

*Key Issues in
Judicial Ethics*

**POLITICAL ACTIVITY BY MEMBERS
OF A JUDGE'S FAMILY.**

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INTRODUCTION

It has been suggested that there is "an inevitable public belief" that the publicly stated views of a judge's politically active spouse "would or must implicate the fundamental thinking of the judge and the court represented by that judge." *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976). Consistent with the right to free speech contained in the First Amendment, however, the code of judicial conduct does not and probably could not prohibit members of a judge's family from engaging in independent political activity. Therefore, judges have never been required to compel family members to shun political activity. They have been, however, required to encourage family members to do so.

The 1972 American Bar Association Model Code of Judicial Conduct provided, in Canon 7B(1)(a):

A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election should encourage members of his family to adhere to the same standards of political conduct that apply to him.

The reporter for the ABA committee that drafted the 1972 model code noted that the committee had "considered setting mandatory political conduct standards for members of the candidate's family but rejected the idea because of lack of a means of enforcement." Thode, *Reporter's Notes to [1972] Code of Judicial Conduct*, at 98 (ABA 1973). The "standards of political conduct" that applied to judges under the 1972 model code included prohibitions on acting as a leader or holding an office in a political organization, making speeches for a political organization or candidate, publicly endorsing a candidate for political office, attending political gatherings, and running for non-judicial office.

- A judge should not have given a check to the campaign manager for the Democratic candidate for Secretary of State and stated, "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 was publicly reprimanded (*In the Matter of Sallee*, 579 N.E.2d 75 (Indiana 1991)).

- "Although a candidate's spouse as a matter of legal right can hold an office in a political organization and can make speeches for other candidates for political office, the candidate has the duty to try to dissuade his spouse from doing so" (Thode, *Reporter's Notes to [1972] Code of Judicial Conduct*, at 98 (ABA 1973)).

The revised model code, adopted by the ABA in 1990, eliminates even the duty to dissuade, except with respect to a judicial candidate's own campaign. Canon 5A(3)(a) provides:

A candidate for judicial office shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate.

The change reflects "awareness that the families of judges and judicial candidates are composed of individuals with independent lives, interests and rights, and that any requirement that a judge or judicial candidate seek to influence or control the behavior of those individuals must be narrowly tailored." Milord, *The Development of the [1990] ABA Judicial Code*, at 49 (1992). The "autonomy of the judge's spouse should simply be accepted as an understood premise of modern life, and the public can accept the political neutrality of a judge despite the political involvement of the judge's spouse." *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976). However, "an implicit burden" always rests on the judge "to be vigilant in detecting possible impropriety or the likelihood of public appearance thereof." *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976).

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 (*Indiana Advisory Opinion* 2-93).

As discussed below, nothing in the code of judicial conduct in any state prevents members of a judge's family from running for political office, supporting others' candidacy for political office, or

being involved publicly in other political activities—as long as they are careful not to suggest their activities reflect the judge's convictions as well. Many judicial family members do refrain from such activities and other community involvement out of concern that their activities may hurt a judge's re-election chances. Those restrictions, however, are self-imposed and are not required by the code of judicial conduct.

This paper discusses the limits a judge is required to encourage family members to follow when participating in a judge's campaign. In addition, it covers the rules regarding a judge working for a family member's campaign, allowing the judge's home to be used in the campaign, references to the judge in campaign literature, the judge accompanying his or her spouse to campaign events, and the judge making contributions to a family member's campaign. The paper outlines ethical considerations for family members when they are active on behalf of a candidate for public office, for example, whether the judge's home can be used for campaign activities, whether campaign signs can be erected on the lawn, whether a judge may escort the judge's spouse to campaign events. Finally, issues such as a family member joining and holding office in a political organization and a judge escorting the judge's spouse to political events are discussed.

FAMILY MEMBERS PARTICIPATING IN A JUDGE'S CAMPAIGN

A judge who runs for office or retention in office is required to encourage members of the judge's family "to adhere to the same standards of political conduct in support of the candidate as apply to the candidate." Therefore, a judge is required to encourage members or his or her family, in general, to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary" (Canon 5A(3)(a)) and to refrain from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office" (Canon 5A(3)(d)(i)); making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court" (Canon 5A(3)(d)(ii)); "knowingly misrepresent[ing] the identity, qualifications, present position or other fact concerning the candidate or an opponent" (Canon 5A(3)(d)(iii)); "personally solicit[ing] or accept[ing] campaign contributions" (Canon 5C(2)); and "personally soliciting publicly stated support" (Canon 5C(2)).

