

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 2001-1**

Issued February 2, 2001

*[Former CJC Opinion-provides advice under the former Ohio Code of Judicial Conduct which is superseded by the Ohio Code of Judicial Conduct, eff. 3/1/2009.]*

**SYLLABUS:** When a judge's spouse is a candidate for elected public or judicial office, the judge may appear in the family picture and be listed by name with or without the title "judge" in the spouse's campaign literature. However, the judge shall not be otherwise depicted in his or her official capacity in the family picture. A judge's inclusion in a family picture and identification by name and title in a spouse's campaign literature does not constitute a "public endorsement" by the judge under Canon 7(B)(2)(b) of the Ohio Code of Judicial Conduct.

When a judge's spouse is a candidate for elected public or judicial office, the judge may allow campaign signs promoting the spouse's candidacy to be placed on real estate jointly owned by the judge and spouse. Placement of a spouse's campaign sign on property co-owned by a judge and spouse does not constitute a "public endorsement" by the judge under Canon 7(B)(2)(b) of the Ohio Code of Judicial Conduct.

This opinion is not to be construed as allowing judges unfettered participation in a spouse's campaign. Judges are not permitted to participate in whatever manner they choose with regard to a spouse's campaign for elected public or judicial office. Judges are bound by the Ohio Code of Judicial Conduct. As an example, a judge is permitted under Canon 7(B)(3) to attend political gatherings and speak to political gatherings, but a judge may not speak publicly in support of his or her spouse's candidacy for that constitutes a prohibited "public endorsement" under Canon 7(B)(2)(b). As a second example, a judge may not wear a campaign button in public or in his or her chambers to support a spouse's candidacy for elected public or judicial office for that constitutes a prohibited "public endorsement." As a third example, a judge may not display in his or her judicial chambers a campaign sign supporting the spouse's candidacy for that constitutes a prohibited "public endorsement." Such activities also improperly lend the prestige of the judicial office to advance the interests of the spouse under Canon 4(A). These examples are illustrative and are not an exhaustive list of prohibited conduct.

**OPINION:** This opinion addresses two questions regarding a judge's conduct when the judge's spouse is a candidate for elected public or judicial office. This opinion does not otherwise address political activities by a judge's spouse.

1. Is it proper for a judge to appear in a family picture used in the campaign literature of his or her spouse who is a candidate for elected or judicial office?
2. Is it proper for a judge to allow campaign signs promoting the candidacy of his or her spouse for elected public or judicial office to be placed on real estate jointly owned by them?

*Question One*

Is it proper for a judge to appear in a family picture used in the campaign literature of his or her spouse who is a candidate for elected or judicial office?

The Ohio Code of Judicial Conduct prohibits a judge or judicial candidate from publicly endorsing a candidate for another public office. That prohibition is found in Canon 7(B)(2)(b).

Canon 7(B)(2) A judge or judicial candidate shall not do any of the following:

- (b) Make speeches on behalf of a political organization or another candidate at a political meeting or publicly endorse or oppose a candidate for another public office.

When a candidate for public office or judicial office is a judge's spouse, what is the application of Canon 7(B)(2)(b)? To what extent, if any, does this rule apply? By its language, the rule is absolute with no stated exceptions. Thus, the Board must determine whether a judge's inclusion in the family picture used in a spouse's campaign literature is a prohibited "public endorsement" under Canon 7(B)(2)(b).

To endorse is "to give approval of or support to." *Webster's II New Riverside University Dictionary* 431 (1984). True, a family picture symbolizes love and support; however, in this Board's view it is not a "public endorsement" of a family member's candidacy even when included in campaign literature. The love and support portrayed by a family picture applies to the members of a family generally in all their endeavors, not specifically to one family member's candidacy for elective office.

In campaign literature, a family picture provides biographical information regarding a candidate. The family picture is often accompanied by the names of the family members and sometimes other biographical family information is provided. The Board finds no ethical bar to using a family picture and listing a judge's name with or without the title "judge" along with the names of the other family members in the campaign literature of a judge's spouse. Family member pictures, names, and occupations are biographical information about a candidate and the candidate's family, not a prohibited "public endorsement."

