

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)**

**C.J.E.A.B. ADVISORY OPINION 2005-05
(Finalized and effective November 25, 2005)**

ISSUE PRESENTED

A judge's spouse plans to seek election to a nonpartisan elected office. The judge recognizes Canon 7's strictures, but requests guidance from the Board as to whether the Canons reach the spouse's activities and as to the permissible scope, if any, of the judge's involvement in the spouse's campaign. Given that the judge's spouse has also expressed interest in the possibility of seeking partisan elected state office, the judge requests that the Board address whether that circumstance alters its analysis. Because the judge's spouse has no immediate intent to seek partisan elected office, we decline to address the second portion of the judge's question, pursuant to CJD 94-01, which directs the Board to issue ethical advisory opinions only related to whether intended, future conduct comports with the Code of Judicial Conduct

CONCLUSIONS

The judge's spouse is not subject to the Code of Judicial Conduct and thus may freely pursue whatever elected office to which the spouse aspires. The judge, however, should refrain from attending all political events, such as campaign kick-offs and cocktail parties, in support of the spouse's candidacy and must avoid activities, such as displaying yard signs or bumper stickers, that could be perceived as constituting an endorsement of the candidate or using the prestige of the judicial office to benefit the spouse. The judge may, however, allow the judge's photograph to be used in the spouse's campaign literature as long as the judge is not depicted as or identified as a judge.

APPLICABLE CANONS OF THE COLORADO CODE OF JUDICIAL CONDUCT

Canon 2 generally directs a judge to avoid impropriety and the appearance of impropriety in all of the judge's activities. Canon 2B specifies that a judge should not allow family, social, or other relationships to influence the judge's conduct or judgment. A judge should not lend the prestige of his or her office to advance the private interests of others; nor should a judge convey or permit others to convey the impression that they are in a special position to influence him or her.

Canon 7A addresses a judge's political conduct in general. Canon 7A(b) provides that a judge shall not make speeches on behalf of or endorse a candidate for public office.

Canon 7A(c) states that a judge shall not solicit funds for or make a contribution to a political organization or candidate, attend political partisan gatherings, or purchase tickets for political party dinners or other similar functions. All other political activity, except on behalf of measures to improve the law, legal system, the administration of justice, or the role of the judiciary as an independent branch, or as otherwise expressly permitted when the judge is a candidate for retention, is disallowed.

Canon 7C addresses nonpartisan conduct. It specifies that a judge may attend and participate in nonpartisan gatherings at which legal or social issues are addressed, provided that the judge shall neither discuss cases in which he or she has participated that are not yet final, nor state how the judge would rule on any case or issue that might come before him or her.

DISCUSSION

As a preliminary matter, the Board points out that the Code of Judicial Conduct binds only judges; the spouse or other family member of a judge is not subject to its strictures. Although some jurisdictions' canons require a judge to urge the judge's spouse not to participate in political campaigns or to seek elected office, *See, e.g., Kentucky Ad. Op. JE-5*, the reach of Colorado's Canons is not that long, and judges in this state need not try to dissuade a spouse or other family members from running for office. Indeed, "[n]othing 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." Cynthia Gray, *Political Activity by Members of a Judge's Family*, State Justice Institute, American Judicature Society, at 1-2 (May 2001).

While the judge's spouse is thus free to pursue elected office, the Colorado Code of Judicial Conduct limits the judge's freedom to assist his or her spouse in the campaign for nonpartisan office. The Code sets high standards for judicial conduct, and it proscribes judges from partaking in activities in which the ordinary citizen may freely indulge. The reach of the Code extends beyond judges' professional obligations and into their nonjudicial lives. Judges must not only be impartial, but they also must conduct themselves in such a way that the public can perceive and continue to rely upon their impartiality. The broad Canons of the Code set forth general requirements that a judge act with integrity, independence, propriety and impartiality. The more specific provisions of Canon 7 address permissible conduct in both political and nonpartisan arenas. Canon 7A governs political conduct, and generally prohibits a judge from having any involvement in political matters, whether partisan or nonpartisan. Canon 7A(b) specifies that a judge may not publicly endorse a candidate for public office, while Canon 7A(c) forbids a judge to make a contribution to a political candidate. All other political activity, except that related to improvement of the law, legal system, or administration of justice, is off limits under Canon 7A(d). However, Canon 7C permits a judge to attend and participate in nonpartisan gatherings at which legal or social issues are addressed,

provided that the judge shall neither discuss cases in which he or she has participated that are not yet final, nor state how the judge would rule on any case or issue that might come before him or her.

