

JUDICIAL INQUIRY COMMISSION

DATE ISSUED: JUNE 12, 2025

ADVISORY OPINION 25-968

POLITICAL ACTIVITY: SPOUSE'S CAMPAIGN FOR NON- JUDICIAL OFFICE

activity on behalf of another, Canon 7A(1) provides:

ISSUE

May a judge engage in political activity in support of his or her spouse, who is a candidate for non-judicial office?

Answer: Yes, subject to certain limitations, though such conduct is generally undesirable.

FACTS

A judge's spouse is a candidate for city council in a non-partisan municipal election. *See* Ala. Code § 11-46-3 (2008) (providing that members of a municipality's governing body in municipalities of less than 300,000 people shall be by nonpartisan ballot). The judge is not a member of the spouse's principal campaign committee and will have no active involvement in the solicitation of funds for the spouse's campaign. The judge does anticipate, however, participating in campaigning on behalf of the judge's spouse by soliciting votes, attending meet-and-greets and other receptions, some of which are fundraising events, and displaying or wearing campaign merchandise (e.g., t-shirts, buttons, etc.)

DISCUSSION

Canon 7 provides, "A judge or a judicial candidate shall refrain from political activity inappropriate to judicial office." Regarding political

A judge or a candidate for election to a judicial office shall endeavor at all times to refrain from political activities inappropriate to the judicial office that he or she holds or seeks. It is desirable that a judge or a candidate for election to judicial office endeavor not to be involved in the internal workings of political organizations, engage in campaign activities in connection with a political candidate other than a candidate for a judicial office and not be involved in political fund solicitations other than for himself or herself. However, so long as judges are subject to nomination and election as candidates of a political party, it is realized that a judge or a candidate for election to a judicial office cannot divorce himself or herself completely from political organizations and campaign activities which, indirectly or directly, may be involved in his or her election or re-election. Nevertheless, should a judge or a candidate for a judicial position be directly or indirectly involved in the internal workings or campaign activities of a political organization, it is imperative that he or she at all

times conduct himself or herself in such a manner as to prevent any political considerations, entanglements, or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.

(Emphasis added.) In other words, judges in Alabama are not strictly prohibited from engaging in campaign activities on behalf of another candidate, even if for non-judicial office. Rather, a judge must ensure, if he or she chooses to engage in such activities, that he or she must do so in a manner that does not allow even an appearance that a judicial decision or the judicial process might be influenced by political influences. *Cf.* Canon 3A(1) (“[A judge] should be unswayed by partisan interests, public clamor, or fear of criticism.”)

In Advisory Opinion 82-142, the Commission addressed whether a judge may “actively participate” in a campaign in which the judge’s “immediate kin” was a candidate. The Commission advised that such activity on behalf of a candidate for non-judicial office was undesirable pursuant to Canon 7A(1) and that the Canons did not contain or recognize an exception for family members who are candidates. The Commission also based this advice on Canon 2C’s prohibition against allowing others to convey the impression that they are in a special position to influence the judge.

In Advisory Opinion 82-143, the Commission provided the exact same advice regarding whether a judge may allow his picture to be used in the campaign of the judge’s “immediate kin.” The Commission has since, however, overruled that opinion. Advisory Opinion 18-937. In Advisory Opinion 18-937, the Commission recognized that a majority of other jurisdictions advised that allowing the use of a photo that included the judge in a family member’s campaign materials was not a violation of the Canons as long as the judge is not identified as a judge and the judge’s office is not otherwise implicated. The Commission stated in that opinion, “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.” *Id.*

The Commission’s advice in Advisory Opinion 18-937, however, was limited only to the use of the judge’s photo in a family member’s campaign materials. That opinion does not address a judge’s participation in other campaign activities on behalf of a family member who is a candidate for a non-judicial office. Thus, while that opinion overrules Advisory Opinion 82-143, it does not overrule Advisory Opinion 82-142. In reconsidering Advisory Opinion 82-142 and in light of the Commission’s reasoning in Advisory Opinion 18-937, it is the

opinion of the Commission that Advisory Opinion 82-142 should be modified.

In an opinion addressing whether a judge may appear in a family member's campaign materials, the Massachusetts Supreme Judicial Court Committee on Judicial Ethics reasoned:

Arguably, any such participation or appearance might be perceived as a prohibited public endorsement of the candidate. However, here we believe the Canons must be viewed with some degree of realism and common sense. Obviously, the public would perceive that one spouse would support the efforts of the other in this type of endeavor. What will offend Canons 2 and 7 is activity that crosses the line from acceptable, and, indeed, expected, familial support to the impermissible trading on the prestige of the judicial office.

