

JUDICIAL QUALIFICATIONS COMMISSION
STATE OF GEORGIA

Public Comments for Proposed Formal Advisory Opinion 243

Pursuant to Judicial Qualifications Commission Rule 28.B (3), the Commission's Hearing Panel is posting this proposed Formal Advisory Opinion on the websites of the Commission, the Administrative Office of the Courts, and the State Bar of Georgia to solicit public comments on the opinion. Anyone who wishes may submit a comment on the opinion by e-mail to the Commission's staff attorney, Max Jones, at max@gajqc.com. The Hearing Panel will receive and consider comments through **June 25, 2018**.

JUDICIAL QUALIFICATIONS COMMISSION
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(PROPOSED) FORMAL ADVISORY OPINION No. 243

Pursuant to Rule 28(B)(1) of the Rules of the Judicial Qualifications Commission (JQC), the Director of the JQC has requested that the Hearing Panel of the JQC issue an opinion on the recurring concern of whether a judge's spouse or partner may use the couple's shared residence for political events or fundraisers. For the reasons set forth below, the Hearing Panel concludes that such a situation, while not prohibited by the Code of Judicial Conduct, presents a serious and substantial risk of creating the appearance of improper political engagement by the judge. Given that risk, the Hearing Panel further finds that such events should occur only under conditions that minimize the possibility that the public will perceive the judge as sponsoring or supporting the political or fundraising event.

Rule 4.1 of the Code of Judicial Conduct instructs that a judge must not (1) act as or hold herself out to be a leader of a political organization, (2) make speeches for a political organization or candidate, or (3) solicit funds for or make a contribution to a political organization. The JQC has properly interpreted and applied Rule 4.1 to mean that a judge may not campaign for or otherwise publicly endorse a political candidate in any way. *See, e.g.*, JQC Formal Advisory Ops. 141, 147. Thus, it is plain that a judge could not host a political or fundraising event (other than her own campaign event) in her home.

These strictures do not apply to the judge's spouse.¹ That individual enjoys a less-encumbered First Amendment right to assemble and to engage in political speech -- to

¹ Several jurisdictions disagree and prohibit any political or fundraising events in a judge's marital home, even if exclusively sponsored by the non-judge spouse. *See, e.g.*, Tex. Formal Advisory Op. 284; Kan. Formal Advisory Op. JE-33; De. Formal Advisory Op. 2008-1. The Commission finds that the Code of

include speech in support of politicians, candidates, political parties, and political organizations as expressed by hosting political events and fundraisers in the spouse's home. However, a judge's spouse's exercise of those freedoms can have consequences for the judge. If the spouse decides to host a political or fundraising event in the marital home, the judge must guard against the event being directly associated with the judge (other than by the unavoidable fact that the event occurred in her residence).

There is no perfect solution here. Ideally, the spouse would opt to find another venue for the event. However, since that is not what the Code of Judicial Conduct requires, the judge should take all reasonable steps to reduce the likelihood that a member of the public might fairly misconstrue the spouse's event as also being the judge's event.

The following are steps a judge must take whenever her spouse or partner elects to host a political or fundraising event in their joint household:²

- (1) The judge should not be identified in any invitations, publicity, or social media for the event;
- (2) The judge may not assist in any preparations for the event;
- (3) The judge's title may not be directly or purposefully associated with the event;
- (4) The judge may not invite anyone to the event;³
- (5) The judge may not encourage anyone to attend or to support the candidate or cause that is the focus of the event; and
- (6) The judge may not be present at the marital home for any part of the event.

Judicial Conduct does not -- and indeed cannot -- impose such restrictions on a non-judge's First Amendment rights.

² Many jurisdictions impose similar requirements on judges in this situation. *See, e.g.*, Ca. Formal Advisory Op. 49; Fla. Formal Advisory Op. 2011-10; In. Formal Advisory Op. 2-2014; N.Y. Formal Advisory Op. 2006-147; S.C. Formal Advisory Op. 14-2006; Wa. Formal Advisory Op. 1986.

³ This prohibition covers joint invitations as well (*e.g.*, "Mr. and Mrs. X invite you..."). The invitations must come exclusively from the non-judge spouse (or the organization planning the event).

Again, the preferred course of action is for a judge to avoid using the marital home as the site for a political or fundraising event (other than a judge's own campaign event). Given that that is ultimately a question for the judge to resolve with her spouse or partner, the Hearing Panel is limited to imposing the above-listed rules governing the judge's conduct in connection with the spouse's political or fundraising event.

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