- A judicial candidate's campaign committee may not be composed solely of the judicial candidate's spouse (*Georgia Advisory Opinion* 163 (1992)).
- A judicial candidate may not appoint the candidate's father-in-law as campaign treasurer (*Michigan Advisory Opinion* JI-90 (1994)).
- The spouse of a judge who is a candidate for retention in office may serve as the judge's campaign committee treasurer, but may not solicit campaign contributions (*Pennsylvania Informal Advisory Opinion* 99-2-16).
- A judge's spouse may not send out letters to solicit funds for the judge's campaign and may not serve on the judge's campaign committee (*South Carolina Advisory Opinion* 26).

A JUDGE PARTICIPATING IN A FAMILY MEMBER'S CAMPAIGN

Most state codes of judicial conduct, like the model code, prohibit a judge from publicly endorsing another candidate for public office. A judge's kinship to another candidate is not "a sufficient reason for removing the undesirability of such campaign activity," *Alabama Advisory Opinion 82-142*. The restriction applies whether the family member is running for a judicial or a non-judicial office. (Some states, like the model code, have a limited exception that allows a judge only while a candidate to publicly endorse "other candidates for the same judicial office.")

Thus, a judge is prohibited from soliciting votes, funds, and other support for a family member through speeches, handing out campaign literature, or personal contacts.

- A judge may not give speeches on behalf of a relative who is a candidate for non-judicial office (*Alabama Advisory Opinion 82-142*; *Michigan Advisory Opinion JI-30* (1990); *Ohio Advisory Opinion 2001-1*).
- A judge may not solicit funds or support for a spouse's campaign for judicial office through personal political appearances or personal contacts by telephone or through the media (*Louisiana Advisory Opinion 52* (1981)).
- A judge may not hand out a family member's campaign literature (*Alabama Advisory Opinion 82-142*; *Michigan Advisory Opinion JI-30* (1990)).
- A judge should not have contacted attorneys to seek help for his son's candidacy for county court judge or asked an individual why he was backing the son's opponent. The judge was reprimanded for this and other misconduct (*Inquiry Concerning Turner*, 573 So. 2d 1 (Florida 1990)).
- A judge may not inform friends of a spouse's candidacy even if the judge does not solicit votes or support. (*Florida Advisory Opinion 87-22*).

- A judge may not solicit votes for a non-judicial candidate to whom the judge is related (*Michigan Advisory Opinion JI-30* (1990)).
- A judge may not solicit persons to display campaign signs in their yards, erect those signs, or hand out campaign signs or posters (*Michigan Advisory Opinion JI-30* (1990); *West Virginia Advisory Opinion* (February 25, 1994)).
- A judge whose wife was campaigning for judicial office should not have encouraged several people to vote for his wife. The judge was publicly censured for this and other misconduct (*In the Matter of Codispoti*, 438 S.E.2d 549 (West Virginia 1993)).
- *But see New Mexico Advisory Opinion 96-2* (a judge may assist the judge's spouse in a door-to-door campaign as long as the judge does so as a private person and does not do so while acting in an official capacity during the judge's normal business hours; the judge may solicit signatures for the spouse's nominating petition).

A judge is also prohibited from displaying support for a relative's candidacy by, for example, displaying campaign signs or driving a car with the candidate's bumper sticker and from engaging in behind-the-scenes activities in support of a relative's campaign.

- A judge may not do "leg work" for the judge's spouse's campaign (*Florida Advisory Opinion 87-22*).
- A judge whose wife was running for clerk of the county court should not have delivered campaign signs, erected signs along a highway, and attached political disclaimers to signs. The judge was publicly reprimanded (*In re McGregor*, 614 So. 2d 1089 (Florida 1993)).
- A judge may not drive a car that displays a spouse's campaign sticker even if the car is normally driven by the spouse and even if the title for the car is in the spouse's name (*Florida Advisory Opinion 87-22*; *Maine Advisory Opinion 94-3*; *Michigan Advisory Opinion JI-*

30 (1990); *West Virginia Advisory Opinion* (February 25, 1994)).

- A judge may not wear the judge's spouse campaign button in public or in chambers (*Ohio Advisory Opinion 2001-1*).
- A judge may not compile voter or contribution lists (*Maine Advisory Opinion 94-3*).
- A judge may not stuff envelopes for a relative's campaign (*Maine Advisory Opinion 94-3*).
- A judge may not drive the judge's spouse to events (*Maine Advisory Opinion 94-3*).
- A judge may not sign letters (*Michigan Advisory Opinion JI-30* (1990)).
- A judge may not act or appear to act as a political advisor for a family member's campaign (*New Hampshire Advisory Opinion 78-3*; *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976); *New York Advisory Opinion 92-129*).
- A judge may not maintain a relative's campaign sign in chambers, in plain view (*Ohio Advisory Opinion 2001-1*; *Oregon Advisory Opinion 82-2*).
- A judge may not perform volunteer manual labor for the judge's spouse's campaign (*West Virginia Advisory Opinion* (February 25, 1994)).
- A judge may not deliver or pick up campaign materials from printers or commercial advertisers (*West Virginia Advisory Opinion* (February 25, 1994)).
- *But see Michigan Advisory Opinion JI-30* (1990) (a judge may perform behind-the-scenes campaign activities for relatives, as well as non-relatives, including stuffing envelopes, participating in voter registration drives, placing ads, writing speeches, and building yard signs).

