

California Judges Association
OPINION NO. 49

(Issued: September 2000)

**ETHICAL CONSIDERATIONS REGARDING POLITICAL
ACTIVITIES OF A JUDGE'S FAMILY MEMBERS**

The Code of Judicial Ethics addresses only the conduct of judicial officers, and not anyone else. The era in which judges were held accountable for the activities of their family members¹, has long passed. Family members have independent political interests, business interests, and careers, and a judge cannot be held responsible for these activities. However, the actions of a family member may create an obligation for a judge to disclose or recuse in individual cases, and a judge needs to be sensitive to the fact that the independent activities of household members can give rise to inferences of unethical judicial conduct.

Family members' activities in politics, business, and careers are most likely to present ethical issues for judges. This opinion will focus on political activities of family members. This opinion supersedes all previous opinions, informal responses and Ethics Updates published by the CJA Ethics Committee on this subject.

Canon 5 of the Code of Judicial Ethics provides in relevant part:

Judges are entitled to entertain their personal views on political questions . . . They shall, however, avoid political activity that may create the appearance of political bias or impropriety. Judicial independence and impartiality shall dictate the conduct of judges . . . Judges. . . shall not . . . make speeches for a political organization or candidate for non-judicial office or publicly endorse or publicly oppose a candidate for non-judicial office.

Canon 2 provides in relevant part:

A judge . . . shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary . . . A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment, nor shall a judge convey or permit others to convey the impression that any individual is in a special position to influence the judge. A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others . . .

APPLICATIONS

- (1) Contributions to candidates.

¹ The published Terminology for the Code of Judicial Ethics defines a "member of the judge's family" as "a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship." The terms "member" or "family member" in this opinion are synonymous with "member of the judge's family" as defined in the Canons.

While a judge may contribute no more than five hundred dollars per year to a non-judicial candidate², others in the judge's family are free to contribute funds or other consideration to any candidate in any amount, subject to general federal and state limitations. In the case of a spouse, to avoid potential misconceptions concerning a contributing spouse's use of community funds, spouses making such contributions from a community property joint account often write on the check and accompanying paperwork that the contribution is from the spouse alone. In instances where community funds are used, some judges even ask their spouse to cross off the printed name of the judge on the check. However, these cosmetic precautions do not necessarily determine if an ethical violation occurs. *The issue is not the source of the money, or the name(s) on the check, but rather the source of the decision to make the contribution.* (Rothman, Section 11.29.) Obviously a judge should not use the family member's freedom to contribute as a device for the judge to channel funds to a candidate.

(2) Activities in support of a candidate.

As in the case of campaign contributions, a judge's family member is free to endorse a candidate for any office, notwithstanding the prohibition against a judge publicly endorsing a non-judicial candidate. A family member may walk precincts, participate in telephone polling, staff campaign headquarters, solicit voters, raise funds and participate in a myriad of campaign activities. When a family member endorses a non-judicial candidate, the judge should take steps to ensure that the judge's name and title are not used, and that the endorsement does not imply that the judge shares the family member's view.

Bumper stickers are problematic. If a family member is the primary user of a vehicle, the judge is not obligated to take any action concerning a bumper sticker supporting a non-judicial candidate. However, the judge should not drive the vehicle. If both regularly use a vehicle, the judge should not allow such a bumper sticker on the vehicle.

(3) Use of a judge's home for political events and displays.

A judge's family member has a right to be politically active. In the case of a spouse or domestic partner, that family member may have the right to use a community property or shared home as well. Whenever a judge's family member intends to use the family home for a non-judicial political fundraiser or meeting, the judge should review with the family member the judge's ethical constraints. The appearance that the judge is engaging in fundraising or endorsing the candidate should be strenuously avoided. If the family member nevertheless does choose to use the home, the judge's name should not be used in any invitation or other announcement of the event. The judge should not even be present at the event. The likelihood that the judge's attendance at such an event in the intimacy of his/her home outweighs the general rule stated in the Commentary to Canon 5, that a judge may attend political meetings. The prohibition against a judge attending the event does not apply if the family member is the candidate.

A judge should specifically discourage his/her family member from hosting an event in support of a candidate for an office closely associated with the courts, such as District Attorney. Hosting the event in the judge's home would require the judge to disclose the facts about the event in all cases in which the candidate appears before the judge and would generate recusal/disqualification problems.

Lawn and window support signs can present unique problems. The display of a non-judicial candidate's lawn sign at the judge's residence gives the appearance that the judge endorses the candidate no matter who may have put up the sign. Focusing upon the judge's ethical obligations while recognizing the political independence of the family member, the judge should specifically discourage family members from

² Canon 5A(3). A judge has no limitations concerning contributions to judicial candidates except for general federal and state limitations.

displaying residential lawn or window signs, or any other political endorsement in a manner that may imply that the judge endorses the non-judicial candidate.

(4) The family member as a candidate.

If a judge's family member is a candidate for non-judicial office the family member may include the judge's name in campaign literature as long as the judge's title is not used. Photos of the family may include the judge if the judge is not pictured in robes or in a courthouse setting. Such photos should be placed and captioned in a manner that depicts the member/candidate's family, as opposed to an endorsement of the member/candidate by the judge. A judge should not publicly campaign on behalf of the member/candidate in any way, but may attend fundraisers and other political events, even at the judge's home, in honor of the candidate.

CONCLUSION

Judicial independence is one of the most important facets of our society, and public perception of independence in decision-making is essential for public confidence in the integrity and impartiality of the judiciary. Judicial involvement in non-judicial campaigns would undermine such independence and lend the prestige of judicial office to the advancement of the interests of others, a violation of Canon 2(B)(2). Thus there is a natural tension between preserving the public's confidence in judicial independence and the individual rights of family members to engage in chosen political activity. The responsibilities of a judge include the obligation to inform a politically active family member of the ethical constraints imposed on the judiciary by Canons 2 and 5, and to take precautions to avoid the perception that the judge is an active or passive participant in the family member's political activities.

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