association are compensated for writing or publishing the book.)



The 21st National College on Judicial Conduct and Ethics

October 29-31, 2008 • Chicago

The Center for Judicial Ethics will hold its 21st National College on Judicial Conduct and Ethics on **October 29-31, 2008**, at the Embassy Suites Downtown Lakefront, 511 N. Columbus, Chicago, Illinois. The National College provides a forum for judicial conduct commission members and staff, judges, judicial ethics advisory committees, and attorneys to learn about and discuss professional standards for judges and current issues in judicial discipline.

The College will begin Wednesday October 29 with registration and a reception. Thursday morning there will be a plenary session on “Judicial Ethics and Discipline

Around the World,” followed by concurrent workshops through Friday noon. The topics for discussion are listed below. **The Center will apply for certification for continuing legal education credit for the College.**

The \$300 registration fee includes one set of conference resource materials, the reception, and Thursday luncheon. The Embassy Suites Downtown Lakefront has reserved a block of rooms for College participants at \$239 a night (single occupancy), plus tax. Reservations must be made with the hotel by **October 3, 2008**. Hotel registration information is on page 8.

Plenary Session – Thursday October 30 – 8:30 a.m. Judicial Ethics and Discipline Around the World

Panelists will describe how other countries are meeting the challenges of judicial ethics and accountability. Opportunities for judges and others to share their expertise abroad will also be discussed.

Panelists: **Marla N. Greenstein**, Executive Director,

Alaska Commission on Judicial Conduct • **Olga Ruda**, Co-Coordinator, Judicial Reform Focal Area, American Bar Association Rule of Law Initiative • **Dale Simon**, Head, Office of Judicial Complaints, United Kingdom • **Justice T. Strasberg-Cohen** (retired), The Ombudsman of the Israeli Judiciary

Concurrent Workshop Topics

Best Practices for Judicial Ethics Advisory Committees

Should advisory committees issue informal opinions? What are effective formats for advisory opinions? Should advisory opinions be subject to review? How should opinions be distributed? Participants will share how they have solved these and similar issues in their states.

Facilitators: **E. Keith Stott**, Executive Director, Arizona Commission on Judicial Conduct • **Judge Ellen Flatley**, Member, Massachusetts Supreme Judicial Court Committee on Judicial Ethics

Campaign Conduct and Political Activity

The challenges of running for judicial office and the threats to judicial impartiality have never been greater. This session will discuss the rules that apply to judicial campaigns and debate the validity of the restrictions following *Republican Party of Minnesota v. White*.

Facilitators: **Robert Alsdorf**, Davis Wright Tremaine LLP, Seattle • **Jonathan Coughlan**, Disciplinary Counsel, Supreme Court of Ohio

Determining the Appropriate Sanction

Examining recent judicial discipline cases, this session will review the criteria for imposing sanctions and discuss issues such as the relevance of a judge’s failure to express remorse and when removal is appropriate.

Facilitators: **Steven Scheckman**, Deputy Administrator, New York State Commission on Judicial Conduct • **Judge James R. Wolf**, First District Court of Appeal; chair, Florida Judicial Qualifications Commission

Disqualification

Looking at case law and advisory opinions, this session will consider the standard requiring disqualification “when a judge’s impartiality might reasonably be questioned.”



COLLEGE REGISTRATION FORM

21st National College on Judicial Conduct and Ethics
October 29-31, 2008
Embassy Suites Downtown Lakefront

College registration
also available on-line
at www.ajs.org/ethics

Name _____

Title _____

Address _____

City _____ State _____ Zip _____

Telephone _____ Fax _____

Email: _____

Organization you represent _____

First name as you would like it on your name badge _____

Check if you are a new member of a conduct commission.

Check if you are a public member of a conduct commission.

Check if you are a member of a judicial ethics advisory committee.

Registration fee is not refundable unless cancellation is received prior to **October 15, 2008**. Fee includes one set of conference resource materials, the reception, and one luncheon on Thursday.

