
ISSUE

To what extent, if any, may a full-time court commissioner assist a spouse in hosting a political fund-raising activity in their home?

ANSWER

A court commissioner may assist a spouse in all non-visible activities.

FACTS

The spouse of a full-time court commissioner is politically active and holds fund-raisers in their home. The court commissioner does not contact individuals or committees concerning the event. He does not greet the guests nor become involved in any of the fund-raising activities. He assists his spouse by (1) performing household cleaning tasks both before and after the event; (2) child care; (3) food preparation; and (4) replenishment of food/beverages while the activity is conducted.

The court commissioner asks whether his activities, as outlined above, are in violation of SCR 60.06.

DISCUSSION

The issue presented involves SCR 60.01(8), making a court commissioner subject to the Code of Judicial Conduct, and SCR 60.06, requiring a judge to refrain from inappropriate political activity.

A. *SCR 60.01(8)*

SCR 60.01(8) includes in the definition of "judge" those holding office as court commissioners.

The Committee concludes that court commissioners are subject to the Code of Judicial Conduct and shall, therefore, refrain from inappropriate political activity.

B. *SCR 60.06*

SCR 60.06 provides:

A judge or judicial candidate shall refrain from inappropriate political activity.

Subsection (2) of the Rule provides, in part, that a judge shall not be a member of any political party or participate in any of its affairs or activities. In addition, the Code states at 60.06(2):

A judge shall not make or solicit financial or other contributions in support

of its causes or publicly endorse or speak on behalf of its candidates or platforms.

It is recognized that the Code does not address political activities of a judge's spouse, nor could it in view of the First Amendment. The Committee concludes that the court commissioner's assistance in cleaning the house, preparing food and providing child care, both before and after the event, and out of view of the fund-raising participants, does not constitute inappropriate political activity. Because they are not public or visible to those not resident in the home, such efforts could not be viewed as promoting or engaging in a political party's affairs or activities and would not constitute a solicitation of funds or endorsement of a candidate.

A closer question concerns the court commissioner's presence at the fund-raiser by either listening to the speakers or replenishing food and beverage during the affair. The issue is one of visibility: would those present view the commissioner's presence as an endorsement of the person for whom the fund-raiser was held?

The Committee concludes that to avoid the appearance of participation in the fund-raiser, the commissioner should not be seen by those attending the event. Is the commissioner required to leave the house? No. Presence in a part of the residence not utilized by the participants would not be deemed inappropriate political activity, nor an endorsement of the candidate. However, if the confines of the house are such that the commissioner would probably be seen by some/all of those in attendance, the committee concludes that the commissioner should leave the premises while the event is conducted.

"... a judge must take all reasonable measures to dissociate himself or herself from [the events] including steps to avoid being seen by those in attendance during the events, which if necessary would involve leaving the premises for the duration of the events." [Emphasis added.]

Gray's Political Activity By Members of a Judge's Family, citing U.S. Compendium of Selected Opinions, s. 7.3(d) (1995).

CONCLUSION

The Committee concludes that a court commissioner and all other persons subject to the Code may assist a spouse in setting up their residence for the political fund-raiser and in cleaning up after the event, and in other supporting activities, so long as such activities are not visible to the fund-raising participants. A person subject to the Code may not be visible to those participating in the event.

APPLICABILITY

This opinion is advisory only, is based on the specific facts and questions submitted by the petitioner to the Judicial Conduct Advisory Committee, and is limited to questions arising under the Supreme Court Rules, Chapter 60 -- Code of Judicial Conduct. This opinion is not binding upon the Wisconsin Judicial Commission or the Supreme Court in the exercise of their judicial discipline responsibilities. This opinion does not purport to address provisions of the Code of Ethics for Public Officials and Employees, subchapter III of Ch. 19 of the statutes.

I hereby certify that this is Formal Opinion No. 97-2 issued by the Judicial Conduct Advisory Committee for the State of Wisconsin this ____ day of _____, 1997.

Thomas H. Barland
Chair