Massachusetts Advisory Opinion 99-16. As the Oklahoma Judicial Ethics Advisory Panel observed in an opinion addressing that same issue:

The public will surely assume that the judge supports his [or her spouse's] candidacy. Voters who know the judge may be influenced by his position, but they would have that information whether or not

the judge appeared in the family photograph. Voters who do not know the judge will receive no clue as to his position from the photograph.

Oklahoma Advisory Opinion 2000-6. This expectation does not depend on whether the judge is only an active or passive participant in the family member's campaign. Thus, this reasoning rationally extends beyond simply allowing a close family member to include a photograph containing the judge in his or her campaign materials to other types of political activity on behalf of that same family member, and undercuts any appearance that the judge is lending the prestige of his or her office to the family member or other impropriety, particularly where there is no indicia of the judge's judicial office while the judge engages in these activities.

It is the opinion of the Commission that, although such conduct remains undesirable under the terms of Canon 7, a judge is not strictly prohibited from soliciting votes, including in a door-knocking campaign, accompanying his or her spouse to meet-and-greets and other receptions, even ones that might be considered fundraisers as long as the judge does not personally engage in any solicitation of funds on behalf of the candidate, or by displaying or wearing campaign merchandise such as t-shirts or campaign buttons "so long as the judge is not identified as a judge, no indicia of the judge's

office are depicted, and his [or] her office is not otherwise implicated” while engaging in these activities. Advisory Opinion 18-937.

Furthermore, a judge whose spouse is a candidate for non-judicial office does not lend the prestige of his or her office to their spouse in violation of Canon 2C by engaging in these activities when related to the spouse’s campaign for office. As explained above, the expectation that the judge will support his or her spouse because of their spousal relationship, lessens any appearance that the judge is participating in and supporting the spouse’s campaign solely because of the judge’s position and is attempting to trade on the influence that comes with that position to benefit the judge’s spouse. Nonetheless, there are some limits on the judge’s participation.

Canon 7 prohibits political activities that are “inappropriate to judicial office.” The Commission has defined such activities in the context of the Canon’s two paramount commands: that “[a] judge should uphold the integrity and independence of the judiciary,” Canon 1, and “[a] judge should avoid impropriety and the appearance of impropriety in all his [or her] activities,” Canon 2. Advisory Opinion 78-39. Canon 7 ensures this by emphasizing that if a judge engages in undesirable political activities, “it is imperative that he or she at all times conduct himself or herself in such a manner as to prevent

any political considerations, entanglements, or influences from ever becoming involved in or from ever appearing to be involved in any judicial decision or in the judicial process.” Canon 7A(1). Of course, whether a specific activity would be considered “inappropriate” depends on the facts of each particular case. Advisory Opinion 78-39.

Under the facts presented in this opinion, the judge would be prohibited from soliciting votes from lawyers or litigants that appear before him or her or are likely to appear before him or her. Additionally, the judge should refrain from wearing or displaying campaign merchandise or photographs in the judge’s chambers, courtroom, or in other areas of the courthouse. These are examples of conduct that are inappropriate under Canon 7A(1) because they allow an appearance that political consideration, entanglements, or influences might be involved in the judge’s judicial decision-making and create an appearance that the judge is lending the prestige of the judge’s office to advance the private interests of the judge’s spouse by advertising the judge’s spouse’s candidacy in spaces reserved for the performance of the judge’s judicial duties.

This opinion should not be construed as creating or recognizing an implied “family exception” to the undesirability of a judge’s political activity. The Commission’s opinion recognizes only that a judge’s participation in his or her spouse’s

campaign is not per se “inappropriate to judicial office” so as to be prohibited by Canon 7 or any other Canon based, particularly, on the close relationship between a judge and his or her spouse and the objectively sensible expectation that a judge would support his or her spouse based solely on that relationship. The same can not be said of other, more distant familial relationships.

REFERENCES

Alabama Canons of Judicial Ethics
2C, 3A(1), 7, 7A(1).

Ala. Code § 11-46-3.

Alabama JIC Advisory Opinions 78-39, 82-142, 82-143, 18-937.

Massachusetts Advisory Opinion 99-16.

Oklahoma Advisory Opinion 2000-6.

This opinion is advisory only and is based on the specific facts and questions submitted by the judge who requested the opinion pursuant to Rule 18 of the Alabama 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; email: jic@jic.alabama.gov.