

## JUDICIAL INQUIRY COMMISSION

DATE ISSUED: February 15, 2018

ADVISORY OPINION 18-937

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### POLITICAL ACTIVITY: JUDGE DEPICTED IN FAMILY PHOTOGRAPH FOR RELATIVE'S POLITICAL CAMPAIGN FOR NON-JUDICIAL OFFICE

#### ISSUE

May a judge who is not running during the current election cycle be depicted in a family photograph to be used for the campaign literature for the judge's unmarried, adult child who is a candidate for a non-judicial office? **Answer:** Yes, if the judge is not identified by his/her judicial title in the campaign literature, no indicia of the judge's office are depicted, his/her office is not otherwise implicated, and the particular use of the photograph does not otherwise violate Canon 7.

#### FACTS

A judge's adult child has qualified to run for election to a non-judicial office in a partisan political race. The unmarried adult child would like to use a family photograph in campaign materials. The photograph would depict all members of the candidate's immediate family, including the candidate's judge-parent.

#### DISCUSSION

A review of advisory opinions from other jurisdictions reveals the majority of advisory bodies find no violation of judicial ethics in these or similar circumstances—with certain limitations. See Vermont Advisory Opinion 2728-10 (2004), and opinions cited therein. One of the two exceptions to this rule, however, is Alabama. See Alabama Advisory Opinion 82-143, which has been construed to advise that a family member's campaign materials cannot use the judge-relative's photograph. See C. Gray, *An Ethics Guide for Judges & Their Families* 102 (AJS 2001).

The majority-view states properly examine the issue under Canon 2C's prohibition against a judge's lending the prestige of his/her office to advance the interests of others and Canon 7's political-activities provisions or their equivalents. They advise that there is no violation of the applicable canons, so long as the judge is not identified as a judge, no indicia of the judge's office are depicted, and his/her office is not otherwise implicated. The Commission, in Alabama Advisory Opinion 82-143, examined the issue under Canon 7 and another provision in Canon 2C, i.e., a judge should not convey nor permit others to convey the impression that they are in a special position to influence him/her. In light of the overwhelming authority contrary to the Commission's advice rendered 35 years ago, we reconsider that advice.

Other states convincingly reason that a judge does not give up his/her place in the family when taking on the judicial robe. The judge remains a mother, father, brother, sister, wife, husband, etc. despite his/her judicial office. If the occupation of the judge-relative in the photograph is not mentioned in the campaign literature, the judicial robe is not used, there are no other indicia pointing to the judicial office, and the judicial office is not otherwise implicated (e.g.,

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“Honorable”), there is nothing to tie the “prestige of the office” to the photograph. There is, therefore, no violation of Canon 2C in the use of the photo. Oklahoma Advisory Opinion 2000-6, 73 P.3d 261. See also Colorado Advisory Opinion 2005-05; Florida Advisory Opinion 2017-16; Kansas Advisory Opinion JE-3 (1984); New York Advisory Opinion 96-07.

This reasoning applies equally to other provisions in Canon 2C. The judge’s appearance in a family photograph does not convey the family members are in a special position to influence him/her, especially if the campaign literature in no way conveys the judge’s occupation, i.e., the judge merely appears as a wife, father, brother, etc.

Based on the foregoing, it is the opinion of Commission that a judge may allow the use of a family photograph in his/her adult-child’s campaign literature under the conditions set out above and the additional condition that its use does not otherwise violate any provision of Canon 7. Accordingly, Advisory Opinion 82-143 is overruled.

#### REFERENCES

Alabama Canons of Judicial Ethics, Canons 2B; 2C; 7.

Alabama Advisory Opinion 82-143.

Colorado Advisory Opinion 2005-05.

Florida Advisory Opinion 2017-16.

Kansas Advisory Opinion JE-3 (1984).

New York Advisory Opinion 96-07.

Oklahoma Advisory Opinion 2000-6, 73 P.3d 261.

Vermont Advisory Opinion 2728-10 (August 5, 2004).

C. Gray, An Ethics Guide for Judges & Their Families 102 (AJS 2001).

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This opinion is advisory only and is based on the specific facts and question submitted by the judge who requested the opinion pursuant to Rule 18 of the Rules of Procedure of the Judicial Inquiry Commission. For further information, you may contact the Judicial Inquiry Commission, P. O. Box 303400, Montgomery, Alabama 36130-3400; tel.: (334) 242-4089; fax: (334) 353-4043.