Registration Fee: \$300 per person \$ _____

Please check the appropriate box(es)

I plan to attend the reception Wednesday, Oct. 29

I will be bringing a guest to the reception

I plan to attend the luncheon Thursday, Oct. 30

I will be bringing a guest to the luncheon Thursday, Oct. 30

(Guest tickets \$25 each) \$ _____

TOTAL Enclosed: \$ _____

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Krista Maeder

American Judicature Society

The Opperman Center at Drake University

2700 University Avenue

Des Moines, IA 50311

(515) 271-2284, Fax (515) 279-3090

**Hotel information is on page 8.
Room reservations must be made
directly with the hotel.**

Facilitators: **Charlie Gardner Geyh**, Professor of Law, Indiana University School of Law • **J. Reiko Callner**, Executive Director, Washington State Commission on Judicial Conduct

Ethical Guidelines for Members of Judicial Conduct Commissions

This session will review the ethical guidelines adopted for members of several judicial conduct commissions and debate the benefits of adopting such guidelines, consider what issues should be covered, and discuss what the rules should be in areas such as political activity, disqualification, and contacts from complainants and judges.

Facilitators: **Justice Judith McConnell**, Member, California Commission on Judicial Performance • **Seana Willing**, Executive Director, Texas State Commission on Judicial Conduct

Ethics for Judges and Their Families

A judge is still a judge in the public's eyes when he or she leaves the courthouse, and a judge is still part of a family when he or she departs from home in the morning. This session will explore the code of judicial conduct restrictions that affect a judge as a member of a family and the guidance the rules give to family members on issues such as hiring or appointing relatives, disqualification issues related to familial relationships, acting as an attorney for family members, financial affairs, and civic and political activities.

Facilitators: **William Johnston**, Young, Conaway, Stargatt & Taylor LLP, Wilmington • **Judge Mary Johnston**, Superior Court of Delaware

Introduction to the Canons for New Members of Judicial Conduct Commissions

This session will give new members of judicial conduct commissions an overview of the ethical standards they will be enforcing and focus on those provisions that result in the most judicial discipline cases.

Facilitators: **James C. Alexander**, Executive Director, Wisconsin Judicial Commission • **Judge Randall Cole**, Chair, Alabama Judicial Inquiry Commission

The Prestige of Office

"Do you know who I am?" This session will examine classic examples of judges using the prestige of office to advance private interests and consider thorny issues regarding separating the public role and private life in areas such

as personal litigation, recommendations, use of judicial stationery, and community involvement.

Facilitators: **Robert H. Tembeckjian**, Administrator and Counsel, New York State Commission on Judicial Conduct • **Judge Ray McKoski**, Member, Illinois Judicial Ethics Committee

Revisions to the ABA Model Code of Judicial Conduct

In February 2007, the American Bar Association House of Delegates adopted a revised *Model Code of Judicial Conduct*. In an interactive session, representatives of the ABA Joint Commission and the American Judicature Society will describe the changes and discuss the status of adoption by the states.

Facilitators: **Gordon L. Doerfer**, President-Elect, American Judicature Society • **George A. Kuhlman**, Ethics Counsel, American Bar Association • **Mark Harrison**, Chair, ABA Joint Commission to Evaluate the Model Code of Judicial Conduct • **Judge Cara Lee Neville**, Member, Ad Hoc Advisory Committee to Review the Minnesota Code of Judicial Conduct

The Role of Public Members

Participants will share their experiences as public members of judicial conduct commissions and discuss what impact their perspective has on commission deliberations, commissioner training and qualifications, and the perception of the commission by the public and judges.

Facilitators: **Dedee Naven**, Member, Nevada Commission on Judicial Discipline • **Patrick Sexton**, Chair, Minnesota Board on Judicial Standards

When Judges Speak Up

This session will discuss the tension between ensuring that the public understands the justice system and guaranteeing that litigants have confidence that judges are impartial and their cases are being tried in the courthouse. Possible questions for participants: What can a judge whose decision has been unfairly attacked do in response? How can a judge address problems requiring reform without undermining public confidence in the courts?

Facilitators: **Victoria Henley**, Director-Chief Counsel, California Commission on Judicial Performance • **Cynthia Gray**, Director, American Judicature Society, Center for Judicial Ethics



HOTEL INFORMATION

21st National College on Judicial Conduct and Ethics

October 29-31, 2008

Embassy Suites, Downtown Lakefront

511 North Columbus Drive, Chicago, IL 60611

Group Code: AJS

www.ajs.org/ethics/College.asp

College room rates

Single rate – 1 person — \$239 + 15.4% tax

Double rate – 2 persons — \$239 + 15.4% tax

Triple rate – 3 persons — \$259 + 15.4% tax

Quad rate – 4 persons — \$269 + 15.4% tax

When making reservations, you must use the group code AJS to obtain the College rate.