Use of the judge's home

As long as the judge does not attend or participate, a judge's spouse may use the home they jointly own as headquarters for the spouse's campaign and to hold a fund-raiser, campaign strategy meeting, or constituent event. *Florida Advisory Opinion 87-22*; *Maine Advisory Opinion 94-3*; *Washington Advisory Opinion 86-8*; *U.S. Advisory Opinion 53* (1998). *But see Michigan Advisory Opinion JI-30* (1990) (campaign events for a candidate-spouse may not be held at a judge's home or at other property owned by a judge even when it is also the property of the candidate); *New Hampshire Advisory Opinion 78-3* (consideration should always be given to not using the marital home for political or fund-raising meetings).

To disassociate himself or herself from any political event held in the judge's home, the judge:

- should not be identified on invitations to the event (*Washington Advisory Opinion 86-8*),
- should not assist in any preparations for the event (*Washington Advisory Opinion 86-8*),
- should not serve as host by greeting guests, mingling with the visitors, pouring coffee, or serving cake (*Florida Advisory Opinion 87-22*; *Maine Advisory Opinion 94-3*), and
- should be in another part of the house separated from the event or leave the house when the event is scheduled (*Maine Advisory Opinion 94-3*).

The Ohio advisory committee stated that a judge whose spouse is a candidate for elected public or judicial office may allow campaign signs promoting the spouse's candidacy to be placed on real estate jointly owned by the judge and judge's spouse. *Ohio Advisory Opinion 2000-1*. The committee explained: "Placement of a spouse's campaign sign on property co-owned by a judge and spouse does not constitute a 'public endorsement' by the judge"

Campaign literature

In general, factual information about a relative-candidate's "background or family should not tie the candidacy to the prestige of the judge's office." *Michigan Advisory Opinion JI-30* (1990). However, there is a divergence of advice on whether a judge may be referred to in a family member's campaign literature.

- In some states, a family member's campaign materials cannot use the relative-judge's picture (*Alabama Advisory Opinion 82-143*) or name and title (*Texas Advisory Opinion 180* (1995)).
- In some states, a candidate's judge-relative may be included in a family picture reproduced in campaign literature if the judge-relative is not identified or referred to by name or office (*New York Advisory Opinion 96-7*).
- In some states, a family member's campaign materials may use the judge's name or include the judge in a family photograph but may not identify the judge as a judge (*Kansas Advisory Opinion JE-3*; *Florida Advisory Opinion 90-7*; *Maine Advisory Opinion 94-3*; *New Mexico Advisory Opinion 96-2*; *West Virginia Advisory Opinion* (June 19, 1991). See also *Florida Advisory Opinion 92-40* (a photograph of a judge, in robes, administering the oath of office to a candidate taking local government office may not be used in campaign literature even if the judge is related to the candidate).
- In some states, a family member's campaign literature may identify the candidate's relative as a judge as long as the judge's office or title are not used or his or her judicial duties discussed, the occupations of other family members are also identified, and the judge is not pictured in robes (*Massachusetts Advisory Opinion 99-16*; *New Mexico Advisory Opinion 89-2*; *Ohio Advisory Opinion 2001-1*).

The Massachusetts advisory committee stated that, if a judge participates in an interview related to a relative's campaign, the judge should keep the interview brief, limit his or her remarks to personal

matters about marriage and family, not allow the interview to focus on judicial duties, and avoid weighing in on issues being raised in the campaign or why the voters should vote for the judge's spouse. *Massachusetts Advisory Opinion 99-16*. If the interviewer asks a question that the judge should not answer, the judge should change the subject or cease participation no matter how awkward. In the interview, the judge may be identified as a judge, but should not allow the interviewer to use the judge's title as a manner of address, should not appear in judicial robes, and should not permit interviews to be conducted at the courthouse.

Accompanying spouse to campaign events

Whether a judge can escort his or her spouse to political gatherings when the spouse is a candidate varies from state to state, depending, at least in part, on whether the judge is prohibited by the code from attending political events.

