

Advisory Committee on the Code of Judicial Conduct

Hon. Frank H. Allen, Jr. Chairman
Hon. Thomas A. Donnelly
Prof. William T. MacPhearson, Jr.
Hon. Marie Baca

February 22, 1996

The Honorable
Magistrate Judge

Re: Judicial Advisory Opinion 96-02

Dear Judge

In your letter to this committee you have asked us to give you some general information concerning what a judge whose spouse is running for elective office may and may not do in support of that spouse's political campaign.

You also have asked us the following specific questions:

1. Can I assist my husband or his campaign in his door-to-door campaign?
2. Can I solicit signatures for his petitions?
3. Can I have my photograph appear with my husband and children in his campaign literature?
4. Can this photo be used to advertise in the newspaper so long as my judgeship isn't mentioned?

SCRA 1986 21-700(A) (REPL. 1995) of the Code of Judicial Conduct is pertinent to your inquiry. This canon entitled Election and political activity provides specific what a judge may or may not engage in when supporting a political candidate. Also important is SCRA 21-001 F & G which define member of candidates family and member of the judges family.

The commentary to SCRA 21-700 provides that "[a] judge...is not prohibited from privately expressing the judges...views on judicial candidates or other candidates for public office.

Also your attention is directed to SCRA 21-800, A judge shall refrain from campaign fund raising which has the appearance of impropriety.

In past Advisory Opinions this committee has given the following advice concerning judges support of political candidates. The revision of the Code in 1995 does not seem to have affected this advice.

A candidate for political office who is the relative of a judge may state that the candidate is related to the judge in the candidate's campaign literature, provided other members of the immediate family are similarly referred to. However, indication of the judge's office or use of the judicial title in person's campaign literature or in any other aspects of the campaign, such as introductions at political functions, is not permitted. A089-2 Issue 1.

Judges may attend nonfund-raising political functions for members of their families who are running for political office. The judge must attend as a private individual, not as a member of the judiciary. The judge may not speak on behalf of the candidate. A089-2 Issue 3.

A judge may not attend fund-raising events in support of his/her spouse's candidacy. Although the passive appearance at a fund-raiser is not necessarily improper, it has the appearance of soliciting funds, and is therefore precluded activity. A089-2.

We hold that a judge's act of signing a nominating petition of a judicial candidate is not improper. Additionally, we conclude that a judge's act of circulating a nominating petition of a judicial candidate does not violate the provisions of the New Mexico Code of Judicial Conduct, so long as such act is not done during the judge's normal business hours, the judge does not utilize court facilities, supplies or postage in carrying out such act, or solicit others to sign such petition while the judge is performing judicial duties or acting in his or her official capacity. A096-1.

As to your specific questions:

1. Can I assist my husband or his campaign in his door-to-door campaign?

Yes, if you do this as a private person (spouse of candidate) and it is not done during the judges normal business hours or while acting in your official capacity as a judge.

2. Can I solicit signatures for his petitions?

Yes, with the restrictions as set out in A096-1.

3. Can I have my photograph appear with my husband and children in his campaign literature?

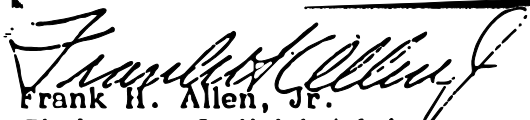
Yes, see A089-2 Issue 1.

4. Can this photo be used to advertise in the newspaper so long as my judgeship isn't mentioned?

Yes, and as long as the picture includes all members of the family and you are not singled out and identified as a judge.

For your further information, attached is A089-2 and A096-1.

Very truly yours,


Frank H. Allen, Jr.
Chairman, Judicial Advisory
Committee

Enclosures

FHA/mav