The Board is aware that at least one state's commission advised that a judge may not allow his or her picture to be used in the campaign of an immediate family member. *See* Alabama, Judicial Inquiry Commission, Op. 82-143 (1982). The Board is also aware that one state's committee advised that the campaign literature of a spouse or daughter of a judge may state that the candidate is related to the judge but may not give an indication of the judge's office or use the title in the campaign literature. *See* New Mexico, Judicial Advisory Committee, Op. 89-2 (1989). This Board disagrees for the reasons stated above. In this Board's view, a judge appearing in a family picture and having his or her name listed with or without the title judge in the campaign literature of his or her spouse does not constitute a "public endorsement" under Canon 7(B)(2)(b).

In conclusion, this Board advises that when a judge's spouse is a candidate for elected public or judicial office, the judge may appear in the family picture and be listed by name with or without the title "judge" in the spouse's campaign literature. However, the judge shall not be otherwise depicted in his or her official capacity in the family picture. A judge's inclusion in a family picture and identification by name and title in a spouse's campaign literature does not constitute a "public endorsement" by the judge under Canon 7(B)(2)(b) of the Ohio Code of Judicial Conduct.

#### *Question Two*

Is it proper for a judge to allow campaign signs promoting the candidacy of his or her spouse for elected public or judicial office to be placed on real estate jointly owned by them?

It is not uncommon for spouses to jointly own real property, a home, an office, and or other real estate. This holds true even when one of the spouses is a judge, for the Ohio Code of Judicial Conduct does not bar a judge from owning real estate individually or with others.

Like any other candidate, a judge's spouse who is a candidate for elected public or judicial office wants to place his or her campaign signs on property the candidate owns. When a candidate and a judge jointly own property, does the placement of a campaign sign supporting the candidacy of the judge's spouse constitute a prohibited Canon 7(B)(2)(b) "public endorsement" by the judge?

It is this Board's view that a campaign sign supporting the candidacy of a judge's spouse on property jointly owned by the judge and the spouse does not constitute a prohibited "public endorsement" under Canon 7(B)(2)(b). The placement of the sign allows the candidate to use his or her own property to support his or her candidacy.

In conclusion, this Board advises that when a judge's spouse is a candidate for elected public or judicial office, the judge may allow campaign signs promoting the spouse's candidacy to be placed on real estate jointly owned by the judge and spouse. Placement of a spouse's campaign sign on property co-owned by a judge and spouse does not

constitute a “public endorsement” by the judge under Canon 7(B)(2)(b) of the Ohio Code of Judicial Conduct.

This opinion is not to be construed as allowing judges unfettered participation in a spouse’s campaign. Judges are not permitted to participate in whatever manner they choose with regard to a spouse’s campaign for elected public or judicial office. Judges are bound by the Ohio Code of Judicial Conduct. As an example, a judge is permitted under Canon 7(B)(3) to attend political gatherings and speak to political gatherings, but a judge may not speak publicly in support of his or her spouse’s candidacy for that constitutes a prohibited “public endorsement” under Canon 7(B)(2)(b). As a second example, a judge may not wear a campaign button in public or in his or her chambers to support a spouse’s candidacy for elected public or judicial office for that constitutes a prohibited “public endorsement.” As a third example, a judge may not display in his or her judicial chambers a campaign sign supporting the spouse’s candidacy for that constitutes a prohibited “public endorsement.” Such activities also improperly lend the prestige of the judicial office to advance the interests of the spouse under Canon 4(A). These examples are illustrative and are not an exhaustive list of prohibited conduct.

**Advisory Opinions of the Board of Commissioners on Grievances and Discipline are informal, nonbinding opinions in response to prospective or hypothetical questions regarding the application of the Supreme Court Rules for the Government of the Bar of Ohio, the Supreme Court Rules for the Government of the Judiciary, the Code of Professional Responsibility, the Code of Judicial Conduct, and the Attorney’s Oath of Office.**