- In some states, a judge may accompany a candidate-spouse to political events, including fund-raisers (*Illinois Advisory Opinion 96-12*; *Kansas Advisory Opinion JE-62* (1996); *Michigan Advisory Opinion JI-30* (1990)).
- In some states, a judge may accompany a candidate-spouse to political events other than fund-raisers (*Louisiana Advisory Opinion 52* (1981) (may attend public events or civic or political gatherings); *New Mexico Advisory Opinion 89-2* (may attend non-fund-raising political functions); *Texas Advisory Opinion 180* (1995) (may attend campaign functions); *West Virginia Advisory Opinion* (February 25, 1994) (may attend campaign rallies and social functions)). See *In the Matter of Rath, Determination* (New York State Commission on Judicial Conduct February 21, 1989) (admonition for, among other misconduct, attending two fund-raisers for his wife's campaign).
- In some jurisdictions, a judge may not accompany a candidate-spouse to any political event (*Florida Advisory Opinion 90-7*; *Maine Advisory Opinion 94-3*; *Maryland Advisory*

Opinion 69 (1979); *Massachusetts Advisory Opinion 99-16*; *New Hampshire Advisory Opinion 78-3*; *Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976); *New York Advisory Opinion 89-48*; *New York Advisory Opinion 92-129*; *Oregon Advisory Opinion 82-2*; *Utah Informal Advisory Opinion 89-15*; *U.S. Compendium of Selected Opinions*, §§ 7.1(a); 7.1(b); 7.2(a); 7.3(b) (1995)).

Even those advisory committees that allow a judge to escort his or her spouse to campaign events note that a judge should take certain precautions when attending such gatherings:

- the judge's appearance must be discreet and low-profile (*West Virginia Advisory Opinion* (June 19, 1991)),
- the judge may not be introduced by title (*Kansas Advisory Opinion JE-62* (1996); *Louisiana Advisory Opinion 52* (1981); *New Mexico Advisory Opinion 89-2*),
- the judge may not make comments that concern the candidate's position relating to the judiciary (*New Mexico Advisory Opinion 89-2*),
- the judge may not solicit votes or financial support for the spouse (*Louisiana Advisory Opinion 52* (1981)),
- the judge may not speak on behalf of or endorse the spouse's candidacy (*Louisiana Advisory Opinion 52* (1981); *Texas Advisory Opinion 180* (1995)), and
- any views expressed by the judge must comport with the code of judicial conduct (*New Mexico Advisory Opinion 89-2*).

For those states that prohibit a judge from escorting his or her spouse to a political event, a political event is defined as any event "the public fairly would perceive as political in nature." *New York Advisory Opinion 89-48*. The Massachusetts committee stated that prohibited events are those "that are partisan in nature, that is, designed to enhance the electability of, pay homage to, to rally support behind, or to raise funds for, a particular

candidate," or to show solidarity against the opposing party. *Massachusetts Advisory Opinion 99-16*. The Florida committee cautioned that a candidate-spouse should not explain the judge-spouse's absence from campaign functions by referring to the restrictions in the code of judicial conduct because such an explanation would reveal the judge-spouse's status and "thus indirectly achiev[e] that which cannot be done directly." *Florida Advisory Opinion 90-7*.

Even those advisory committees that prohibit a judge from escorting his or her candidate-spouse to any political event allow a judge to escort a candidate-spouse to events that are essentially civic, social, religious, community, cultural, or recreational even if the spouse engages in some personal campaigning during the events if the judge would have attended the event if the spouse were not a candidate. *Maine Advisory Opinion 94-3*; *Massachusetts Advisory Opinion 99-16*; *New York Advisory Opinion 89-48*. The Massachusetts judicial ethics committee stated that a judge whose spouse was running for office could, for example, attend a forum sponsored by Common Cause at which four of the candidates would speak because the event was not designed to garner support for one candidate but to inform the electorate of the positions of all the candidates. *Massachusetts Advisory Opinion 99-16*.

However, when attending a non-partisan event, the judge should be careful not to be introduced by title or to participate in any activity that could be seen as campaigning on behalf of the spouse such as speaking, carrying a sign, passing out literature, or encouraging people to vote for the candidate. For example, while a judge may attend a local parade or community fair, the judge should not march beside the judge's spouse under a campaign banner or work the crowd with the spouse, *Maine Advisory Opinion 94-3*. If the line is difficult to draw, the judge should err on the side of caution and avoid any activity that could be construed as campaigning on behalf of the spouse. *Maine Advisory Opinion 94-3*.

Campaign contributions

Whether a judge can make a financial contribution to the campaign of a spouse or other family member varies depending on each state's rule regarding political contributions by judges. In Michigan,

erence to the judge or the judge's office and may not be undertaken to do indirectly for the judge that which is prohibited. *Louisiana Advisory Opinion 134* (1996). Family members should take "every precaution to insulate the judge from direct or indirect involvement in such activity" (*Kansas Advisory Opinion JE-37*) and to ensure that the family member's participation in the campaign is not misunderstood as "surrogate judicial participation." *Maryland Advisory Opinion 108* (1986).

