

Maryland Judicial Ethics Committee

Opinion Request Number: 2015-47 (Amended For Publication)

Date of Issue: February 18, 2016

Published Opinion Unpublished Opinion Unpublished Letter of Advice

Issue: May a judge or a judicial appointee participate in a spouse's political campaign?

Answer: No.

Facts: The Ethics Committee has received a request for advice from a State official of the Judicial Branch (the "Requestor"). The Requestor's spouse (the "Candidate Spouse") is a candidate for elective office. The Requestor inquired regarding the degree to which the Requestor may participate in the Candidate Spouse's election campaign, asking specifically whether (1) the Requestor may accompany the Candidate Spouse to fund-raisers and similar events and (2) whether the Candidate Spouse might place his/her election signs on the couple's property. The Committee has responded to this request by means of an unpublished opinion. However, in light of the issues raised by the request and the very real possibility that other judges or judicial appointees might find themselves confronting similar questions, the Committee has decided to publish a modified version of its opinion.¹

Discussion: The degrees to which judges and judicial appointees may participate in political activities are controlled by the provisions of the Maryland Code of Judicial Conduct (Md. Rule 16-813 (the "Judicial Code")) and the Maryland Code of Conduct for Judicial Appointees (Md. Rule 16-814 (the "Appointee Code")). The provisions of

¹ The Committee has addressed similar issues in the past, albeit in reference to prior versions of the Code of Judicial Conduct and the Code of Conduct for Judicial Appointees. See JEC Opinion Request No. 1972-01 (A judge not running for election may not participate in or contribute to other judicial election campaigns.); JEC Opinion Request No. 1978-07 (A judicial campaign committee should not contribute to a campaign committee in another jurisdiction); JEC Opinion Request No. 1979-01 (A judge should not attend fund-raisers for spouse's campaign.); JEC Opinion Request No. 1986-03 (A judicial appointee may not accompany spouse to spouse's campaign events even though the appointee is on a leave of absence.); JEC Opinion Request No. 1991-02 (A judge may not attend a partisan political function in a non-election year.).

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the two codes of conduct are substantively identical. Rule 4.2² of the Judicial Code and Rule 4.2³ of the Appointee Code prohibit judges and judicial appointees from engaging in “any partisan political activity” unless the judge/judicial appointee is a candidate for a judicial office. Neither Code provides an exception to allow a judge or judicial appointee to engage in political activities on behalf of another person, including a spouse, who is a candidate in an election.

(1) Fund-Raisers, Rallies, and Similar Events

Campaign functions, whether dinners, rallies, or similar events are by their nature political activities. The Requestor should not attend any campaign function. The Requestor’s presence at such events clearly suggests that the Requestor supports the Candidate Spouse’s electoral aspirations and could reasonably be interpreted as an attempt to lend the prestige of judicial office “to advance the personal or economic interests of the [judge or judicial appointee] or others,” an activity proscribed by both Codes.⁴ For the same reason, the Requestor should also avoid any other action that

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Rule 4.2. Political Conduct of Judge Who Is Not a Candidate

(a) A judge who is not a candidate shall not engage in any partisan political activity.

(b) A judge shall resign when the judge becomes a candidate for a non-judicial office, except that a judge may continue to hold judicial office while a candidate for election as a delegate to a Maryland Constitutional Convention.

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Rule 4.2. Political Conduct of Judicial Appointee Who Is Not a Candidate

(a) A judicial appointee who is not a candidate for election shall not engage in any partisan political activity.

(b) A judicial appointee shall resign when the judicial appointee becomes a candidate for a non-judicial office, except that a judicial appointee may continue to hold the appointed position while a candidate for election as a delegate to a Maryland Constitutional Convention.

⁴ Compare:

Judicial Code: **Rule 1.3. Avoiding Lending the Prestige of Judicial Office**

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could be reasonably viewed as “lending the prestige” of the Requestor’s position to the Candidate Spouse’s candidacy. By way of example and not limitation, the Requestor should not engage in fund-raising nor should his/her name appear on any campaign literature or campaign advertisements.

(2) Campaign Signs

The provisions of the Judicial Code and/or the Appointee Code do not apply to the Candidate Spouse (unless, of course, the Candidate Spouse is also either a judge, a judicial appointee, or is seeking election to a Circuit Court or an Orphans’ Court).⁵

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A judge shall not lend the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

with:

Appointee Code Rule 1.3. Avoiding Lending the Prestige of the Position

A judicial appointee shall not lend the prestige of the judicial appointee’s position to advance the personal or economic interests of the judicial appointee or others, or allow others to do so.

⁵ If the Candidate Spouse is a judge, or is a judicial appointee running in an election for a seat on a Circuit Court or an Orphans’ Court, the Candidate Spouse may engage in limited political activity. Each Code has a rule intended to maintain public confidence in a fair and impartial judiciary while permitting judges and judicial appointees to compete fairly in judicial elections. Once again, the corresponding provisions in the two Codes are substantively identical. We set out Rule 4.4 of the Judicial Code:

Rule 4.4. Political Conduct of Candidate for Election

A candidate for election:

- (a) shall comply with all applicable election laws and regulations;
- (b) shall act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary and maintain the dignity appropriate to judicial office;
- (c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:
 - (1) may publicly endorse or oppose candidates for the same judicial office;
 - (2) may attend or purchase tickets for dinners or other events sponsored by a political

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There is nothing in either the Judicial Code or the Appointee Code that prevents a candidate in a judicial election from posting a campaign sign or signs in his/her yard. If the Candidate Spouse is running for a non-judicial office, he or she has the same rights. These rights are not defeated because a co-owner or co-tenant is a judge or a judicial appointee. Thus, the Candidate Spouse may place election signs in the couple's yard. However, the Requestor should not allow the Candidate Spouse to post campaign signs on property owned solely by the Requestor.

Application: The Judicial Ethics Committee cautions that this Letter of Advice is applicable only prospectively and only to the conduct of the requestor described herein, to the extent of the requestor's compliance with this letter. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this Letter of Advice should not be considered to be binding

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organization or a candidate for public office; and

(3) may seek, accept, and use endorsements from any person or organization; but
(4) shall not act as a leader in or hold office in a political organization, make a speech for a candidate or political organization, or publicly endorse a candidate for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the candidate or by the candidate's campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by this Rule;

(3) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(5) shall not knowingly, or with reckless disregard for the truth, misrepresent the candidate's identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the candidate's candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to paragraph (b) of this Rule, may respond to a personal attack or an attack on the candidate's record.

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indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. . If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.