The Board concludes that, under the circumstances presented here, the judge must refrain from attending most events related to the spouse's campaign for nonpartisan elected office because the judge's presence at such functions would constitute a public endorsement of a candidate for public office and would lend the prestige of the judge's office to advance the spouse's interests. Even though the campaign in question is described as nonpartisan, it is still political and thus subject to the Canon's proscriptions. Thus, we join our counterparts in New Jersey, Massachusetts, and Vermont, in concluding that "the ordinary courtesy of the judge in accompanying his or her spouse to a political gathering of any kind would have to be foregone." Vermont Ad. Op. 2728-10 (collecting opinions). Accordingly, under Canons 2B and 7A(c), the judge should not attend the campaign kick-off, a cocktail party for the campaign, political rallies in support of his or her spouse, or similar events. Although the Board's conclusion is somewhat more restrictive than that of some of its counterparts, many other jurisdictions' rules specifically permit attendance at and participation in political events. See Vt. Ad. Op. 2728-10 (collecting advisory opinions allowing judges to participate in political events). In light of Colorado's apolitical system of selecting judges, however, a permissive approach in which judges are allowed to participate in political affairs is inappropriate.

Nevertheless, we agree with many of our sister jurisdictions that not all gatherings attended by a candidate during the course of a campaign will necessarily be considered political. As the Massachusetts Advisory Board observed, "[j]ust because a candidate walks in the door, an event or activity that the public would perceive as religious, social, civic or recreational in nature is not converted into a political gathering so long as the candidate does not use it as an occasion to seek political support, raise money for the campaign, or make political speeches." See Mass. Ad. Op. 99-16. Thus, the judge should make a decision as to whether a particular event is political. In making that decision, the judge should consider why the judge and spouse are attending, whether the judge would have done so even if the spouse was not a candidate, whether the event would have been held if there was no campaign, who is sponsoring the event, what the spouse plans to do there, whether the spouse views the event as an opportunity to enhance his or her candidacy, and whether the average citizen would perceive the event as political in nature. *Id.* Thus, the judge may attend informational meetings (such as those sponsored by Common Cause or the League of Women Voters) where all candidates are present and the event is designed to inform the general electorate, rather than to garner support for any one particular candidate. At such events, of course, the judge should maintain a low profile and should not speak publicly, nor should the judge be introduced by title. *Id.*

In addition to avoiding political events, the judge should refrain from engaging in other activities in support of the spouse's candidacy that trade on the prestige of the judicial office or constitute a prohibited endorsement. While the Board recognizes that, as a matter of common sense, the public would desire certain basic information about the

candidate and would perceive that one spouse would support the efforts of the other in a campaign, it cautions that the judge should take care not to cross the line between acceptable and, indeed, expected, familial support to activity that improperly lends the prestige of the judicial office to advance the interests of the spouse. Accordingly, a judge should not allow campaign signs promoting the spouse's candidacy to be placed on real estate jointly owned by the judge and spouse, wear a campaign button in public or in his or her chambers to support a spouse's candidacy, display a campaign sign or bumper sticker on the judge's car or in the judge's chambers in support of the spouse's candidacy, or speak publicly in support of his or her spouse's campaign. Similarly, the judge may not permit funds from a joint account to be used toward the campaign; the judge must ensure that the spouse creates a separate account, for campaign purposes, to which the judge does not contribute.

A judge's photograph, however, may appear in the spouse's campaign literature along with an identification of the judge by name as long as the judge is identified and depicted only as a spouse and not as a member of the judiciary. Accordingly, the words "judge," "honorable" or other references to title should not accompany the picture, and the photograph should not show the judge in judicial robes. Family pictures and names are biographical information about a candidate and a candidate's family, not a prohibited "public endorsement" within the meaning of Canon 7A. Moreover, when the candidate uses the family photograph with nothing to indicate the occupation of the candidate's spouse, the prestige of the office is not being used to assist the candidate. Our conclusion that a judge may allow the use of his or her photograph in campaign literature is consistent with the opinions of the majority of other jurisdictions. *See, e.g.,* Vt. Ad. Op. 2728-10; Okla. Jud. Eth. Op. 200-6.; Kan. Ad. Op. JE3; Ohio Ad. Op. 2001-1; N.M. Ad. Op. 96-02; Fla. Ad. Op. 92-40; N.Y. Ad. Op. 96-07; *but see* Ala. Ad. Op. 82-143; Tex. Ad. Op. 180.

RESOLUTION AND OPINION

The judge need not dissuade his or her spouse from seeking non-partisan elected office, but the judge may not attend political events in support of the campaign, nor may the judge engage in other activities that could be perceived as endorsing the spouse or as lending the prestige of the judicial office to the spouse's campaign. The judge may, however, attend nonpolitical events and permit use of the judge's photograph as part of a family photo in the spouse's campaign literature provided the judge is not identified as such.

FORMALLY FINALIZED AND EFFECTIVE this 25th day of November, 2005, by the Colorado Judicial Ethics Advisory Board.