



Ohio Board of Professional Conduct

OPINION 2018-04

Issued August 3, 2018

(Withdraws Adv. Op. 1990-24, Adv. Op. 2002-13)

Political and Campaign Activities of Magistrates

SYLLABUS: A magistrate may not make a contribution to the campaign committee of a judicial candidate seeking office to the same court or division of a court to which the magistrate is appointed. A magistrate may contribute personal funds to a political party, a nonjudicial candidate, or to the campaign committee of judicial candidate who is seeking election to a court or division of the court other than the one to which the magistrate is appointed. A magistrate may not publicly endorse or oppose a candidate for any public office, including an incumbent judge or a judicial candidate. A magistrate may not solicit or receive campaign contributions on behalf of a political party or candidate for any public office, including judicial office.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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QUESTIONS PRESENTED:

- 1). Whether a magistrate may contribute personal funds to a nonjudicial candidate, a judicial candidate, or a political party.
- 2). Whether a magistrate may contribute personal funds to a judicial candidate seeking election to another court or to a division of the court other than the division in which the magistrate serves.

3). Whether a magistrate may endorse or oppose a candidate for any public office.

4). Whether a magistrate may engage in campaign activities on behalf of his or her appointing judge who is seeking reelection, such as soliciting funds, going door-to-door to speak with voters, distributing campaign literature, placing yard signs, or participating in a telephone bank.

APPLICABLE RULES: Jud.Cond.R. 1.1, 1.3, 4.1, 4.4

OPINION: As judicial officers, both full- and part-time magistrates appointed by judges in municipal, common pleas, or appellate courts are subject to the Code of Judicial Conduct. Jud.Cond.R., *Application*. Due to the unique nature of magistrates as judicial officers and public employees, Canon 4 of the Code of Judicial Conduct restricts the ability of a magistrate to participate in the political process. The restrictions in the Code assist magistrates in remaining free from political influence and in upholding and promoting the independence, integrity, and impartiality of the judicial branch. Jud.Cond.R. 4.1, cmt. [1], Canon 1, *Preamble* [2].

Campaign and political contributions

With one significant exception, a magistrate, like a judge, may contribute personal funds to any candidate for public office. The Code expressly prohibits the campaign committee of a judicial candidate from receiving, directly or indirectly, a contribution from any employee of a court on which the candidate serves or to which the candidate is seeking election. Jud.Cond.R. 4.4(C)(1). Because magistrates are court employees, they fall within the scope of the prohibition.

Conversely, a magistrate may contribute personal funds, subject to the contribution limits, to a judicial candidate seeking election to a court or division of a court other than the court to which the magistrate serves. Jud.Cond.R. 4.4(I)-(J). In addition, a magistrate may contribute personal funds to a political party without restriction under the Code of Judicial Conduct. Jud.Cond.R. 4.1(B)(3); *see* Adv. Op. 88-017 (campaign contributions of personal funds permitted under former Code of Judicial Conduct.)

Endorsement of candidates for public office

A magistrate may not publicly endorse or oppose any candidate for public office, including judicial office. Jud.Cond.R. 4.1(A)(3). Public opposition or endorsement by a magistrate of a candidate for public office abuses the prestige of judicial office held by the magistrate to advance the private interests of others. Jud.Cond.R. 1.3; Jud.Cond.R. 4.1, cmt. [4]. For example, an improper endorsement occurs if a magistrate allows his or her name to be placed on an invitation to a candidate's fundraiser or signs and mails letters and cards in support of a candidate. *In re Keys* (1996), 80 Ohio Misc. 2d 1, 671 N.E.2d 1124; *Disciplinary Counsel v. Capers* (1984), 15 Ohio St.3d 122, 472 N.E.2d 1073. In terms of campaign contributions, the Board concludes that a magistrate's contribution of personal funds to a candidate for public office does not constitute a public endorsement of the candidate.

Participation in campaign activities and solicitation of campaign contributions on behalf of candidates

When a magistrate distributes campaign literature door-to-door, speaks to voters, participates in a campaign phone bank, or places yard signs on behalf of any candidate for public office, including his or her appointing judge, he or she is publicly endorsing the candidate.¹ When undertaken by a magistrate, participation in these types of activities demonstrates public approval and support for a candidate, and consequently is prohibited by the Code as an improper endorsement. Jud.Cond.R. 4.1(A)(2)-(3). An improper endorsement also occurs if a magistrate solicits or receives contributions from others for or on behalf of a campaign committee of any candidate for public office or a political party. Jud.Cond.R. 4.1(A)(4). The appointing court should ensure that its magistrates are not involved in the receipt or solicitation of campaign fund contributions on behalf of any candidate for judicial or nonjudicial office. *See generally, Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704.

¹ For the circumstance in which a judicial officer's spouse is a candidate for public office, see Adv. Op. 2001-1 (no violation of Judicial Code if a judicial officer's spouse places a yard sign supporting the spouse's candidacy for public office.)

CONCLUSION: Magistrates are judicial officers subject to the Code, including the restrictions on political and campaign activities. Because magistrates are also judicial appointees, the Code imposes additional limitations on their political and campaign activities. The Code prohibits the campaign committee of a judicial candidate from receiving, directly or indirectly, a contribution from any employee from the same court or division the candidate serves or is seeking election. However, a magistrate may contribute personal funds to the campaigns of other judicial candidates in other courts or other divisions of a court in which they serve, nonjudicial candidates, or political parties. As a judicial officer, a magistrate may not endorse or oppose any candidate for public office, including his or her incumbent judge. This restriction requires the magistrate to refrain from engaging in campaign activities including, but not limited to, soliciting or receiving campaign contributions on behalf of a political party or candidate for any public office, the distribution of campaign literature, speaking with voters, participating in a campaign phone bank, or placing yard signs on behalf of any candidate for public office.