



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
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Charleston, West Virginia 25304
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February 21, 2012

Re: JIC Advisory Opinion 2012-08.

Dear Ms.

Your request for an advisory opinion to Counsel was reviewed by the Judicial Investigation Commission at its February 10, 2012 meeting. The factual scenario giving rise to your request is as follows: Your husband presently serves as a probation officer in _____ County. You are running for Magistrate of _____ County. You want to know what role, if any, your husband can play in your campaign. You also want to know whether your husband can remain a probation officer in _____ County if you are elected Magistrate.

Canon 6A of the Code of Judicial Conduct provides that "[a]ll candidates for judicial office shall comply with the applicable provisions." Canon 5 governs the political activity of judicial officers and candidates. Canon 5E states that "Canon 5 generally applies to all incumbent judges and judicial candidates. A candidate whether or not an incumbent and whether or not successful, is subject to judicial discipline for his or her campaign conduct."

Canon 5A(3)(a) states that "a candidate for a judicial office shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, and **should encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate that apply to that candidate**" (emphasis added). The Comment to this provision notes that "although a judicial candidate must encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate, family members are free to participate in other political activity."

Canon 5A(3)(b) and (c) extend the reach of Canon 5 even farther and provide:

A candidate for judicial office "(b) 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 under the Sections of this Canon [and] (c) except to the extent permitted by Section 5C(2) shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon. . . ."

Therefore, your husband is required to follow the tenets of Canon 5 because he is married to and residing in the same household as a candidate for magistrate.

Your husband is doubly constrained by virtue of his employment. A probation officer is considered a judicial employee. Your husband is employed by the Supreme Court of Appeals, and he answers to the Chief Judge of the Judicial Circuit in which he serves as a probation officer. As such, your husband should observe the Code of Judicial Conduct.

Canon 3C(2) states that "a judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties." Canon 3C(5) provides that "[a] judge shall not require any personnel subject to the judge's direction to act contrary to any code of ethics applicable to the judge or the personnel. . . ." The concept that a judicial employee must observe the same standards as a judge is also found in *Philyaw v. Gatson*, 195 W. Va. 474, 466 S.E.2d 133 (1995), and JIC Advisory Opinion 3/15/04 (Magistrate Assistant is a judicial employee and must comply with Canon 5A(2) and immediately resign when running for the non-judicial office of Board of Education).

The Commission has previously set forth some parameters on the campaign activities of judicial officers/employees. For example, in JIC Advisory Opinion 2/25/1994, the Commission advised a Magistrate who wanted to campaign for his wife who was running for prosecuting attorney as to the following:

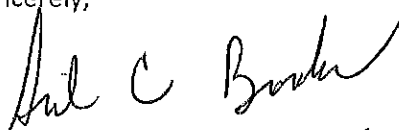
It would be permissible for you to attend campaign rallies or other social functions with your wife. However, you could not engage in any fundraising activities. It would not be permissible for you to perform volunteer manual labor connected with her campaign. It would not be permissible for you to drive a vehicle normally driven by your wife when that vehicle had her campaign stickers displayed. It would not be permissible for you to assist in handing out campaign signs or posters that had been previously requested by individuals. Nor would it be permissible for you to deliver and pick up items from the printers or commercial advertisers at the request of your wife or a member of her campaign committee.

In JIC Advisory Opinion 3/15/2004, the Commission stated that the campaign activity of a magistrate assistant on behalf of her husband who was running for Sheriff could only occur "after office hours and outside the area where court proceedings are conducted." In JIC Advisory Opinion 3/19/2004, the Commission found that a probation officer who wanted to campaign for a close personal friend who was running for statewide office should know that spending too much time on such activities could cause a problem "because of the unique schedule and time constraints placed" on his position.

With respect to the possible reassignment of your husband should you be elected Magistrate, the Chief Judge of the Circuit better understands the circumstances surrounding the issue so he/she will have the final say as to the ultimate outcome.

It is hoped that this opinion fully addresses the issues which you have raised. If there is any further question regarding this matter do not hesitate to contact the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Gail C. Boober", with a stylized flourish at the end.

Gail C. Boober, Vice Chairperson¹
Judicial Investigation Commission

GCB/tat

¹ The Chairperson abstained.