

**JUDICIAL ETHICS ADVISORY COMMITTEE
OF THE
STATE OF DELAWARE**

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The Hon. Richard B. Coonin

February 20, 2008

JEAC 2008-1

[redacted]

**Re: Request for Opinion from the Judicial Ethics Advisory
Committee**

Dear [redacted]:

You have requested an expedited opinion from the Judicial Ethics Advisory Committee (“the Committee”) on whether the Delaware Judges’ Code of Conduct (“the Code”) would prohibit your spouse from seeking elective office in the Delaware General Assembly, and whether the Code would place restrictions upon you (in your service as a judge or otherwise) in the event your spouse did run for and/or was elected to a seat in the General Assembly. We appreciate very much the research you have performed on these questions and the information you attached to your request. For the reasons that follow, the Committee has determined that your spouse may run

for election to the General Assembly and that, with the limitations listed below, you may continue your service as a judge during the campaign and after the election.

Your Spouse' s Planned Campaign For Office

In your letter, you have indicated that your spouse has been approached to run for a seat in the General Assembly and that, if you receive favorable guidance from the Committee, your spouse intends actively to campaign for the office including, of course, soliciting funds to support the campaign. You have indicated that you would not “help in any way with the campaign” and that “your home [would] not be used for campaign functions or signs.” You have also indicated that you and your spouse appreciate that you would not be able to attend campaign-related events together, “including any party after his swearing in ceremony.”

The Applicable Canons of the Code

Your inquiry implicates Canons 1, 2 and 7 of the Code.¹ The relevant portions of these Canons provide:

Canon 1. A judge should uphold the integrity and independence of the judiciary. [] The provisions of this Code should be construed and applied to further that objective.

¹*See Inquiry Concerning a Judge: Jack Turner*, 573 So.2d 1, 2 (Fla. 1990)(citing Canons 1, 2, and 7 in addressing the propriety of a judge's involvement in the political campaign of a spouse); *In the Matter of Codispoti*, 438 S.E.2d 549, 552-53 (W.Va. 1993)(same).

Canon 2. A judge should avoid impropriety and the appearance of impropriety in all activities. [] A judge should not lend the prestige of the judicial office to advance the private interests of others.

Canon 7. A judge should refrain from political activity inappropriate to the judge's judicial office. A judge should not make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public service. [A judge also should not] directly or indirectly solicit funds for or ... make a contribution to a political [] candidate, attend political gatherings, or purchase tickets for political dinners, or other functions. A judge should not engage in any other political activity....

Analysis

1. Your Spouse May Seek Elective Office

"It goes without saying that our system of government is predicated upon the premise that every citizen shall have the right to engage in political activity."² And while "[t]his important right (except ... for the exercise of the voting franchise) is relinquished by our judges upon ascendancy to the bench," no such restriction applies to the spouse of a judge.³ Indeed, the Code applies only to "judges, including justices of the peace and court commissioners."⁴ Thus, if your spouse wishes to seek elective office, nothing in the Code would preclude him from doing so.

²*In the Matter of Gaulkin*, 351 A.2d 740, 743 (N.J. 1976).

³*Id.* The New Jersey Supreme Court noted that "no other American jurisdiction, whether by a court having administrative responsibility for the conduct of judges, a judicial ethics commission, or otherwise, has ever undertaken to forbid or limit spousal public or political activity.... In voluminous writings of recent years concerning judicial ethics there does not seem to be the slightest suggestion that any prohibition of a spouse's service in or candidacy for public office is either necessary or appropriate." *Id.* at 745 (string cite to multiple supporting articles omitted).

⁴Final Provision of the Code (Unnumbered) Entitled "Compliance With Code of Judicial Conduct."

2. You Should Not Participate In Any Way In Your Spouse's Campaign Or In Any Political Activity

While the Code will not restrict the conduct of a judge's spouse, "the Code [does] refer to a judge's spouse at several points with respect to the effect of the spouse's conduct or interests on the conduct of the judge."⁵ The drafters of the Code were "aware of the effect on public confidence in a judge that might result from the conduct of a judge's spouse."⁶ In response, the Code imposes a burden upon the "judge to be vigilant in detecting possible impropriety or the likelihood of public appearance thereof."⁷

⁵*In the Matter of Gaulkin*, 351 A.2d at 746.

⁶*Id.*

⁷*Id.* at 747. *See also* Maryland Advisory Op. 108 (1986)("the activities of one spouse can affect the public's perception of the other spouse...").

As one might imagine, other judges have confronted the ethical implications of a spouse's run for political office.⁸ The judicial and ethics advisory opinions that have emerged from these other cases provide a clear road map for the judge in determining what he/she can and cannot do while the judge's spouse actively engages in political activity. Based on this guidance, the Committee recommends that you adhere to the following restrictions:

- “The ordinary courtesy of the judge in accompanying his or her spouse to a political gathering of any kind, or being seen as a political advisor, would have to be foregone.”⁹ **You should not accompany your spouse to any political gatherings or be seen as his political advisor.**¹⁰

⁸This Committee, however, has not previously addressed the issue presented here.

⁹*Id.* at 748.