The Embassy Suites, Downtown Lakefront is holding a limited block of rooms at the College rate for October 27-November 1, 2008. (The College rate is also available for three days before and three days after those dates.) After those rooms are reserved or **no later than October 3, 2008**, the hotel will accept reservations on a space-available basis only and may charge a higher rate.

The Embassy Suites requires on-line or telephone reservations. You may use the National College Personalized Group Web Page. Go to **www.ajs.org/ethics/College.asp** and click on the hotel reservation link. Reservations may also be made at (800) 362-2779. The hotel will not accept faxed reservations.

Room reservations include a complimentary cooked-to-order breakfast and the nightly manager's reception with a variety of cold beverages. The Embassy Suites Chicago - Downtown/Lakefront hotel is located in the heart of downtown Chicago on the corner of Illinois Street and Columbus Drive, between Navy Pier and the famed Michigan Avenue - the Magnificent Mile. Each suite has a private bedroom and living room equipped with two televisions, a refrigerator, microwave oven, coffee maker, two telephones with data ports, and a dining/work table.

If you have any difficulties making reservations, please contact Krista Maeder at kmaeder@ajs.org or 515-271-2284.

You must register for the College and the hotel separately. Links for both can be found at www.ajs.org/ethics/College.asp

When a Family Member Supports a Political Candidate *continued from page 1*

addition, a member of a judge's family may:

- walk precincts, participate in telephone polling, staff campaign headquarters, and solicit voters (*California Advisory Opinion 49* (2000));
- participate in door-to-door campaigning (*South Carolina Advisory Opinion 33-2001*);
- hand out campaign materials and recommend to people that they vote for a candidate (*Texas Advisory Opinion 170* (1994)); or
- display election signs and have a campaign party at his or her law office (*Florida Advisory Opinion 94-21*).

However, family members should take "every precaution to insulate the judge from direct or indirect involvement" in campaign activity (*Kansas Advisory Opinion JE-37*), to ensure that the family member's participation is not misunderstood as "surrogate judicial participation" (*Maryland Advisory Opinion 108* (1986)), and to avoid any suggestion or hint that the judge supports the candidate (*Arkansas Advisory Opinion 2002-6*). For example, the South Carolina advisory committee stated that, when a judge's husband is soliciting funds and participating in door-to-door campaigning for a candidate, he may not introduce himself as the judge's spouse. *South Carolina Advisory Opinion 33-2001*.

The California advisory committee imposed on the judge the responsibility of ensuring that, when a family member endorses a candidate, for example, the judge's name and title are not used and the endorsement does not imply that the judge shares the family member's view. *California Advisory Opinion 49* (2000). Similarly, the New York judicial ethics committee stated that a judge should make a concerted effort to convince his wife not to refer to the judge in

a letter to friends expressing her support for and soliciting their support for a candidate for the United States Congress. *New York Advisory Opinion 06-142*.

Use of the judge's home

Several advisory opinions prohibit a judge from allowing his or her spouse to hold gatherings in support of a candidate in the judge's home. The Kansas advisory committee, for example, stated that a judge may not permit his wife to host a "Come over and meet the Governor" party in their home, owned in joint tenancy, in an election year when the governor was an announced candidate for re-election even if there would be no fund-raising and the judge would not take part in the event. *Kansas Advisory Opinion JE-33* (1990). See also *Texas Advisory Opinion 284* (2001) (judge's spouse may not host a fund-raiser for a judicial candidate in the judge's home).

Other committees, however, advise that a judge may allow his or her spouse to host political events in the home in which they reside but that the judge must take reasonable steps to dissociate himself or herself from the event. For example, the California judicial ethics committee advised that, whenever a judge's spouse intends to use the family home for a non-judicial political fund-raiser or meeting, the judge should review with the spouse the ethical constraints on the judge to avoid the appearance that the judge is engaging in fund-raising or endorsing the candidate. *California Advisory Opinion 49* (2000). The committee specified that the judge's name should not be used in any invitation or announcement, and the judge should not be present.

Similarly, the Wisconsin judicial ethics committee advised that a judge should be careful not to be seen by those attending a political fund-raiser hosted by the judge's wife in their home. *Wisconsin Advisory Opinion 97-2*. However, the committee stated, a judge is not required to leave the house, unless its layout is such that the judge would probably be seen by those attending, and could assist his wife by performing household cleaning tasks, caring for their children, preparing food, and replenishing refreshments as long as the attendees do not observe the judge. See also *South Carolina Advisory Opinion 14-2006* (judge's spouse may host a party for a political candidate at their home as long as the judge does not attend and judge's name is not used); *West Virginia Advisory Opinion* (May 7, 2002) (judge's personal residence may be used by the judge's spouse for political fund-raising events as long as the judge is not present during fund-raising and does not otherwise participate).

