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Letter to the Editor

Judges Need Clear Rules on Family's Political Activity

by William H. Kaye

I read "When a Judge's Relative is a Political Candidate" [*Judicial Conduct Reporter*, vol 17, no. 3, fall 1995] with great personal interest. As a trial judge in a state that elects all its judges at all levels, I personally have been through the electoral process while a sitting judge, and have attempted to adhere to the somewhat nebulous rules as to what I—and my spouse—may/should and may/should not do politically.

In previous issues, AJS has addressed the hodgepodge of rulings from around the country relating to proscribed conduct of a judge when a spouse is involved in political activity other than as a candidate. As I recall, at least one judge was disciplined severely when his wife wrote a political contribution check out of a joint checking account she held with her husband, the judge. Apparently, this was because the money in the account was derived from the husband's salary as a judge, as the wife did not work outside the home. Presumably, if she were financially self-sufficient, this would not have been a problem if the judge had diligently—though unsuccessfully—attempted to dissuade his wife from making this contribution.

The hair-splitting distinctions, in my view, make the whole process little more than sophistry passing as a code of conduct, and unfortunately denigrates the real need of the judiciary to maintain its independence from political considerations. In my view, judges and their families who rely at least in part on the income the judge derives from his or her position of public trust have a high responsibility not to erode public confidence in the judiciary by doing these neat little dances around serious ethical concerns.

I think the rules should state in no uncertain terms that judges must not engage in any political activity except in their own elections, and are subject to sanctions when their spouses fail to follow the same rules, unless the judge can demonstrate that he or she took specific affirmative steps to attempt to dissuade such activity, and what those steps were. Failing this, a judge can simply use a spouse as their alter ego to circumvent the rules.

While I do not wish to carry this analogy too far, it seems to me that a police officer married to and cohabiting with a heroin addict would have a difficult time maintaining employment as a police officer unless she would demonstrate that virtually every human effort had been expended to prevent this illegal activity from being perpetuated by the spouse. Obviously, political activity is not the equivalent of illegal activity, which is why the analogy is not entirely correct, but nonetheless the activity in each instance impinges the ability of the public servant from discharging his or her duties unfettered by the appearance of impropriety.

Unless a very strong statement is made in this regard, the serious purpose behind the rules prohibiting political activities by judges will not be served, and the rule proscribing this conduct is a charade.

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California, Ohio, Texas Adopt Code Changes

California

The California Supreme Court has made several changes to the code of judicial ethics it adopted in 1995. (A summary of the new California code was published in the fall 1995 issue of the *Judicial Conduct Reporter*.)

To the requirement that a judge provide information to disciplinary bodies when officially requested to do so, the amendments add permission to "provide information on behalf of a lawyer or a judge involved in disciplinary proceedings...."

The amendments add an exception to the prohibition on a judge commenting on a pending case that allows a judge to discuss "in legal education programs and materials, cases and issues pending in appellate courts." However, that exception "does not apply to cases over which the judge has presided or to comments or discussions that might interfere with a fair hearing of the case."

Unlike the 1990 American Bar Association Model Code of Judicial Conduct, the California code allows judges to endorse candidates for judicial office. The recent amendments added commentary that explains, "Such endorsements are permitted because judicial officers have a special obligation to uphold the integrity and impartiality of the judiciary and are in a unique position to know the qualifications necessary to serve as a competent judicial officer." Moreover, where the code as originally adopted stated that a "candidate for judicial office *should* comply with the provisions of Canon 5," the code as amended states that a "candidate for judicial office *shall* comply with the provisions of Canon 5" (emphasis added).

Ohio

The Ohio Supreme Court has adopted several changes to the canon of the Ohio code of judicial conduct governing a judge's campaign conduct, effective April 18, 1996. (A summary of the canon as originally adopted was published in the spring 1995 issue of the *Judicial Conduct Reporter*.)

Canon 7C(6) of the Ohio code imposes limitations on expenditures in judicial

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