

**JUDICIAL ETHICS ADVISORY COMMITTEE  
OF THE  
STATE OF DELAWARE**

The Hon. Donald F. Parsons, Jr., Chair  
The Hon. Richard F. Stokes, Vice Chair  
The Hon. Robert B. Coonin  
The Hon. Mary M. Johnston  
The Hon. Bonita N. Lee  
The Hon. Michael K. Newell  
The Hon. Charles W. Welch, III

**JEAC 2008-3**

August 26, 2008

[Member of Judiciary]

**Re: Request for Opinion from the Judicial Ethics Advisory Committee**

Dear [Member of Judiciary]:

By correspondence dated August 5, 2008, you have requested an expedited opinion from the Judicial Ethics Advisory Committee (“Committee”) on what restrictions, if any, apply with respect to political activities of a [judicial intern] whose spouse is seeking elective public office in the State of Delaware. Thank you for the information and research that you presented with your request. This information was quite useful to the Committee. For the reasons that follow, the Committee has determined that, pursuant to the Delaware Code of Conduct for Law Clerks (“Code”), a [judicial intern] is limited in the political activity in which he or she may participate.

**A. A [Judicial Intern]’s Conduct Must Conform to the Code.**

Pursuant to the Delaware Supreme Court’s Administrative Directive establishing

the Code,<sup>1</sup> the Code applies to “all full-time, part-time, paid and unpaid law clerks and judicial interns” working within the Delaware court system.<sup>2</sup> As indicated in your letter to the Committee requesting this opinion, a [judicial intern] is a part-time, unpaid law clerk for a Delaware court and, therefore, must comply with the Code. They are used like other law clerks and enjoy the same unique confidential relationship with a judge as any other law clerk. A [judicial intern]’s position of confidence necessitates their compliance with the Code.

**B. The Applicable Canons of the Code.**

Your inquiry implicates Canons 1, 2, 3 and 7 of the Code. The relevant portions of these Canons provide as follows:

**Canon 1. A law clerk should uphold the integrity and independence of the judiciary and the office.**

**An independent and honorable judiciary is indispensable to justice in our society. A law clerk should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.**

**Canon 2. A law clerk should avoid impropriety and the appearance of impropriety in all activities.**

**A. A law clerk should not engage in any activities that would put into question the propriety of the law clerk’s conduct in carrying out the duties of the office. A law clerk should not allow family, social, or other relationships to influence official conduct or judgment. A law clerk should not lend the prestige of the office to advance the private interests of others; nor should the law clerk permit others to convey the impression that they are in a special position to influence the law clerk.**

**Canon 3. A law clerk should perform the duties of the office impartially and diligently.**

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<sup>1</sup> Delaware Supreme Court Administrative Directive No. 102 (Del. June 1, 1995).

<sup>2</sup> See Delaware Supreme Court Administrative Directive No. 102, at paragraph (1).

**D. A law clerk should promptly inform the appointing judge of any circumstance that might serve as a basis for disqualification of the law clerk or judge, including, but not limited to, any relationship or association of the law clerk with any person or entity interested in a case in any way.**

**Canon 7. A law clerk should refrain from political activity.**

**A law clerk should refrain from political activity; a law clerk should not act as a leader or hold office in a political organization; a law clerk should not make speeches for or publicly endorse a political organization or candidate; a law clerk should not solicit funds for or contribute to a political organization, candidate or event; a law clerk should not become a candidate for political or public office; a law clerk should not otherwise engage in political activities.**