Judicial Conduct Reporter

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When a Family Member Supports a Political Candidate *continued from page 9*

In states where a judge may attend political gatherings, a judge may attend an event hosted by the judge's spouse for a political candidate in their home. *Illinois Advisory Opinion 01-9*. However, the Illinois committee warned that the judge should not in any manner act as a sponsor or lend his or her name or office to the event.

Campaign signs

Several judicial ethics committees have advised that a judge should not permit his or her spouse to place a sign endorsing a political candidate on property they jointly own as the sign implies an endorsement by both house-holders. *See Arkansas Advisory Opinion 06-3; Florida Advisory Opinion 06-11; South Carolina Advisory Opinion 33-2001*.

In contrast, the Illinois advisory committee stated that a judge's spouse may display a campaign sign in the yard of their home. *Illinois Advisory Opinion 06-2*. The committee acknowledged "that some members of the public, upon observing a sign placed by a spouse on jointly held property, may erroneously conclude that the spouse's independent political act is the act of the judge," but noted "this will not be true in all cases and certainly will not be true when the spouse has a higher community or political profile than the judge. Emphasizing "the accepted view that married individuals remain individuals with separate property rights and beliefs," the committee concluded that the possibility that "some people will misinterpret the campaign sign as a prohibited political endorsement by the judge . . . does not justify curtailment of a spouse's right to political expression."

Other committees acknowledge that, once a judge has "strongly urged" his or her spouse not to place a sign at their joint residence, he or she is not required to take further action. *New York Advisory Opinion 07-169*. *See also California Advisory Opinion 49* (2000) (judge should discourage family members from displaying residential lawn or window signs in a manner that may imply that the judge endorses the non-judicial candidate).

Candidate bumper stickers raise similar concerns. The California advisory committee stated that a judge is not obligated to take any action concerning a bumper sticker placed on a vehicle if a family member is the primary user of the vehicle, but the judge should not drive the vehicle. If both regularly use the vehicle, however, the committee advised, the judge should not allow a bumper sticker on the vehicle.

California Advisory Opinion 49 (2000). *See also Florida Advisory Opinion 06-11* (judge may not operate a car solely owned by the judge's spouse that displays a sign supporting a candidate); *Illinois Advisory Opinion 06-2* (judge's spouse may display a bumper sticker on a vehicle jointly owned by the spouse and the judge and driven by the spouse).

Contributions

Members of a judge's family may contribute to a candidate, but the judge should not participate in the decision to make the contribution or use the family member's freedom to channel funds to a candidate. *California Advisory Opinion 49* (2000). Judges have been disciplined for failing to make that distinction.

"I want to give you \$100, but I want you to put it in my wife's name because I'm a sitting judge and I'm not supposed to be doing this."


At the office of the Indiana Democratic Party, a judge stated to the campaign manager for a candidate for Secretary of State, "Hi. I'm Dick Sallee. I want to give you \$100, but, I want you to put it in my wife's name because I'm a sitting judge and I'm not

supposed to be doing this." The judge wrote "on behalf of Cheri Sallee" on the check he gave to the campaign organization but knew that he would also be identified as a contributor. The Indiana Supreme Court publicly reprimanded the judge. *In the Matter of Sallee*, 579 N.E.2d 75 (Indiana 1991).

The Nebraska Commission on Judicial Qualifications publicly reprimanded a judge who had actively facilitated a campaign contribution by her husband to a candidate. *In the Matter of Prochaska*, Reprimand (Nebraska Commission on Judicial Qualifications October 7, 2002). The judge had been approached by an attorney who practiced before her and who was a candidate for city council. The candidate stated, "I know you can't give me money for my campaign, but maybe your husband can give me money." The judge agreed to talk to her husband and subsequently delivered a brochure from the candidate to her husband. The judge's husband signed a check for \$50 payable to the candidate's campaign, on a joint account with the names "Donald F. or Jane H. Prochaska" printed on it. Several days later, when the judge saw the candidate in the courthouse, she said "I have something for you." He accompanied her to her office, and she handed him the check.