¹⁰This restriction would prohibit you from attending political events with your spouse. It would not, however, prohibit you from attending purely ceremonial events (e.g. a State funeral, an inauguration, or a swearing in ceremony) with your spouse. *See* U.S. Compendium of Selected Opinions §7.2(a) (1995). *See also* Delaware Advisory Op. 2005-4 (2005)(a judge may attend holiday party hosted by a United States Senator for the benefit of the Toys for Tots charity); Delaware Advisory Op. 2005-3 (2005)(a judge should not attend or speak at an event where funds will be raised for a political party).

- “A judge should not make speeches for a political organization or candidate (including a spouse) or publicly endorse a candidate for public office.”¹¹ **You should not make any speeches for or publicly endorse your spouse’s candidacy.**
- “[The] judge [engaged] in misconduct [by] delivering campaign signs [and] erecting campaign signs [for his spouse].”¹² **You should not help with delivering campaign literature, erecting yard signs or other campaign-related activities for your spouse.**

¹¹*Inquiry Concerning Turner*, 573 So.2d at 3.

¹²*Inquiry Concerning McGregor*, 614 So.2d 1089, 1090 (Fla. 1993). *See also* West Virginia Advisory Op. (Feb. 25, 1994)(a judge may not perform volunteer manual labor for a spouse’s campaign.); Florida Advisory Op. 87-22 (same).

- Formal proceedings were instituted against a judge for “contacting attorneys [and others] seeking help for [his] son who [had] announced his candidacy for [a judicial position].”¹³ **You should not solicit others to assist or support your spouse’s campaign in any way.**
- “The judge’s home should not be used for campaign activities.”¹⁴ **You should not permit any campaign or political-related activity to take place in the home you share with your spouse.**
- A judge may not drive a car that displays a spouse’s campaign sticker even if the car is normally driven by the spouse and even if the title for the car is in the spouse’s name.¹⁵ **You should not drive a car that displays your spouse’s campaign sticker.**
- A judge may not contribute financially to the judge’s spouse’s campaign.¹⁶ **You**

¹³*Inquiry Concerning Turner*, 573 So.2d at 1-2.

¹⁴Michigan Advisory Op. JI-30 (1990). *See also* New Hampshire Advisory Op. 78-3 (1978)(same); *In the Matter of Gaulkin*, 351 A.2d at 748 (“The use of the marital home for a political or fundraising meeting ... would come within the restrictions [set forth in Canon 3].”).

¹⁵*See* West Virginia Advisory Op. (Feb. 25, 1994)(such conduct viewed as an improper endorsement under Canon 7); Florida Advisory Op. 87-22 (1987)(same).

¹⁶*See* Delaware Advisory Op. 1987-1 (1987)(opining that neither judge nor spouse may contribute to campaign of incumbent governor); New York Advisory Op. 92-129 (1992). *See also In the Matter of Gaulkin*, 351 A.2d at 748(prohibiting “contributions from the common family fund”

should not contribute financially to your spouse's campaign. Any financial contributions to your spouse's campaign made by your spouse must be clearly designated as originating from your spouse alone.¹⁷

or the spouse's own funds to the judge's spouse's campaign).

¹⁷*See* Canon 7, Comment (“Political contributions by the judge’s spouse must result from the independent choice of the spouse and checks by which such contributions are made shall not include the name of the ‘judge.’”).

- One judicial ethics advisory opinion prohibited the judge's spouse from accepting political contributions from individuals or entities known to appear, or likely to appear, before the judge.¹⁸ **Your spouse's campaign should not *knowingly* accept contributions from individuals or entities that appear or are likely to appear before you in court. Likewise, you should recuse yourself from any matter involving an individual or entity that *you discover during the pendency of the matter* has contributed to your spouse's campaign. The Committee appreciates that there may be instances where your spouse's campaign receives a contribution from an individual or entity that has appeared or likely may appear before you without knowing that this is the case. Likewise, a litigant may appear before you without you knowing that the litigant has supported your spouse's campaign. In the Committee's view, the Canons prohibit only knowing or reckless violations of this restriction.**

¹⁸See New Hampshire Advisory Op. 78-3 (1978).

Just as the New Jersey Supreme Court declined to provide an exhaustive list of restrictions in *In the Matter of Gaulkin*, the Committee cannot and does not intend to provide an exhaustive list of restrictions on your conduct in relation to your spouse's political activities.¹⁹ The list provided above is sufficient to communicate the essence of this opinion: your spouse may run for elective office but you may not lend the prestige of your judicial office in any way to that endeavor, otherwise compromise the integrity of your office, or engage in prohibited political activity.²⁰ Your statement that you do not intend to "help [your spouse] in any way with the campaign" suggests that you fully appreciate the breadth of the restrictions that will be placed upon your activity should your spouse seek elective office. With these restrictions in mind, the Committee is satisfied that your spouse may seek elective office and that you may continue to serve as a judge while your spouse does so and while he holds office if elected.

For the Committee,

Joseph R. Slights, III
Judicial Ethics Advisory Committee

¹⁹351 A.2d at 748.

²⁰See Canon 1, Canon 2, Canon 7.