**C. A [Judicial Intern]’s Ability to be Politically Active on Behalf of Their Spouse is Limited by the Code.**

It is important to remember that ethics deals with a theory or system of moral values. The Code is meant to establish a practical guide for the principles of conduct governing law clerks. Except in very specific instances, the Code does not restrict the conduct of a law clerk’s spouse. “[F]or practical reasons as well as on principle, the autonomy of [a law clerk’s] spouse should simply be accepted as an understood premise of modern life.”<sup>3</sup> However, every precaution must be taken to assure that the judiciary itself, including its law clerks, maintains its careful separation from direct and indirect involvement in politics.<sup>4</sup> In this respect, your [judicial intern]’s (“Law Clerk”) conduct must conform in most aspects to the conduct of any member of the judiciary. A comparison of the Code with the Delaware Judges’ Code of Conduct (“Judges’ Code”) illustrates this fact. Thus, “in order to maintain the integrity, independence, and the impartiality of the judiciary,” law clerks must conform to the Code.<sup>5</sup> However, the Committee is sensitive to the reality that a law clerk’s position is not synonymous with the position of a member of the judiciary. Members of the judiciary are in a more sensitive position. Their position is more public and influential. Therefore, members of

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<sup>3</sup> See *In the matter of Gaulkin*, 351 A.2d 740, 746 (N.J. 1976) (holding that a judge’s spouse is autonomous from a judge).

<sup>4</sup> *Id.* at 747. See also Canon 7 of the Code.

<sup>5</sup> Delaware Supreme Court Administrative Directive No. 102 (Del. June 1, 1995).

the judiciary are, and should be, subject to a higher standard of care. With these precepts in mind, the Committee recommends that your Law Clerk adhere to the following restrictions:

1. Your Law Clerk should not make any speeches for or publicly endorse their spouse's candidacy.<sup>6</sup> He or she should attempt to avoid any appearance of an endorsement, to the extent possible. For example, it is the Committee's opinion that your Law Clerk should not display their spouse's campaign sticker on their personal vehicle. However, the Committee also realizes that the candidate spouse has a right to place such a campaign sticker on their own vehicle and that your Law Clerk may, on occasion, have to drive that vehicle in order to satisfy family obligations. The Committee recommends that your Law Clerk make a conscious attempt to minimize such situations. The Committee also understands that a spouse, owning property as a joint tenant with the Law Clerk, may use the property for any legal purpose. Therefore, the Law Clerk's spouse may place his or her yard sign on jointly owned property, although it must be the decision of the Law Clerk's spouse to place the yard sign on the property. It may not be the decision of the Law Clerk.<sup>7</sup>
2. Your Law Clerk should not help with delivering campaign literature, erecting yard signs, greeting at polling places or campaign events, or actively participate in any other campaign-related activities on behalf of their spouse.<sup>8</sup>
3. Your Law Clerk should not solicit others to assist or support their spouse's campaign in any way.

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<sup>6</sup> Canon 7 of the Code. *See also* South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 5-1999.

<sup>7</sup> See Oklahoma Judicial Ethics Advisory Panel, Judicial Ethics Opinion 2000-7, 73 P.3d 262 (Nov. 14, 2000).

<sup>8</sup> Canon 7 of the Code.

4. Your Law Clerk should not contribute financially to their spouse's campaign. Additionally, any financial contributions to your Law Clerk's spouse's campaign made by the candidate spouse must be clearly designated as originating from the candidate spouse alone.<sup>9</sup>
5. Your Law Clerk may not attend political functions, except as a spectator at bi-partisan political functions. It should be understood that he or she may not actively campaign at those functions, however. In this regard, the Committee notes that Canon 7 of the Code differs from Canon 7 of the Judges' Code. The Judges' Code specifically prohibits judges from attending political gatherings, political party dinners and other functions, while Canon 7 of the Code does not include such a specific prohibition.<sup>10</sup> Notwithstanding this omission from the Code, the Committee is of the opinion that attendance at any partisan political function would constitute an endorsement of the political party or candidate(s) holding the event. Such endorsements are prohibited by the Code.
6. Your Law Clerk may be identified as part of their spouse's family and may appear in campaign photographs and television commercials with his or her spouse. However, it must be noted that your Law Clerk may not provide any endorsements or opinions in any such campaign literature or advertisements and that no reference can be made to the Law Clerk's occupation or for whom they work.<sup>11</sup>

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<sup>9</sup> Canon 7 of the Code. *See also* the comment for Canon 7 of the Judges' Code ("[p]olitical contributions by the judge's spouse must result from the independent choice of the spouse and checks by which such contributions are made shall not include the name of the judge").