Use of the judge's home

In 1934, the ABA Committee on Professional Ethics advised that, "[i]n principle, a judge should not approve a practice on the part of his wife in giving political teas at their home to advance the candidacy of partisan nominees for political office." *ABA Advisory Opinion 113* (1934). Similarly, in an advisory opinion, the New Hampshire Supreme Court stated that, when a judge's spouse participates in the political campaigns of others, consideration should always be given to not using the marital home for political or fund-raising meetings. *New Hampshire Advisory Opinion 78-3*. The Kansas advisory committee stated that a judge may not permit a spouse to host a "Come over and meet the Governor" party in their home, owned by them in joint tenancy, in an election year where the governor was an announced candidate for re-election even if there would be no fund-raising and the judge would take no part in the event. *Kansas Advisory Opinion JE-33* (1990).

However, the West Virginia judicial ethics committee stated that the spouse of a judge could have political fund-raisers in the home in which the judge and the spouse reside as long as the judge was not involved in raising funds or endorsing any candidate. *West Virginia Advisory Opinion* (August 28, 1995). Moreover, the Massachusetts Supreme Judicial Court found no misconduct when a judge attended meetings held by his wife in their home with a gubernatorial candidate and supporters. *In the Matter of Troy*, 306 N.E.2d 203 (1973). Even though the impression was created that the judge supported the campaign, the court found no misconduct where it was not proved that he took any active part in the campaign or fund-raising.

Although not prohibiting the use of a judge's home for political events hosted by the judge's spouse, the advisory committee for federal judges has stated that a "judge must not in any manner encourage, assist or concur" in the events. *U.S. Compendium of Selected Opinions*, §7.3(d) (2001). The committee stated that a judge "must take all reasonable measures to dissociate himself or herself from [the events], including steps to avoid being seen by those in attendance during the events, which if necessary would include leaving the premises for the duration of the events." Similarly, the Wisconsin judicial ethics committee stated that if a judge's spouse hosts political fund-raising activities in their home, the judge should be careful not to be seen by those attending the event. *Wisconsin Advisory Opinion 97-2*. However, the committee stated that a judge is not required to leave the house unless its layout is such that the judge would probably be seen by some of those in attendance. Further, the committee advised that the judge could assist his or her spouse by performing household cleaning tasks, caring for their children, preparing food, and replenishing food and beverages as long as those activities are not visible to the fund-raising participants. See *1992 California Commission on Judicial Performance Annual Report*, at 16 (the commission sent a judge an advisory letter regarding an invitation that stated a political meeting would be held at the home of the judge and the judge's spouse).

Campaign signs

Several judicial ethics committees have advised that a judge should not permit a sign endorsing a political candidate to be erected on property jointly owned by the judge and the judge's spouse as this implies an endorsement by both house-holders. *New York Advisory Opinion 96-112*; *Maine Advisory Opinion 94-3*. The committee for federal judges suggested a judge try to dissuade the judge's spouse from posting a political candidate's sign at the marital home. *U.S. Compendium of Selected Opinions*, §7.3(f) (2001). However, recognizing that a judge might fail in that attempt, the committee advised a judge to "make reasonable efforts to dissociate himself or herself from the sign (e.g., by posting a dis-

for example, where a judge is permitted to make contributions to a political party at any time, the Michigan advisory committee stated that a judge may personally contribute to a spouse's campaign. *Michigan Advisory Opinion JI-30* (1990). Canon 7A(1)(d) of the North Carolina code expressly creates an exception to the prohibition on a judge making financial contributions to any candidate for public office that allows a judge to contribute to a candidate who is a member of the judge's family.

In contrast, in Maine and New York, where a judge is prohibited from all political activity except while a candidate for office, a judge whose spouse is campaigning for political office cannot contribute to the spouse's campaign. *Maine Advisory Opinion 94-3*; *New York Advisory Opinion 92-129*. The Maine advisory committee stated that a judge's spouse should not pay for expenses of his or her campaign out of a joint bank account that includes funds contributed by the judge and over which the judge shares control. *Maine Advisory Opinion 94-3*. But see *Florida Advisory Opinion 87-22* (a candidate-spouse may withdraw funds from a joint account and place it into a campaign account).

According to several authorities, a judge's spouse may not accept campaign contributions from attorneys or litigants who are appearing or may appear before the judge.

- A judge's spouse may not accept political contributions from attorneys or litigants whose cases are, or are likely to be, before the judge (*New Hampshire Advisory Opinion 78-3*).
- Contributions to a judge's spouse's campaign from attorneys or litigants who are appearing or may appear before the judge "would be particularly offensive from an ethical standpoint" (*Application of Gaulkin*, 351 A.2d 740 (New Jersey 1976)).
- A judge whose family member is a candidate for elected office must disqualify from cases in which parties or counsel are known by the judge to be contributors to the family member's campaign (*U.S. Compendium of Selected Opinions*, §7.3(b) (2001)).

