

Maryland Judicial Ethics Committee

Opinion Request Number: 2022-01

Date of Issue: January 19, 2022

Published Opinion Unpublished Opinion Unpublished Letter of Advice

A Judge Cannot Attend a Spouse’s Political Events But Can Be Included in a Family Photograph Used in Campaign Materials

Facts: Requestor is a judge whose spouse is running for elected office. Requestor asks whether he/she would be able to “attend and introduce [the spouse] at campaign events, as well as, have pictures of [him/her] on flyers, publications, and websites in [his/her] capacity as [the candidate’s spouse].” Requestor states that he/she “would not attend any fundraising event.”

The two issues presented, which we will discuss separately, involve three provisions of the Maryland Code of Judicial Conduct (“the Code”) codified in Title 18, Chapter 100 of the Maryland Rules. Rule 18-101.2 provides:

- (a) Promoting Public Confidence. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.
- (b) Avoiding Perception of Impropriety. A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

Rule 18-104.2, provides:

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

Rule 18-101.3 provides:

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.

Issue I: May a judge whose spouse is running for political office attend and introduce the spouse at campaign events?

Answer: No. A judge may not attend and introduce his/her spouse at the spouse’s campaign events.

Discussion: As we said in JEC Opinion 2015-47, “[c]ampaign functions, whether dinners, rallies, or similar events are by their nature political activities,” and any campaign event is potentially a fund-raising event. The Requestor does not indicate that he/she is a candidate

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for judicial office under the Code. Therefore, he/she “shall not engage in any partisan political activity.” Rule 18-104.2(a). This prohibition reflects the concern that public confidence in the independence and impartiality of the judge will be jeopardized if judges are, or appear to be, politically influenced. In addition, a judge’s participation in political activity on behalf of a candidate risks being perceived as a public endorsement of the candidate spouse, which is prohibited, and lending the prestige of judicial office to advance the interests of others. Because the prohibition does not apply to spouses, spouses cannot be precluded from engaging in partisan political activity or seeking elective office. But the Requestor, by attending any campaign events, would be in violation of the Code.

Issue II: May the Requestor’s picture be included in the spouse’s campaign materials and website?

Answer: Yes, with limitations.

Discussion: As to whether the Requestor’s picture may be included in the spouse’s campaign materials and website, the Committee, in other opinions, has sought to balance the requirements of the Code with the spouse’s interests and right to participate in political activities. For example, political contributions from the spouse’s individual funds were permitted (JEC Opinion Request No. 2016-33). We have also permitted the posting of an election sign by a candidate spouse on jointly-owned property (JEC Opinion Request No. 2015-47). In those situations, the judge played no active or express role in the spouse’s political activities. *But see* JEC Opinion Request No. 2018-14 (when a spouse posts a political sign for a candidate other than him/herself on jointly owned property, that “creates significant problems for the judge.”)

In balancing the requirements of the Code and the candidate spouse’s interest in mounting an effective campaign, we believe that the Requestor’s photograph may be used in family photographs so long as the Requestor’s title or office is not mentioned, there are no visual elements identifying the Requestor as a judge, and no explicit endorsement is featured. We recognize that family photographs are important fixtures in political campaigns and the absence of a spouse in such a photograph would invite speculation and misrepresent to voters the candidate spouse’s family situation.

Application: The Maryland Judicial Ethics Committee cautions that this Opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor’s compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this Opinion. Additionally, this Opinion should not be considered to be binding indefinitely.

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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.