

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

FORMAL ADVISORY ETHICS OPINION 16-03
(November 1, 2016)

**FAMILY MEMBERS POSTING POLITICAL SIGNS
ON JUDGE'S PROPERTY**

Overview

The Judicial Ethics Advisory Committee (JEAC) was asked whether the Arizona Code of Judicial Conduct prohibits a judge's family member or significant other from posting political signs on property at a residence shared by the judge and that family member or significant other.

Applicable Rules

Under the Arizona Code of Judicial Conduct, judges shall not "publicly endorse or oppose another candidate for any public office," or "actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office." Rule 4.1(A)(3), (5).

Rule 4.1(B) requires a judge or judicial candidate to "take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under" Rule 4.1(A).

Comment 3 to Rule 4.1 explains that "Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence."

Comment 7 to Rule 4.1 states that "members of the families of judges and judicial candidates are free to engage in their own political activity, [but a] judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take and should urge members of their families to take reasonable steps to avoid any implication that the judge or judicial candidate endorses any family member's candidacy or other political activity."

Rule 4.2(A)(4) states that judicial candidates shall "take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities

other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.”

Discussion

The committee recognized in Arizona JEAC Formal Advisory Ethics Opinion 03-05 (Participation of Judges, Family Members, and Judicial Employees in Political Activities)(October 30, 2003), that judicial ethics rules pertaining to political activities apply only “to judges and judicial candidates, not their spouses or other family members.” The committee further noted that family members generally are free to participate in their own political activities.

However, that recognition was not without qualification. Specifically, a judge’s spouse or family members could “fully participate in campaign activities [only if] the judge takes reasonable steps to avoid any public perception that the judge is also participating in those activities or is furthering the candidate’s political aspirations by virtue of the judge’s position.”

Ultimately, the question posed requires the committee to balance the need to ensure that judges are not perceived to endorse specific political candidates with another individual’s right to political speech. Other jurisdictions have differed greatly in their attempt to balance these competing interests.

Some jurisdictions have concluded that judges should never permit a family member to place signs endorsing a political candidate on property in which the judge owns an interest. *See, e.g.*, Arkansas Judicial Ethics Advisory Opinion 2006-3 (June 13, 2006); South Carolina Judicial Ethics Advisory Opinion 33-2001 (Propriety of a Family Court Judge’s Spouse Contributing to a Political Campaign); New York Judicial Ethics Advisory Opinion 99-118 (June 18, 1999). Arkansas Judicial Ethics Advisory Opinion 2006-3 opined that any campaign signs on property owned by a judge and his or her spouse “could be construed as a political endorsement by” the judge. Similarly, South Carolina Judicial Ethics Advisory Opinion 33-2001 stated that placing a political sign at a shared home “would indicate that the Judge is also campaigning for the candidate.”

In sharp contrast, the Illinois Judicial Ethics Committee concluded that ethical restrictions on judges never prohibit spouses from engaging in independent political activity, and accordingly, spouses may “display a campaign sign in the yard of the home jointly owned with the judge.” Illinois Judicial Ethics Advisory Opinion 2006-02 (Political Activity of Judge’s Spouse on behalf of Candidate for Public Office) (August 23, 2006). The reasoning for rejecting a *per se* ban was:

The Committee recognizes that some members of the public, upon observing a sign placed by a spouse on jointly held property, may erroneously conclude that the spouse's independent political act is the act of the judge. This will not be true in all cases and certainly will not be true when the spouse has a higher community or political profile than the judge. The likelihood of a sign being misinterpreted as the judge's act is also reduced by the accepted view that married individuals remain individuals with separate property rights and beliefs. It is simply less likely today that the community will automatically consider the joint residence as the "judge's" house. Nevertheless, some people will misinterpret the campaign sign as a prohibited political endorsement by the judge. Public perceptions may require disqualification of a judge if mandated by Rule 63C, but they do not justify curtailment of a spouse's right to political expression.

Between these two extremes, the majority of jurisdictions require judges to "strongly urge" that a spouse not place a political sign on jointly-owned property. *See, e.g.,* New York Judicial Ethics Advisory Opinion 07-169 (November 9, 2007); California Judges Association Advisory Ethics Opinion 49 (Ethical Considerations regarding Political Activities of a Judge's Family Members) (September 2000); Florida Judicial Ethics Advisory Opinion 06-11 (May a Judge Authorize Placement of a Campaign Sign Supporting a Partisan Political Candidate in the Yard of a Residence Jointly Owned by the Judge and the Judge's Spouse?) (May 9, 2006); Massachusetts Committee on Judicial Ethics Opinion 05-8 (Family Member Placing Political Campaign Sign Outside Judge's Home) (September 20, 2005). This line of opinions reasons that although a judge's ethical restrictions do not prohibit spouses from engaging in independent political activity, the judge cannot authorize, encourage, or otherwise endorse the political sign.

Advice

The committee agrees with the majority rule, which is consistent with both the Arizona Code of Judicial Conduct and our prior Formal Advisory Ethics Opinion 03-05. By its very terms, Rule 4.1(B) requires judges to "take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any [prohibited] activities." Comment 7 to Rule 4.1 then applies the "reasonable measures" requirement to a spouse's political activities.

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The committee concludes that the Arizona Code of Judicial Conduct does not preclude spouses or significant others who share an ownership interest with the judge in a property from placing political signs on their jointly-owned property. However, the committee also recognizes that Rule 4.1 requires a judge to “take and should urge members of their families to take reasonable steps to avoid any implication” that the judge supports the political candidate.

Accordingly, as to jointly-owned property, the judge should explain the public perception issues to his or her spouse or significant other and request that they not place political signs on their property. The judge has complied with the Arizona Code of Judicial Conduct by engaging in this discussion and making this request even if the spouse or significant other ultimately decides to place a political sign on their property. Finally, if the spouse or significant other (or, for that matter, any other family member) has no ownership interest in the property, then the judge should not allow them to place political signs on the judge’s solely-owned property.