WHEN A FAMILY MEMBER IS INVOLVED IN ANOTHER CANDIDATE'S CAMPAIGN

Members of a judge's family may publicly and actively support another individual's campaign for public office.

- A member of a judge's family may display election signs for a political candidate and have a campaign party at his or her law office (*Florida Advisory Opinion 94-21*).
- A member of a judge's family may serve as campaign manager or on a campaign committee for a political candidate (*Kansas Advisory Opinion JE-37*; *Kansas Advisory Opinion JE-61* (1996); *New York Advisory Opinion 91-85*; *New York Advisory Opinion 95-22*).
- A judge's spouse or a member of the judge's immediate family may actively work in political campaigns (*Louisiana Advisory Opinion 134* (1996)).
- A member of a judge's family may work in a campaign for a political candidate (*Louisiana Advisory Opinion 154* (1996); *Maryland Advisory Opinion 108* (1986)).
- A member of a judge's family may endorse a candidate for political office (*Louisiana Advisory Opinion 154* (1996); *Maryland Advisory Opinion 108* (1986)).
- A member of a judge's family may solicit funds for a political candidate (*Louisiana Advisory Opinion 154* (1996); *Maryland Advisory Opinion 108* (1986)).
- A member of a judge's family may hand out campaign materials for a political candidate (*Texas Advisory Opinion 170* (1994)).
- A member of a judge's family may recommend to people that they vote for a political candidate (*Texas Advisory Opinion 170* (1994)).

However, the family member's participation in political campaigns must be conducted without ref-

claimer, listing spouse's name only on the sign, or placing the sign on the spouse's automobile which judge would not drive)."

Contributions

A judge who is prohibited from making political contributions should ensure that the judge's spouse does not use the couple's joint funds to make a contribution to a political campaign. In *Application of Gaulkin*, 351 A.2d 740 (1976), the New Jersey Supreme Court stated that the use of any portion of the marital assets suggests at least indirect involvement of the judge. A spouse's contribution of \$1,000 to a gubernatorial candidate from a joint bank account was one of the grounds for a judge's removal in *In the Matter of Briggs*, 595 S.W.2d 270 (Missouri 1980). Noting the "closely woven business and political aspects" of the judge and his wife, the Supreme Court of Missouri stated that the Commission on Retirement, Removal and Discipline "simply did not believe any of the contributions to have been the independent act of Mrs. Briggs or regard as credible Briggs' statements that he was unaware of his wife's check to [the gubernatorial candidate] on this account."

However, a judge's spouse may make financial contributions to a candidate for political office from the spouse's separate funds. *Florida Advisory Opinion 84-19*; *Kansas Advisory Opinion JE-13*; *Nebraska Advisory Opinion 96-6*; *New Hampshire Advisory Opinion 78-3*; *New York Advisory Opinion 90-88*; *New York Advisory Opinion 95-138*; *New York Advisory Opinion 96-2*; *West Virginia Advisory Opinion* (June 19, 1991); *West Virginia Advisory Opinion* (August 28, 1995); *U.S. Compendium of Selected Opinions*, §7.3(a) (2001). See also *Louisiana Advisory Opinion 134* (1996) (a judge's spouse or a member of the judge's immediate family may make contributions to political campaigns provided the contribution is made without reference to the judge or the judge's office and is not made to do indirectly what the judge cannot do directly); *Pennsylvania Informal Advisory Opinion 99-6-1* (a judge should not encourage his wife to make a campaign contribution, but is not required to discourage her from doing so; if the wife makes a contribution, the judge's name should not appear on the check).

However, the judge and his or her spouse must take all reasonable efforts to ensure that the contribution is perceived as that of the spouse and not the judge. *U.S. Compendium of Selected Opinions*, §7.3(a) (2001); *West Virginia Advisory Opinion* (August 28, 1995). The judge must play no role in the decision to contribute. (*Kansas Advisory Opinion JE-13*; *U.S. Compendium of Selected Opinions*, §7.3(a) (2001). If the spouse decides to make a contribution, there must be no reference to the judge's name and position. *Florida Advisory Opinion 84-19*).

If a spouse has independent income and the contribution is made from a checking account in which the judge has no interest, the contribution would not constitute a violation by the judge. *New York Advisory Opinion 98-22*. According to the New York advisory committee, if a judge's spouse has no independent source of income, the spouse may make political contributions from funds set aside for the spouse's sole discretionary use but should not use a check from a joint checking account even if the judge's name is deleted from the check. *New York Advisory Opinion 98-111*.

OTHER POLITICAL CONDUCT

Membership and holding office in a political organization

A member of a judge's family may be a member or officer of a political party or organization.

