

FILED

OCT 05 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY ~~CHIEF~~ DEPUTY CLERK

STATE OF NEVADA

STANDING COMMITTEE ON
JUDICIAL ETHICS AND ELECTION PRACTICES

DATE ISSUED: October 5, 2010

ADVISORY OPINION: JE10-009

PROPRIETY OF A JUDGE'S SPOUSE
DISPLAYING A CANDIDATE SUPPORT
SIGN FOR ANOTHER CANDIDATE FOR
PUBLIC OFFICE.

residence, see JE10-007, but seeks
clarification as to whether independent
political activities by the judge's spouse may
trigger a violation of Canon 4 by the judge.

ISSUE

DISCUSSION

Does a judge violate Canon 4
if the judge's spouse independently decides
to display a support sign for a candidate for
public office at the shared residence of the
judge and spouse?

Canon 4 states that "A judge or
candidate for judicial office shall not engage
in political or campaign activity that is
inconsistent with the independence, integrity
or impartiality of the judiciary." More
specifically, Rule 4.1(A)(3) provides that "a
judge or judicial candidate shall not: ... (3)
publicly endorse or oppose a candidate for
public office." The scope of the
endorsement clause in Rule 4.1 was
discussed in Advisory Opinion JE 10-005:

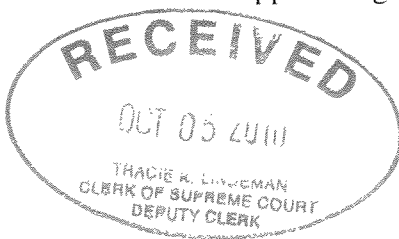
ANSWER

No, but only if the endorsement and
display of the candidate sign is done solely
by and as a result of the independent action
of the spouse. Judges and judicial
candidates are prohibited from displaying a
candidate support sign other than their own,
and should strongly discourage their spouses
from displaying other candidates' support
signs which may create an implication of
endorsement by the judge.

Rule 4.1 specifically
prohibits a judge from
publicly endorsing or
publicly opposing a candidate
for public office. The
prohibition applies to all
endorsements, whether by
action or words, and is
absolute in application. As
recognized in the Comments
to Rule 4.1, "this Canon
imposes narrowly tailored
restrictions upon the political
and campaign activities of all
judges and judicial
candidates" for the purpose
of prevent[ing] them from
abusing the prestige of

FACTS

A judge asks whether it would be a
violation of Canon 4 if the judge's spouse
independently decides to display a support
sign for a candidate for public office at the
community property residence owned by the
judge and spouse. The judge recognizes the
Committee previously concluded that a
judge is prohibited from displaying
candidate support signs at the judge's



judicial office to advance the interests of others.” Rule 4.1, Comment 1 and 3; see also Rule 1.3. The Committee notes that nothing in this opinion implicates a judge’s ability “to participate in the political process as a voter . . . and contribute personal funds to a candidate or political organization.” See comment 3, Rule 4.1.

Advisory Opinion JE10-005.

The Committee recently addressed whether a judge may display a candidate support sign at his or her personal residence. See Advisory Opinion JE10-007. The Committee concluded that “displaying candidate support signs on property readily identified as being owned by a judge constitutes an impermissible endorsement of candidates for public office contrary to Rule 4.1(A)(3).” Id.

The issue presented here, however, is whether the act by a judge’s spouse of placing a campaign sign at the residence shared by the judge and spouse violates the Code of Judicial Conduct by creating the public perception of an implied political endorsement by the judge. Other jurisdictions which have addressed similar issues are generally split as to whether such conduct by a judge’s spouse implicates Code violations by the judge. See Arkansas Advisory Opinion 2006-3 (conduct prohibited); accord South Carolina Advisory Opinion 33-2001; cf. New York Advisory Opinion 07-169 (judge should discourage spouse, but is not required to take further action); accord California Advisory Opinion 49 (2000); Florida Advisory Opinion 06-11; Massachusetts Advisory Opinion 05-08.