The judge testified that she was unaware of a Nebraska judicial ethics opinion (*Nebraska Advisory Opinion 96-6*)

advising that a spouse could make a political contribution only from an account containing the spouse's separate funds and that she did not know what the index to the ethics opinions looked like. The Commission found that, notwithstanding her intent and her belief that the contribution was from her husband, the judge violated the prohibition on engaging in inappropriate political activity and contributing to a political organization or candidate, noting that because of the comingling of their funds, the contribution could not be considered to be from the husband's funds alone. *See also In Application of Gaulkin*, 351 A.2d 740 (1976) (use of any portion of marital assets for campaign contribution suggests at least indirect involvement of the judge); *In the Matter of Briggs*, 595 S.W.2d 270 (Missouri 1980) (given the "closely woven business and political aspects" of the judge and his wife, Missouri commission did not believe contributions by the judge's wife to a gubernatorial candidate were independent acts of which the judge was unaware).

A judge's spouse may make financial contributions to a candidate for political office from the spouse's separate account but not from a joint account. *Colorado Advisory Opinion 06-4*; *Kansas Advisory Opinion JE-13* (1985); *Nebraska Advisory Opinion 96-6*; *New York Advisory Opinion 95-138*; *New York Advisory Opinion 98-22*; *South Carolina Advisory Opinion 33-2001*; *West Virginia Advisory Opinion* (June 19, 1991); *West Virginia Advisory Opinion* (August 28, 1995). The Delaware code of judicial conduct provides that the checks by which a judge's spouse makes a campaign contribution "shall not include the name of the judge." Several advisory committees concur. *See Pennsylvania Informal Advisory Opinion 99-6-1*; *New York Advisory Opinion 98-111*. *But see California Advisory Opinion 49* (2000) (judge's spouse may contribute from a community property joint account without noting that the contribution is from the spouse alone or crossing the judge's printed name off the check). 

Political Party Caucuses and Primaries/Inaugural Events *continued from page 3*


Inaugural events

A judge may attend the inauguration of elected public officials. The South Carolina advisory committee explained that swearing-in ceremonies are "not political activities, but rather governmental activities in which every citizen regardless of their official position should be allowed to participate."

By attending the inauguration ceremonies . . . a judge simply participates as a spectator to a time honored tradition of government that symbolizes and celebrates the orderly and legal transition of elected officials. Also, by attending as a spectator the judge is merely showing respect, in a dignified manner, for a branch of government other than his own, which thus avoids harming the integrity and impartiality of the judiciary and avoids any appearance of impropriety.

South Carolina Advisory Opinion 2-1995. *Accord Colorado Advisory Opinion 2006-10* (gubernatorial inauguration); *Florida Advisory Opinion 92-41* (inauguration of the President of the United States); *New York Advisory Opinion 97-145* (municipally funded induction ceremony).

A judge may attend an inaugural ball or similar event as long as any fee charged covers only the costs, but a judge may not attend if the event is a fund-raiser for a political campaign or party. For example, the Colorado advisory committee opined that a judge may attend a dinner, concert, and whistle-stop tour following the gubernatorial inauguration where the events are open to the public at large and nominal fees cover the costs only and will not go to political party.

Colorado Advisory Opinion 2006-10. *Accord Florida Advisory Opinion 92-41* (judge may attend inaugural ball provided no funds are paid to a political organization and attendance is not limited to members of one party); *New York Advisory Opinion 97-145* (judge may not attend a ball following the inauguration where the \$250 ticket price will be used to pay debts incurred by the candidate during the campaign); *New York Advisory Opinion 98-12* (judge may attend an inaugural ball for a mayor where any proceeds will go to a charitable organization and the event is not a political gathering); *South Carolina Advisory Opinion 2-1995* (judge may attend inaugural ball if any fee paid to attend covers only the cost and will not be retained by any political party). *Cf.*, *Arkansas Advisory Opinion 92-5* (judges who hold offices filled by election may purchase tickets to and attend an inaugural ball for the President regardless whether the ball is considered a political gathering and regardless whether the admission charge is used to defray the costs of the event, is given to a charitable organization, or is used to support Democratic Party activities). The Colorado advisory committee cautioned that, even if a judge may attend an inaugural event for the governor, the judge may not engage in fundraising to pay for attendance, should not use his or her attendance as an opportunity to seek elevation to a higher bench, should attend as any member of the public without being seated on the dais or in any position that suggests a particular allegiance with the governor, and should be identified to the extent possible by name without reference to the judicial title. *Colorado Advisory Opinion 2006-10*. 



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