- A judge's wife may be a member of the local Republican Women's Club and the state Federation of Republican Women (*Arizona Advisory Opinion 76-2*).
- A judge's spouse may hold office in a political party's central committee (*Indiana Advisory Opinion 2-93*).
- A judge's family member may be a member in or officer of a political party (*New Mexico Advisory Opinion 90-5*).
- A judge's family member may be a committee member of a political party (*New York Advisory Opinion 94-60*; *West Virginia Advisory Opinion* (November 8, 1993)).
- A member of a judge's family may be a member of the chair's club of a county political organization (*New York Advisory Opinion 90-88*).
- A judge's spouse may be appointed to fill the vacancy on a political party's county committee created by the judge's election (*New York Advisory Opinion 92-65*).
- *But see Arizona Advisory Opinion 76-2* (while a judge's wife could remain a member of political organizations, the judge should encourage her to resign from all offices in those organizations; the Arizona code has since been revised to eliminate the duty to encourage a family member to refrain from political activity); *Georgia Advisory Opinion 27* (1978) (the spouse of a candidate for judicial office should not serve on a county political committee); *New Mexico Advisory Opinion 90-5* (a judge should encourage his or her spouse not to serve as an officer of a

political party; the New Mexico code has since been revised to eliminate the duty to encourage a family member to refrain from political activity).

Escorting spouse to political events

In general, a judge may not escort the judge's spouse to political gatherings even if the judge is not introduced at the events and does not participate in the program. Although the code does not define "political gatherings," the term has been applied to functions, both fund-raisers and non-fund-raisers, sponsored by political parties or other political organizations, such as committees, caucuses, and reelection campaign committees. (However, a judge whose spouse is an elected official may attend purely ceremonial, governmental functions with the judge's spouse. *U.S. Compendium of Selected Opinions*, §7.2(a) (2001).

The New Jersey Supreme Court noted its sympathy for a judge who could not attend a political event that was important to the judge's spouse. However, stating "Judges must make many sacrifices, sometimes most substantial, in order to maintain the public's confidence in the judiciary," the court concluded:

We are certain that a judge who attends any political event damages the most valuable interests of the judiciary, damages the public's confidence in the judiciary, damages the public's confidence in its independence, and damages the public's confidence in the judiciary's total separation from politics (*Statement by Chief Justice on Behalf of the New Jersey Supreme Court Concerning Judge Alexander D. Lehrer and Judge Sybil R. Moses* (January 29, 1990)).

- A judge may not escort the judge's spouse to a political gathering of any kind (*New Hampshire Advisory Opinion 78-3*).
- Judges should not have attended the inaugural ball for the state's governor, which was also a fund-raiser, with their spouses even if the spouses were active fund-raisers for the governor's campaign. The judges were publicly reprimanded (*Statement by Chief Justice on Behalf of the New Jersey Supreme Court Concerning*

Judge Alexander D. Lehrer and Judge Sybil R. Moses (January 29, 1990)).

- A judge may not accompany the judge's spouse to a state political party convention, to which the spouse has been elected as a delegate (*New York Advisory Opinion 96-73/96-80; South Carolina Advisory Opinion 4-1982*).
- A judge may not accompany his or her spouse to a dinner honoring the President sponsored by the Democratic National Committee (*New York Advisory Opinion 96-73/96-80*).
- A judge should not have attended fund-raisers for political candidates as his wife's escort. The judge was admonished for this and other misconduct (*In the Matter of Rath, Determination (New York State Commission on Judicial Conduct February 21, 1989)*).
- A judge may not accompany the judge's spouse to a reception and dinner to promote the governor's re-election (*Pennsylvania Informal Advisory Opinion 8 (1974)*).
- *But see Arizona Advisory Opinion 76-2* (a judge may attend political functions with the judge's spouse, provided the spouse is only a member of the organization sponsoring the function and not attending as an officer; the judge may be recognized if public officials are recognized at the function); *Michigan Advisory Opinion JI-47 (1992)* (a judge may sit on the dais with the judge's spouse when the spouse is serving as co-chair of a political party social event).

CODE VARIATIONS

- As of April 2001, Alaska, Arizona, Arkansas, Florida, Indiana, Kansas, Kentucky, Louisiana, Minnesota, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming have changed their codes of judicial conduct to add the "in support of the candidate" qualification from the 1990 model code.
- Commentary to the California code states that "[a]lthough members of the judge's family are not subject to the provisions of this Code, a judge shall not avoid compliance with this Code by making contributions through a spouse or other family member."
- Commentary to the Delaware code of judicial conduct contains a specific rule regarding political contributions by a judge's spouse: "Political contributions by the judge's spouse must result from the independent choice of the spouse and checks by which such contributions are made shall not include the name of the judge."
- The North Carolina code of judicial conduct states that a judge's spouse or any other adult member of the judge's family is not prohibited "from engaging in political activity provided the spouse or other family member acts in accordance with his or her individual convictions, on his or her own initiative, and not as alter ego of the judge himself."

