

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 03-05  
(October 30, 2003)

**Participation of Judges, Family Members, and  
Judicial Employees in Political Activities**

Over the years, the Judicial Ethics Advisory Committee has fielded a myriad of questions relating to political activities of judges, family members, and judicial employees. This opinion addresses a variety of such issues raised by multiple sources. Although some of the issues covered here are only loosely related to each other, their overlapping and recurrent nature suggests treatment in a single opinion.

**Issues**

1. May a judge sign nominating petitions for non-judicial candidates?

**Answer:** Yes, with qualifications.

2. May a judge or judicial candidate circulate nominating petitions?

**Answer:** No, other than his or her own petition, and then only outside the court-house.

3. May a judge's spouse or other family member circulate nominating petitions for candidates?

**Answer:** Yes, with qualifications.

4. May a judge's spouse or other family member work on a non-judge's political campaign?

**Answer:** Yes, with qualifications.

5. May a judge's spouse or other family member hold office in a political party or organization?

**Answer:** Yes, with qualifications.

6. May a member of a precinct committee retain office when he or she becomes a candidate for a judicial office?

**Answer:** No.

7. May a member of a judge's personal staff serve as an officer in a political club or organization?

**Answer:** No.

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### Discussion

#### Issue 1

In Opinion 96-07, we previously concluded that a judge may sign a petition to place a candidate on the primary election ballot, as long as the “nominating petitions are not intended to be used by candidates as endorsements.” But we cautioned judges in sparsely-populated counties about signing nominating petitions because “fewer signatures are required and a judge’s signature is more likely to draw attention” and “could be perceived as an endorsement.” Opinion 96-07 is consistent with opinions of other states’ judicial ethics advisory committees. *See, e.g.*, Ohio Op. 92-11; Tenn. Op. 90-4; *see also* Wis. Op. 00-2 (“A judge may sign a nominating petition for a partisan candidate for office, but the judge should consider the precise language of the petition and whether the petition may be used for any purpose other than filing with the appropriate public official.”). We see no reason for deviating from our prior opinion. Therefore, subject to the foregoing qualifications, a judge may sign nominating petitions of judicial or non-judicial candidates.

#### Issue 2

The question of whether a judge or judicial candidate may circulate nominating petitions, particularly in the courthouse, is more problematic and raises different issues. With respect to nominating petitions for non-judicial candidates or other judicial candidates, Canon 5A(1)(b) and (d) preclude judges and judicial candidates from “publicly endors[ing] a candidate for public office” or “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” *See also* Ariz. Const. art. VI, § 28. As noted in Opinion 96-07, signing a nominating petition constitutes neither a promise to vote for nor an endorsement of the nominee. On the other hand, circulating someone else’s nominating petition implies that the judge or judicial candidate endorses the nominee and is actively participating in a political campaign.

The commentary to Canon 5A(1) recognizes that a judge or judicial candidate “retains the right to participate in the political process as a voter,” may “privately express[] his or her views on judicial candidates or other candidates for public office,” and “is entitled to entertain his or her personal views on political questions.” The commentary also states that a judge “is not required to surrender his or her rights or opinions as a citizen, but should avoid political activity which may give rise to a suspicion of political bias or impropriety.” Circulating the nominating petitions of others, however, goes beyond the private expression of views on candidates and “may give rise to a suspicion of political bias or impropriety.”

As a highly-regarded commentator has noted, several state ethics committees have qualifiedly permitted judges “to circulate nominating petitions to obtain others’ signatures at least if the petition relates to a judicial office (*New Mexico Judicial Advisory Opinion 96-1*), the judge is also a candidate (*Illinois Advisory Opinion 98-2*), or the judge’s name is also on the petition (*New York Advisory Opinion 91-96*).” Cynthia Gray, *May a Judge Sign a Nominating Petition?*, *Judicial Conduct Reporter*, vol. 23, no. 3, at 7 (Fall 2001) (Gray, *Nominating Petition*); *see also* N.Y. Op. 98-99 (a judge “may circulate the nominating petitions for a slate of candidates from the judge’s own political party or another political

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party if the judge's name is also in nomination for judicial office on the petition(s)" but "may not circulate individual nominating petitions of other candidates of any political party").

Canon 5B does not prohibit a judge or judicial candidate from circulating his or her own nominating petition, and Canon 5A implicitly permits that. *See* Canon 5A(1)(d) (a judge or candidate shall not "actively take part in any political campaign other than his or her own election, reelection or retention in office"). In our view, however, a judge or judicial candidate whose name is not on the nominating petition should not circulate it because doing so would be tantamount to publicly endorsing another candidate and actively participating in a political campaign. *See* Canon 5A(1)(b), 5A(1)(d). In addition, circulating the petitions of other candidates "may give rise to a suspicion of political bias or impropriety." Commentary to Canon 5A(1). It also could "convey the impression that [such candidates] are in a special position to influence the judge" or be viewed as "lend[ing] the prestige of judicial office to advance the private interests of . . . others." Canon 2B.

