

**South Dakota
Special Committee
on Judicial Election
Campaign
Intervention**

500 East Capitol Avenue
Pierre, SD 57501-5070



Committee Members:

Retired Chief Justice
David Gilbertson (Chair)
Brookings, South Dakota
Retired Governor Dennis Daugaard
Garretson, South Dakota
Honorable Kathleen Trandahl
Winner, South Dakota
J. Crisman Palmer
Rapid City, South Dakota
Richard Casey
Sioux Falls, South Dakota
Mark Roby
Watertown, South Dakota
Bernie Hunhoff
Yankton, South Dakota
Spencer Hawley
Brookings, South Dakota
Jacqueline Sly
Rapid City, South Dakota

General Legal Counsel:

Greg Sattizahn, Esq.
Pierre, South Dakota

September 23, 2022

FORMAL OPINION #22-02

Re: Application of Code of Judicial Conduct to Family Members

Dear Candidates for Judicial Office:

This formal opinion is in response to a recent complaint received by the Committee that was primarily directed not at the conduct of the candidate but of a judicial candidate's family member. While the Committee determined the complaint did not warrant formal intervention even assuming the facts as alleged, this is a matter that this Committee has not spoken to either in the judicial election campaign educational class or in the prior opinions of the Committee.

Canon 5(3)(A) of the Code of Judicial Conduct provides:

A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity, impartiality, and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to candidate;

COMMENTARY

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.

(Emphasis added).

Given the language contained above it is clear that a candidate is not strictly responsible for the activities of a family member but, instead, is required to "encourage" family members to comply with the standards applicable to the candidate. This provision would also imply that a candidate has an obligation to visit with family members about what those obligations mean both in advance of and during the judicial election process.

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Further, candidates should attempt to maintain an awareness concerning the conduct of family members to prevent any concerning activity and discourage activity in contravention to the Code of Judicial Conduct. In addition, there may very well be factual instances where the candidate's activities are coordinated to a degree with the family member to create a violation of the rules if it is determined the family member is for instance operating as a surrogate for the candidate. As a result, candidates are encouraged to review the rules and this opinion on this subject.

Pursuant to Rule 9 of the Rules and Operating Procedures of the Committee, this opinion is advisory only and is intended to raise an important issue for judicial elections in South Dakota.

For the Committee,

David Gilbertson
Retired Chief Justice
Committee Chair

The Committee is a non-partisan group dedicated to preserving the dignity and integrity of this state's judicial system. We believe judicial candidates should aspire to the highest ethical standards to promote public trust and confidence in the fairness and impartiality of this state's courts. We do not endorse candidates, and this opinion is not intended to announce support for, or opposition to, any candidate. Instead, we strive to educate the candidates, the media, and the public about judicial campaign conduct.