SUMMARY

A judge who runs for office or retention in office is required to "encourage" members of the judge's family "to adhere to the same standards of political conduct in support of the candidate as apply to the candidate." That duty read together with the restrictions on judge's campaigning requires a judge to encourage members or his or her family to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary" and to refrain from making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office," making "statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court," "knowingly misrepresent[ing] the identity, qualifications, present position or other fact concerning the candidate or an opponent," "personally solicit[ing] or accept[ing] campaign contributions," or "personally solicit[ing] publicly stated support."

Most state codes of judicial conduct prohibit a judge from publicly endorsing a candidate for public office, including judicial office, even if the candidate is a member of the judge's family. Therefore, a judge is prohibited from soliciting votes, funds, or other support for a family member who is running for public office. A judge cannot endorse a family member's candidacy by giving speeches, making personal political appearances or personal contacts by telephone or through the media, driving a car that displays the relative's campaign bumper sticker, handing out campaign literature, signing letters, acting or appearing to act as a political advisor, soliciting persons to display campaign signs in their yards, handing out campaign signs or posters, or maintaining a relative's campaign sign in chambers in plain view. Furthermore, a judge cannot endorse a family member's candidacy by behind-the-scenes campaign activities such as compiling voter or contribution lists, stuffing envelopes, driving the candidate to events, performing volunteer manual labor, delivering or picking up campaign materials from printers or commercial advertisers, and erecting signs.

In most states, a candidate-spouse may use a home jointly owned or occupied with a judge for campaign events such as fund-raisers or campaign strategy meetings. However, the judge should not attend or participate, and to dissociate himself or herself from the event, the judge should not be identified on invitations to the event; should not assist in any preparations; and should be in another part of the house or leave the house.

Factual information about a relative-candidate's background or family should not tie the candidacy to the judge's office. There is a divergence of advice on whether a judge may be referred to in a family member's campaign literature. In some states, a family member's campaign materials cannot use the judge-relative's picture or name and title. In some states, a candidate's judge-relative may be included in a family picture reproduced in campaign literature if the spouse is not identified or referred to by name or office. In some states, a family member's campaign materials may use the judge's name or include the judge in a family photograph but may not identify the judge as a judge. In some states, a family member's campaign literature may identify the candidate's relative as a judge as long as the judge's office or title are not used or his or her judicial duties discussed, the occupations of other family members are also identified, and the judge is not pictured in robes.

Whether a judge can escort his or her spouse to political gatherings when the spouse is a candidate varies from state to state, depending, at least in part, on whether the judge is prohibited by the code from attending political events. In some states, a judge may accompany a candidate-spouse to political events, including fund-raisers. In some states, a judge may accompany a candidate-spouse to political events such as campaign rallies and social functions but not fund-raisers. In some jurisdictions, a judge may not accompany a candidate-spouse to any political event. Even those states that allow a judge to escort his or her spouse to campaign events note that the judge's appearance must be discreet and low-profile and the judge may not be introduced by title or make comments on behalf of the spouse's candidacy. Furthermore, even those states that prohibit a judge from escorting his or her candidate-spouse to any political event allow a judge to escort a candi-

date-spouse to civic, social, religious, community, cultural, or recreational events even if the spouse engages in some campaigning as long as the judge would have attended if the spouse were not a candidate.

Whether a judge can make a financial contribution to the campaign of a spouse or other family member varies depending on each state's rule regarding political contributions by judges.

Members of a judge's family may participate in another individual's campaign for public office as long as the relative takes every precaution to insulate the judge from involvement and to ensure that the family member's participation is not misunderstood as surrogate judicial participation. A judge's spouse can probably use their joint home to host political events, but the judge should not encourage, assist, or concur in the events and should take all reasonable measures to dissociate himself or herself from the events. A judge should not permit a sign endorsing a political candidate to be erected on property jointly owned by the judge and the judge's spouse as this implies an endorsement by both house-holders.

If a judge is prohibited from making political contributions, the judge's spouse should not use the couple's joint funds to make a contribution to a political campaign but may make a contributions from the spouse's separate funds. To ensure that the contribution is perceived as that of the spouse and not the judge, the judge must play no role in the decision to contribute and there must be no reference to the judge's name and position.

A judge's family member may be a member or officer of a political party or organization, such as a local political party's women's club, a political party committee, or a county political organization. A judge may not accompany the judge's spouse to political events such as fund-raisers for political candidates, the governor's inaugural ball if it is a fundraiser, a state political party convention, a dinner honoring the president sponsored by the a national party committee, or a reception to promote the governor's re-election.