



Advisory Committee on the Code of Judicial Conduct

Hon. James J. Wechsler, Chair

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Paul L. Biderman, Esq.

Prof. Robert L. Schwartz

Hon. Freddie J. Romero

Hon. Sandra W. Engel

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JUL - 6 2017

Supreme Court Law Library
Santa Fe, New Mexico

July 6, 2017

[REDACTED]

Re: Judicial Advisory Opinion No. 17-01

Dear [REDACTED]

You have asked the Advisory Committee on the Code of Judicial Conduct two questions concerning the application of the Code of Judicial Conduct to political contributions to the campaign of your spouse who is a candidate for elective office: (1) whether you may make a financial contribution to the campaign; and (2) whether your spouse may contribute to the campaign because you hold all assets as community property with your spouse, with all funds in joint checking accounts.

As to your first question, the Code explicitly prohibits your contribution. *See* Rule 21-401(C)(4) NMRA (stating that a judge, except in circumstances not applicable, shall not "solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate").

There is no similarly explicit provision in the Code that addresses your second question. The commentary recognizes, however, that members of a judge's family may "engage in their own political activity, including running for public office[.]" Rule 21-401 comm. cmt. 3. Political activity may involve contributions to political campaigns. *See* Rule 21-401(C) (including campaign contributions with other political activity). The Code does not distinguish based on the recipient of the contribution. Thus, although you are prohibited from contributing to your spouse's campaign, your spouse is not. The issue arises because your spouse does not have separate property from which to make such contributions.

Your spouse, however, "has full power to manage, control, dispose of and encumber" the community funds. NMSA 1978, Section 40-3-14(A) (1975). The Committee believes that this interest, in conjunction with the right to engage in political activity, enables your spouse to use the funds to contribute to your spouse's campaign.

Nonetheless, the Code imposes restrictions on your behavior with respect to your spouse's campaign and contributions. Under Rule 21-401(C)(2), a judge shall not publicly endorse any candidate for public office. The commentary provides that a judge "must not become involved in, or publicly associated with, a family member's political activity or campaign for public office." Rule 21-401 comm. cmt. 3. Moreover, a judge "should urge members of their families to take[] reasonable steps to avoid any implication that the judge . . . endorse[s] any family member's candidacy or other political activity." *Id.*

Following this rule and commentary, you must not engage in actions that appear to publicly endorse your spouse's campaign, and you must avoid public association with your spouse's campaign and contributions to the campaign. You should also urge your spouse to take reasonable action to avoid the appearance that you are supporting the campaign or contributions to the campaign.

Advisory opinions from other states have advised judges that a judge's spouse may make contributions to political campaigns from separate accounts. *See* Maryland Opinion Request 2016-23 (advising that a judge's spouse may make political contributions from other than a joint account); Pennsylvania Informal Advisory Opinion 11/30/2010 (advising that a judge's spouse may make a political contribution from an account solely in the spouse's name). These advisory opinions are not from community property states. In the only opinion the Committee has been able to find from a community property state, a recent Louisiana advisory opinion advises that a judge's spouse may use community funds to contribute to the spouse's campaign if, among other requirements, the judge's name does not appear on the check. Louisiana Advisory Opinion, May 5, 2017 (attached).

In New Mexico, also a community property state, even if your spouse created a separate account to make the contributions, the funds would continue to be community property.¹ The creation of a separate account to make the contributions would thus seem in the legal sense to be a matter of form over substance. As demonstrated by the Louisiana advisory opinion, however, for campaign reporting purposes, your name would not appear on checks from a separate account. Such separation minimizes the appearance that you are endorsing your spouse's campaign merely because community funds are used to make the contributions. Indeed, as the Committee has expressed, your spouse has full authority to manage and dispose of community funds. The Committee suggests, therefore, that you urge your spouse to create a separate account from which to contribute to your spouse's campaign.

Very truly yours,


James J. Wechsler
Chair

¹¹The Committee does not address the question of whether the transfer of funds from a joint account to a separate account would transmute community funds to separate property.

Committee members Paul L. Biderman and Robert L. Schwartz did not participate in this advisory opinion.

cc: Paul L. Biderman, Esq.
Hon. Sandra W. Engel
Hon. Freddie J. Romero
Professor Robert L. Schwartz
Hon. Julie J. Vargas



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May 5, 2017

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Personal and Confidential

Re: Your request for an ethics advisory opinion

Dear

Please be advised that the Louisiana Supreme Court Committee on Judicial Ethics has carefully considered your request for an ethics advisory opinion on the following issues:

ISSUE 1

Is it ethically permissible for a judge, whose spouse is running for statewide elective office, to be identified by the honorific title "Judge" in connection with his spouse's campaign, including in campaign materials or when the judge is introduced at campaign functions or events?

ISSUE 2

Is it ethically permissible for a judge, whose spouse is running for statewide elective office, to contribute financially to the spouse's campaign?

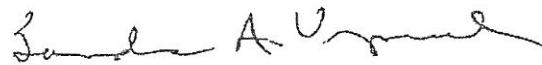
ISSUE 3

Is it ethically permissible for a judge's spouse to use community funds to contribute financially to her own campaign?

The Committee, by majority vote, responds in the negative to Issues 1 and 2. Pursuant to Canon 7A(2), a judge is prohibited from publicly endorsing a candidate for public office. As such, your honorific title should not be used in any context. Nevertheless, for biographical purposes only, your occupation as a district court judge may be cited but reference to your specific court should not be made nor should you appear in a judicial robe in any campaign photographs. Additionally, Pursuant to Canon 7A(4), a judge is prohibited from making a contribution to a candidate for public office. Thus, you may not personally contribute to your spouse's campaign.

Further, by majority vote, the Committee responds in the affirmative to Issue 3, provided that the contribution is made without reference to you or your judicial office, your name not appear on the check making the contribution, you are not publicly involved, nor is there any public perception that you are publicly involved, in making the contribution, and any conduct is not undertaken to do indirectly for you that which you are prohibited from engaging in under the Canons.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra A. Vujnovich". The signature is fluid and cursive, with the first name "Sandra" being more prominent.

Sandra A. Vujnovich, J.D.
Secretary and Member
Supreme Court Committee on Judicial Ethics

SAV/bkb

cc: Chair and Members, Supreme Court Committee on Judicial Ethics
Associate Justices of the Supreme Court of Louisiana