Even as to his or her own nominating petition, a judge or judicial candidate should not circulate the petition in the courthouse. Use of county buildings for circulating nominating petitions arguably conflicts with A.R.S. § 11-410(A), which provides that "[a] county shall not use its personnel, equipment, materials, buildings or other resources for the purpose of influencing the outcomes of elections." In our view, circulating a nominating petition in the courthouse also would be inimical to "maintain[ing] the dignity appropriate to judicial office and act[ing] in a manner consistent with the integrity and independence of the judiciary." Canon 5B(1)(a). *See* N.M. Op. 96-01 (a judge who circulates a nominating petition for a judicial candidate may not circulate the petition during "normal business hours" or using "court facilities, supplies, or postage"). Moreover, a judicial candidate's circulation of a nominating petition in the courthouse would have an inherent, coercive tendency and arguably would "lend the prestige of judicial office to advance the private interests of the judge." Canon 2B.

Finally, we note that judicial candidates "shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control from doing on the candidate's behalf what the candidate is prohibited from doing." Canon 5B(1)(b). Similarly, judicial candidates "shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing." Canon 5B(1)(c).

### **Issue 3**

As the foregoing discussion illustrates, the nature and scope of political activities that judges and judicial candidates may engage in are not without limit. But Canon 5A, which relates to political conduct in general, only applies to judges and judicial candidates, not their spouses or other family members. Canon 5B, which relates to judicial campaign conduct, requires judges and judicial candidates to "maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary." Canon 5B(1)(a). That section also requires judges and judicial candidates to "encourage members

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of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate." *Id.* As the commentary to Canon 5B(1)(a) states, however, "family members are free to participate in other political activity."

Although Opinion 76-02 did not squarely address this issue, it generally suggested that judges should encourage their spouses to refrain from political activities. But "judges have never been required to compel family members to shun political activity." Cynthia Gray, *Political Activity by Members of a Judge's Family*, State Justice Institute, American Judicature Society, at 1 (May 2001) (Gray, *Political Activity*). Indeed, "nothing in the code of judicial conduct in any state prevents members of a judge's family from running for political office, supporting others' candidacy for political office, or being involved publicly in other political activities—as long as they are careful not to suggest their activities reflect the judge's convictions as well." *Id.* at 1-2.

New York's Advisory Committee on Judicial Ethics has concluded that a judge's spouse "may circulate nominating petitions of any party . . . as long as the actions are those of the spouse and are not intended to be the indirect political activity of the [judge]." N.Y. Op. 98-99. We agree with that conclusion, and the First Amendment probably compels it. *See* Ark. Op. 2002-06; Kan. Op. 37. Any suggestion to the contrary in Opinion 76-02 is disavowed.

### Issue 4

For essentially the same reasons stated in Issue 3, a judge's spouse may work on a non-judge's political campaign. As Cynthia Gray has observed:

The "autonomy of the judge's spouse should simply be accepted as an understood premise of modern life, and the public can accept the political neutrality of a judge despite the political involvement of the judge's spouse." However, "an implicit burden" always rests on the judge "to be vigilant in detecting possible impropriety or the likelihood of public appearance thereof."

Gray, *Political Activity*, *supra*, at 1 quoting in part *Application of Gaulkin*, 351 A.2d 740, 746-47 (N.J. 1976).

Citing judicial ethics opinions from several states, Gray correctly observes that "[m]embers of a judge's family may publicly and actively support another individual's campaign for public office." *Id.* at 7. As she also cautions, however,

[T]he family member's participation in political campaigns must be conducted without reference to the judge or the judge's office and may not be undertaken to do indirectly for the judge that which is prohibited. *Louisiana Advisory Opinion 134* (1996). Family members should take "every precaution to insulate the judge from direct or indirect involvement in such activity" (*Kansas Advisory Opinion JE-37*) and to ensure that the family member's participation in the campaign is not misunderstood as "surrogate judicial participation." *Maryland Advisory Opinion 108* (1986).

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Gray, *Political Activity, supra*, at 7-8; *see also* Ark. Op. 2002-06 (“the spouse of a judge is free to participate in other political campaigns” but “should make all efforts to avoid any suggestion or hint that the judge is supportive of a candidate”); Kan. Op. 61 (spouse of judge in non-partisan district may serve as campaign manager for a candidate for office in a congressional district, but judge “should carefully avoid impropriety and even the appearance of impropriety while the judge’s spouse participates in this political activity”); Mass. Op. 98-4 (judge’s spouse and family members may participate in political activities, but judge “must remain sufficiently divorced from the conduct of [family] members . . . to ensure that there is not a public perception that [judge himself or herself is] endorsing a political candidate”).