<sup>10</sup> See Canon 7 of the Code and Canon 7 of the Judges' Code. *See also* South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 5-1999.

<sup>11</sup> See South Carolina Advisory Committee on Standards of Judicial Conduct, Opinion No. 5-1999. *See also* Ethics Committee of the Pennsylvania Conference of State Trial Judges, Informal Advisory Opinion 4/30/03; Oklahoma Judicial Ethics Advisory Panel, Judicial Ethics Opinion 2000-6, 73 P.3d 261 (Oct. 13, 2000).

7. Your Law Clerk may not officially act as a political advisor for their candidate spouse during the campaign, but, the Committee is not suggesting any restrictions on private conversations between husband and wife.<sup>12</sup>
8. Your Law Clerk should disqualify themselves from any matter involving an individual or entity that they know has contributed to their spouse's campaign. In this regard, the Code only prohibits violations of this restriction that are done so knowingly.<sup>13</sup> There are litigants that may appear before you without your Law Clerk knowing that the litigant has supported their spouse's campaign. Your Law Clerk may assist you with any matters involving such a litigant until such time that they discover the litigant's support of their spouse.<sup>14</sup> As soon as your Law Clerk discovers any such relationship of a litigant to their spouse's campaign, your Law Clerk should inform you promptly in order that you may determine whether there is a basis for a disqualification of the Law Clerk or yourself.<sup>15</sup>

As a practical matter, the Committee cannot provide an exhaustive list of restrictions on your Law Clerk's conduct in relation to their spouse's political activities. In general, while your Law Clerk may aid their spouse, as any normal spouse would be expected, they may not actively participate in any political or campaign-related activity. Your Law Clerk should attempt to preserve the integrity and independence of the judiciary and may not lend the prestige of their position to advance the interest of their spouse's campaign.<sup>16</sup>

**D. A [Judicial Intern] May Request an Order from the Presiding Judge of Their Court Exempting Them from Specific Provisions of the Code.**

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<sup>12</sup> See New York Advisory Committee on Judicial Ethics, Opinion No. 92-129 (Jan. 28, 1993). See also Delaware Judicial Ethics Advisory Committee, Opinion No. 2008-1 (Feb. 20, 2008).

<sup>13</sup> See Delaware Judicial Ethics Advisory Committee, Opinion No. 2008-1 (Feb. 20, 2008).

<sup>14</sup> *Id.*

<sup>15</sup> See Canon 3(D) of the Code.

<sup>16</sup> See Canon 1 and Canon 2 of the Code.

The Committee also notes that the Delaware Supreme Court Administrative Directive adopting the Code has a specific provision permitting the presiding judge of your Court, with the advance approval of the Chief Justice, to exempt any part-time, unpaid law clerks from any portion of the Code that the presiding judge determines is impractical in application to the law clerk.<sup>17</sup> As such, you or your Law Clerk may request such an exemption from the presiding judge of your court if either of you anticipate that complying with a specific provision of the Code is going to be impractical.

For the Committee,

Charles W. Welch, III  
Judicial Ethics Advisory Committee

cc: The Honorable Carolyn Berger, Liaison Justice  
Members of the Judicial Ethics Advisory Committee:  
The Honorable Donald F. Parsons, Jr., Chair  
The Honorable Richard F. Stokes, Vice Chair  
The Honorable Robert B. Coonin  
The Honorable Mary M. Johnston  
The Honorable Bonita N. Lee  
The Honorable Michael K. Newell

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<sup>17</sup> See Delaware Supreme Court Administrative Directive No. 102, at paragraph (2), which states as follows: “(2) If the presiding judge of any of the foregoing courts should determine that any part of the Law Clerks Code is impractical in application to any part-time, unpaid law clerk or judicial intern, the presiding judge may enter a specific order with the advance approval of the Chief Justice providing such limited and specific exemption or exemptions from the Law Clerks Code as the presiding judge deems appropriate.”