The Code recognizes that it governs only judges and cannot command the conduct of a judge’s family. However, the Code also recognizes that the conduct of a judge’s family casts a long shadow over the judge. For example, under Rule 2.11 a judge must disqualify himself or herself when a member of his or her household has an economic interest in a proceeding, a relationship to a party to the proceeding, or more than a de minimis interest in the proceeding. Similarly, Comment [4] of Rule 3.13 requires a judge to discourage members of the judge’s household from accepting gifts that could reasonably be perceived as intended to influence the judge.

While a spouse’s conduct may have implications on the judge, the Code does not specifically preclude a judge’s spouse from engaging in independent political speech. Although the public may believe the positions of a judge’s spouse reflect the thinking of the judge, the autonomy of the judge’s spouse to engage in political activity should be accepted and understood as a premise of modern life. That being said, an implicit burden rests on the judge to vigilantly guard against the public appearance of impropriety from a spouse’s political conduct. A family that chooses to combine a judicial career with political endeavors assumes a heavy burden to protect the judge and the judicial office from appearances of political bias, and should proceed cautiously to ensure a clear division exists between the independent political activities of the spouse and the judge’s office.

The Committee affirms its prior opinion that a judge is prohibited from displaying a candidate support sign other than his own. A judge should specifically discourage his or her spouse from displaying campaign signs at their shared residence or

engaging in other political endorsements in a manner that may improperly imply the judge endorses a political candidate; however, the Committee acknowledges the Code does not prohibit a judge's spouse from engaging in independent political speech if he or she chooses not to heed such discouragement. While a judge must always adhere to the Code and refrain from engaging in or encouraging political activity, the Code does not curtail a spouse's right to political speech.

The Committee notes the foregoing conclusion does not apply to campaign signs supporting the judge's election or re-election, and is limited to the facts presented in this request. The Committee also notes that there is an ongoing debate in other jurisdictions regarding the constitutionality of the endorsement clause contained in Rule 4.1(A)(3). See Wersal v. Sexton, et. al., 613 F.3d 821, 2010 WL 2945171, (8th Cir., 2010). To the extent such issues may arise in the future under Nevada's Revised Code of Judicial Conduct, the Committee believes such constitutional questions are best addressed by courts of appropriate jurisdiction.

CONCLUSION

It is the opinion of the Committee that Canons 1 and 4, specifically Rule 1.3 and 4.1(A)(3), prohibit a judge from displaying a candidate support sign for another candidate at the judge's personal residence or on other property owned solely by the judge which is readily identified in the community as being owned by the judge. A judge should specifically discourage his or her spouse from displaying campaign signs at their shared residence or engaging in other political endorsements in a manner that may improperly imply the judge endorses a political candidate. However, the

Committee acknowledges the Code does not prohibit a judge's spouse from engaging in independent political speech if the spouse chooses not to heed such discouragement.

REFERENCES

Revised Nevada Code of Judicial Conduct, Canon 1; Canon 4; Rule 1.3; Rule 4.1(A)(3); Commentary to Rule 1.3; Comment 1 and 3 to Rule 4.1; Advisory Opinion JE010:0005; Advisory Opinion JE010:0007; Wersal v. Sexton, et. al., 613 F.3d 821, 2010 WL 2945171, (8th Cir., 2010); Arkansas Advisory Opinion 2006-3; South Carolina Advisory Opinion 33-2001; New York Advisory Opinion 07-169; California Advisory Opinion 49 (2000); Florida Advisory Opinion 06-11; Massachusetts Advisory Opinion 05-08.

This opinion is issued by the Standing Committee on Judicial Ethics and Election Practices. It is advisory only. It is not binding on the courts, the State Bar of Nevada, the Nevada Commission on Judicial Discipline, any person or tribunal charged with regulatory responsibilities, any member of the Nevada judiciary, or any person or entity requesting the opinion.



Michael A.T. Pagni, Esq.
Committee Vice-Chairman