

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 A. Baca

April 12, 1999

Re: Judicial Advisory Opinion 99-04

Dear

In your letter to this Committee, you have requested our opinion concerning two questions. First, you have inquired whether you are held to the same ethical standards as a judge incident to engaging in political activities or campaigning. Secondly, you have inquired whether there are any restrictions on your political activities which arise from your employment as an attorney and staff member of _____ if your husband should choose to run for a judicial position _____.

You have indicated to us that you are an attorney currently employed _____ in _____ the judiciary, _____. You state, however, that you are not involved in the preparation of legal opinions for _____.

It is our opinion that as an _____, you are not generally subject to all of the same standards applicable to judges under the Code of Judicial Conduct. See Canon 21-901 (A) NMRA 1999. However, Canon 21-300 (C) (2) of the Code of Judicial Conduct requires the _____ to "inform and require" you "to observe the standards of confidentiality, fidelity and diligence that apply to the judge and to refrain from manifesting bias and prejudice in the performance of [your] official duties." Further, as a judicial employee you are required to comply with the New Mexico Judicial Branch Personnel Rules

promulgated by the Supreme Court of New Mexico. In particular, we call your attention to Rule 25 concerning political activity. (See attached copy of Rule 25.) Additionally, as an attorney and member of the New Mexico State Bar, you are also subject to the Rules of Professional Conduct. See Rules 16-101 to 16-805 NMRA 1999.

Secondly, you have asked us to give you some general information concerning what a member of the judiciary staff may and may not do in support of her spouse's political campaign. Although, as discussed above, you are not subject to all of the same standards as a judge, you must still observe the standards of confidentiality, fidelity, and diligence _____ . Additionally, in response to your inquiry, we direct your attention to one of the most important provisions of the Code of Judicial Conduct, namely, Canon 21-700(B). This canon directs that candidates for election to judicial office are permitted to "participate in the electoral process, subject to the requirements" therein specifically listed. Canon 21-700(B)(3) directs that a judicial candidate "shall not allow any other person to do for the candidate what the candidate is prohibited from doing under these rules..." (Emphasis added.)

In past advisory opinions, we have given the following advice concerning participation in political campaign activities and a judge's support of political candidates. The revision of the Code of Judicial Conduct in 1995 has not materially affected these opinions.

In Advisory Opinion 89-02, we stated that campaign literature may indicate in writing or by photograph that a judge is the spouse of a candidate so long as the other members of the candidate's immediate family are included. The candidate could not, however, use the judicial office or use his or her spouse's title in campaign literature or in any other aspect of the campaign, such as introductory remarks at political functions.

In Advisory Opinion 89-04, we discussed the propriety of a judge's secretary or clerk remaining in judicial employ during the course of her candidacy for a state-wide political office. We concluded that the employee could retain her position but that she could not "use her judicial position or position title in connection with her campaign, and her campaigning may not create a conflict of interest, be inconsistent with existing statutes and court rules, or interfere with her assigned duties." Advisory Opinion 89-04. The advisory opinion also explained that she could not "use court supplies, equipment, or facilities in connection

with her political activity." Id.

In Advisory Opinion 96-02, we stated that a judge could assist her husband or his campaign in his door-to-door campaign. A judge could also solicit signatures for her husband's petitions, provided, that this activity was not done during the judge's normal business hours, the judge did not utilize court facilities, supplies or postage or "solicit others to sign such petition while the judge is performing judicial duties or acting in his or her official capacity." Advisory Opinion 96-02 (quoting Advisory Opinion 96-01).

It is our opinion that these same prohibitions would apply to you during your participation in your husband's campaign. In addition, you should not engage in campaign conduct during regular work hours while you are performing your duties on behalf of the court or at the court offices. Such prohibited activity includes displaying buttons, posters or other similar campaign items. See Indiana Advisory Opinion 1-90. The display of partisan political paraphernalia would impart the perception that the courts are partisan and not independent. See Canon 21-300 (C) (2) (prohibiting manifestation of bias and prejudice in the performance of official duties).

In sum, it is our opinion that you may properly participate in the political process consistent with the foregoing.

Yours very truly,

A handwritten signature in black ink, reading "Frank H. Allen, Jr.", with a horizontal line above it.

Frank H. Allen, Jr.
Chairman
Judicial Advisory Committee

Enclosure

...

Rule 25 Political Activity

A. Permitted Activities All employees are permitted to engage in the political activities described as follows:

1. to register and vote;
2. to express their opinions on all political subjects and candidates;
3. to engage in political activity on their own time to:

- a. serve as convention delegates;
- b. attend political rallies;
- c. sign nominating petitions and make voluntary contributions to political organizations; and
- d. serve as election officials

B. Prohibited Activities All employees are prohibited from engaging in the following activities;

- 1. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any political purpose;
- 2. using court supplies, equipment or facilities in connection with any political activity;
- 3. directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;
- 4. threatening to deny promotions to any employee who does not vote for certain candidates or requiring employees to make monetary contributions to a political fund, to buy tickets to political fund-raising events, to take part in political activity or requiring activities of a similar nature; and
- 5. engaging in political activity while on duty

C. Public Office

- 1. Employees covered by the provisions of the HATCH Act [5 USC §§ 1501 to 1508] may be candidates in nonpartisan elections, if upon filing or accepting the nomination and during the entire campaign, the employee is authorized leave without pay. A nonpartisan election is any election for public office when the candidate's party affiliation is neither indicated nor required.
- 2. Employees covered by the provisions of the HATCH Act may not be candidates in partisan elections. A partisan election is any election for public office when the candidate's party affiliation is indicated and required.
- 3. Employees not covered by the provisions of the HATCH Act may be candidates for any public office, but must use annual leave or leave without pay if campaigning requires that he or she be