

**Colorado Supreme Court
Judicial Ethics Advisory Board (C.J.E.A.B.)
C.J.E.A.B. ADVISORY OPINION 2006-04
(Finalized and effective March 30, 2006)**

ISSUE PRESENTED

A judge's spouse is a registered member of a political party, supports certain candidates of that party, and desires to make financial contributions to candidates. The judge is registered unaffiliated, is not politically active, and desires to distance himself from his spouse's political activity and contributions. The judge is not asking whether the spouse may make such contributions because, in his view, she retains that right regardless of the judge's position. Rather, the judge's question is, assuming that the spouse makes a financial contribution to a political candidate, what must the judge do to make clear that the contribution is from the spouse only, and otherwise to insulate the judge from the appearance of improper partisan activity on his part? In connection with his inquiry, the judge notes that the spouse holds a job from which she earns a significant salary; the couple shares a joint bank account; and they do not segregate their income or assets, all of which are held in joint tenancy. The judge states that, if necessary, they could set up a separate bank account in her name only, but he notes that if they did so, it would be funded by marital income as all their income is marital, not separate. What steps should the judge take to make clear that political contributions are made only by the spouse, and not by the judge?

CONCLUSION

To make clear that any contribution by the judge's spouse to a political candidate is not from the judge, that contribution should be made in the spouse's name alone from the spouse's separate bank account with no reference to the judge or his judicial position.

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 prohibited.

DISCUSSION

The Board recently considered a judge's request for guidance as to his involvement in his spouse's campaign for non-partisan elected office. *See* CJEAB Op. 2005-05. In that opinion, the Board noted that the Code of Judicial Conduct does not bind a judge's spouse, who may pursue any office to which the spouse aspires, but concluded that the judge should refrain from participating in activities that could be seen as either endorsing the spouse's candidacy or using the prestige of the judicial office to benefit the spouse.

The general principles set forth in the 2005-05 opinion guide the Board's analysis in the instant inquiry. Thus, we reiterate that a judge is not in violation of the Code of Judicial Conduct because the judge's spouse runs for office or actively supports or opposes candidates for office. The Board recognizes that the judge cannot control the activities of his spouse.

Although the spouse is free to support, monetarily or otherwise, any candidate, her contributing to a political candidate using funds from a joint account held by the judge and the spouse could invite the perception that the judge made the contribution, and thus endorsed the candidate in violation of Canon 7, and used the prestige of the judge's office to advance the candidate's private interests in violation of Canon 2. Accordingly, we join a number of other jurisdictions in concluding that when a judge's spouse contributes to a political candidate, the contribution should be made in the spouse's name alone, with no reference to the judge or his judicial position, and from the spouse's separate bank account. *See* Mass. CJE Op. No. 98-4; Kans. A. Op. JE-13; N.H. Ad. Op. 78-3; Fla. Ad. Op. 84-19; Okla. Ad. Op. 2000-7; Neb. Ad. Op. 96-6; S.C. Ad. Op. 33-2001; *see also In the Matter of Sallee*, 579 N.E.2d 75 (Ind. 1991) (reprimanding a judge who delivered a check drawn on a joint account with his wife to a political candidate); *In the Matter of Briggs*, 595 S.W.2d 270 (Mo. 1980) (removing judge from office for various improper activities including making contributions to political candidates on checks drawn by his wife from a joint bank account in which the judge's paychecks were deposited).

FINALIZED AND EFFECTIVE this 30th day of March, 2006, by the Colorado Judicial Ethics Advisory Board.