In sum, a judge’s spouse or other family member may fully participate in campaign activities, provided that the judge takes reasonable steps to avoid any public perception that the judge is also participating in those activities or is furthering the candidate’s political aspirations by virtue of the judge’s position.

### Issue 5

In Opinion 76-02, Issue 1, the committee opined that a judge “should *encourage* [the judge’s spouse] to resign from all political *offices*” but that the spouse could “remain a *member*” of various local political groups. For reasons set forth in response to Issues 3 and 4 above, we now retract that portion of the opinion. Citing several states’ advisory opinions, Gray notes that “[a] member of a judge’s family may be a member or officer of a political party or organization.” Gray, *Political Activity, supra*, at 10. We agree, subject to the same qualifications noted under Issues 3 and 4 above.

### Issue 6

“Canon 5 generally applies to all incumbent judges and judicial candidates.” Canon 5C. Under Canon 5A(1)(a), judicial candidates shall not “act as a leader or hold any office in a political organization.” Under the code’s Terminology section, “[p]olitical organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.” The code “does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not ‘an office in a political organization.’” Commentary to Canon 5A(1). In contrast, the “principal purpose” of precinct committees is to “further the election or appointment of candidates to political office.” *See* Code Terminology section; *see generally* A.R.S. §§ 16-821 through 16-828, 16-901(20); *Arizona Libertarian Party v. Bd. of Supervisors of Cochise County*, 205 Ariz. 345, ¶8, 70 P.3d 1146, ¶8 (App. 2003) (“A precinct committeeman serves the interests of his or her political party and is not a public officer at all.”).

Therefore, a judicial candidate may not serve as a precinct committee member. *See* Kan. Op. 63 (“One function of Precinct Committeemen and Committeewomen is to further the support and secure the election of candidates within their precinct. . . . We conclude that Precinct Committeemen and Committeewomen hold office in a political organization, and the Judges and Candidates for Judicial Office may not serve as Precinct Committeemen or

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Committeewomen.”); Kan. Op. 23 (because “[p]recinct committeeman is an office in a political organization within the [code’s] meaning,” “judge must resign as precinct committeeman forthwith”).

### Issue 7

Canon 5B of the Code of Conduct for Judicial Employees states that “members of a judge’s personal staff . . . shall be subject to the same political limitations as judges contained in Canon 5 of the Code of Judicial Conduct, and may not hold any elective office.” Therefore, a member of the judge’s personal staff, such as a judicial administrative assistant, law clerk, or bailiff, may not hold office in a political club to elect candidates that it supports. As noted in Issue 6, a judge is precluded from acting “as a leader or hold[ing] any office in a political organization.” Because the judge would not be permitted to hold an office in this type of club, it follows that the judge’s personal staff likewise may not do so.

### Applicable Code Sections

Arizona Code of Judicial Conduct, Terminology; Canons 2B, 5A(1) and commentary, 5A(1)(b), 5A(1)(d), 5B(1)(a), 5B(1)(b) and 5B(1)(c) (1993).

Arizona Code of Conduct for Judicial Employees, Canon 5B (1997).

### Legal References

Arizona Constitution, Article VI, § 28.

A.R.S. §§ 11-410(A), 16-821 through 16-828, 16-901(20).

*Arizona Libertarian Party v. Bd. of Supervisors of Cochise County*, 205 Ariz. 345, ¶8, 70 P.3d 1146, ¶8 (App. 2003).

*Application of Gaulkin*, 351 A.2d 740, 746-47 (N.J. 1976).

### Advisory Opinions

Arizona Judicial Ethics Advisory Committee Opinions [76-02](#) (March 16, 1976); [96-07](#) (June 19, 1996).

Arkansas Judicial Ethics Advisory Committee Opinion 2002-06 (June 26, 2002).

Illinois Judicial Ethics Committee Opinion 98-2 (April 8, 1998).

Kansas Judicial Ethics Advisory Committee Opinions 23 (Dec. 30, 1987); 37 (March 27, 1992); 61 (March 18, 1996); 63 (July 1, 1996).

Massachusetts Supreme Judicial Court Committee on Judicial Ethics Opinion 98-4 (March 19, 1998).

New Mexico Advisory Committee on the Code of Judicial Conduct Opinion 96-01 (Jan. 26, 1996).

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New York State Advisory Committee on Judicial Ethics Opinions 91-96 (1991); 98-99 (Sept. 10, 1998).

Ohio Board of Commissioners on Grievances and Discipline Opinion 92-11 (April 10, 1992).

Tennessee Judicial Ethics Committee Opinion 90-4 (1990).

Wisconsin Supreme Court Judicial Conduct Advisory Committee Opinion 00-2 (Jan. 18, 2001).

### **Other References**

Cynthia Gray, *May a Judge Sign a Nominating Petition?*, Judicial Conduct Reporter, vol. 23, no. 3 (Fall 2001).

Cynthia Gray, *Political Activity by Members of a Judge's Family*, State Justice Institute, American Judicature Society (May 2001).