

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2016-23

**Date of Issue:** July 27, 2016

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Political Contributions by a Judge's Spouse

**Issues:** May a judge's spouse make political contributions? If so, may such contributions be made from a joint account?

**Answer:** Md. Rule 18-613, the Maryland Code of Judicial Conduct (the "Code"), does not restrict a judge's spouse's ability to make partisan political contributions. Those contributions, however, should not be made from a joint account.

**Facts:** The requesting judge ("Requestor") relates that his/her spouse (the "Spouse") wishes to make partisan political contributions in the current election cycle. The Spouse is not a judge or a judicial appointee. The Requestor has inquired whether the Code allows the Spouse to do so and, if the answer to the question is "yes," whether the contributions may be made by checks written on an account that the Spouse and the Requestor own jointly.

**Discussion:** Rule 4.2 of the Code<sup>1</sup> prohibits judges from engaging in partisan political activity unless the judge himself/herself is a candidate for elective or retentive judicial office. The Code, however, does not apply to a judge's spouse solely because of the marital relationship. *See* JEC Opinion No. 2015-47. Therefore, the Code of Judicial Conduct does not restrict the Spouse's ability to make partisan political contributions.<sup>2</sup>

Rule 1.3 of the Code prohibits a judge from using the prestige of judicial office to "advance the personal or economic interests of the judge or others, or allow others to do so." We have interpreted Rule 1.3 to prohibit conduct that, in the eyes of a reasonable person, might be viewed as "lending the prestige" of a judge's office to another person. In our view, a reasonable person might conclude that a check drawn

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#### 1. Rule 4.2. Political Conduct of Judge Who Is Not a Candidate

- (a) A judge who is not a candidate shall not engage in any partisan political activity.
- (b) A judge shall resign when the judge becomes a candidate for a non-judicial office, except that a judge may continue to hold judicial office while a candidate for election as a delegate to a Maryland Constitutional Convention.

2. The result would be different if the Spouse were also a judge or a judicial appointee. *See* JEC Opinion No. 2015-47 for a discussion of this issue.

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on a joint account represents a contribution from both account owners even if the check is signed by only one owner. For this reason, contributions must be made from funds titled in, and directly traceable to, the Spouse, as opposed to commingled funds. Therefore, Requestor should request that the Spouse make political contributions from an account to which the Requestor is not a party and to which the Requestor has not contributed.

**Application:** The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the Requestor described herein, to the extent of the Requestor's compliance herewith. Omission or misstatement of a material fact in the written request for an opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If the request for advice involves a continuing course of conduct, the Requestor should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.