

Summer 1981

Judicial Ethics: Removal from Office for Political Activity

Clyde W. Curtis

Follow this and additional works at: <https://scholarship.law.missouri.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Clyde W. Curtis, *Judicial Ethics: Removal from Office for Political Activity*, 46 MO. L. REV. (1981)
Available at: <https://scholarship.law.missouri.edu/mlr/vol46/iss3/7>

This Note is brought to you for free and open access by the Law Journals at University of Missouri School of Law Scholarship Repository. It has been accepted for inclusion in Missouri Law Review by an authorized editor of University of Missouri School of Law Scholarship Repository. For more information, please contact bassettcw@missouri.edu.

JUDICIAL ETHICS: REMOVAL FROM OFFICE FOR POLITICAL ACTIVITY

*In re Briggs*¹

Judge Lloyd Briggs was the Scott County Magistrate when he received formal notice from the Commission on Retirement, Removal, and Discipline² that he was under investigation for misconduct in office. While under investigation, he was appointed Circuit Judge of the Thirty-Third Judicial Circuit (Mississippi and Scott Counties) on March 6, 1979, by Governor Joseph P. Teasdale. On May 7, 1979, the Commission conducted a formal hearing and found that Judge Briggs had engaged in a wide variety of partisan political activities, such as arranging and attending political meetings,³ contributing to Governor Teasdale's campaign,⁴ acting as a "patronage clearinghouse,"⁵ and acting as a "political counselor."⁶ The Commission also found that Judge Briggs had engaged in nonpolitical misconduct, including failure to supervise his staff, failure to maintain proper court records and procedures, and failure to require proper staff behavior.⁷ The Commission recommended that Judge Briggs be removed from office for violations of the Missouri Supreme Court's Code of Judicial Conduct Canons 1, 2, 3, and 7.⁸ The Missouri Supreme Court reviewed the record of the hearing, found the Commission's recommendation to be justified, and removed Judge Briggs from office.

In re Briggs marks the first time that a Missouri judge has been removed from office for partisan political activity.⁹ The court clearly indicated that Judge Briggs' political misconduct, by itself, justified his removal. "Respondent's excessive involvement in partisan political activities," the court stated, "is inconsistent with the preservation of these values [an impartial, independent judiciary] and as such mandate his removal from office."¹⁰ Because of the presence of serious nonpolitical

1. 595 S.W.2d 270 (Mo. En Banc 1980).

2. MO. CONST. art. V., § 24, mandates the establishment of the Commission to investigate judicial behavior and make recommendations to the Missouri Supreme Court. Rules and procedures used by the Commission are prescribed in MO. SUP. CT. R. 12.

3. 595 S.W.2d at 272-73.

4. *Id.*

5. *Id.* at 272-76.

6. *Id.* at 272, 275-76.

7. *Id.* at 277-79.

8. *Id.* at 270-71. Canons 1-3, 7 are found in MO. SUP. CT. R. 2.

9. *In re Briggs* was not the first Missouri case involving a judge's political activity. See text accompanying notes 13-20 *infra*.

10. 595 S.W.2d at 277.

misconduct,¹¹ the court probably could have reached the same result without reliance on the political activity, tracking the analysis of an earlier decision, *In re Corning*.¹² In choosing instead to base much of the opinion on political activity, the *Briggs* court left no doubt that political activity can result in the removal of a Missouri judge from the bench.

Corning was the first Missouri case to involve a judge's political misconduct. While *Briggs* was decided after Missouri had adopted the ABA Code of Judicial Conduct,¹³ *Corning* was decided in part under the ABA's older standards for judicial conduct, the Canons of Judicial Ethics.¹⁴ The Commission on Retirement, Removal, and Discipline found Judge Corning guilty of numerous violations of the supreme court rules¹⁵ requiring diligence and promptness in the performance of duties.¹⁶ The Commission also found Judge Corning guilty of political activity in violation of the Missouri Constitution¹⁷ because he had paid membership dues of \$2.00 per year to a Republican township club. Additionally, it found a violation of a supreme court rule¹⁸ by the payment of those dues, the attendance of club meetings, and the obtainment of a magistrate to swear in club officials. To answer the charges of political misconduct, Judge Corning claimed the defenses of de minimus and good faith mistake, both of which are common in judicial political misconduct proceedings.¹⁹ Nonetheless, the court found Judge Corning's political activity to be violative of the constitution and the rules as charged. The court refused, however, to decide whether political activity alone could justify removal and chose instead to treat it as "additional support"²⁰ for removal based on the nonpolitical misconduct.

Corning left little doubt that an active, dues-paying membership in a

11. *Id.* at 277-78.

12. 538 S.W.2d 46 (Mo. En Banc 1976).

13. Missouri adopted the ABA Code of Judicial Conduct in 1974 by incorporating it into the supreme court rules as Rule 2. Prior to 1974, the supreme court rules were an incorporation of the ABA Canons of Judicial Ethics adopted in 1966. Prior to 1966, the court had its own rules, which were not a nationally recognized code of ethics.

14. Judge Corning's misconduct occurred both before and after Missouri's adoption of the Code of Judicial Conduct became effective. His nonpolitical misconduct was found to violate both the Canons of Judicial Ethics and the Code of Judicial Conduct. The court treated the political misconduct as a violation of the older Canons of Judicial Ethics. 538 S.W.2d at 48, 50, 53.

15. *Id.* at 50-51, 53.

16. *Id.* at 50.

17. MO. CONST. art. V, § 29(f) (1945) (amended 1976) (now MO. CONST. art. V, § 25(f)).

18. Mo. Sup. Ct. R. 1, Canon 1.28, RSMO (1969).

19. See cases cited note 28 *infra*.

20. 538 S.W.2d at 53.

political club was a violation of the Canons.²¹ *Corning*, however, left two questions unanswered: would the court remove a judge for political activity alone; and, if so, what level of activity must a judge attain before the court would invoke removal? *Briggs* answered the first question in the affirmative, but left the second question unanswered despite the devotion of most of the opinion to discussion of political activity.²² In *Briggs*, as in *Corning*, the court avoided designating which particular types of misconduct would require debenchment and relied instead on the totality of the circumstances.²³

The lack of judicial guidance in this area seems out of step with the movement toward formalized standards. This trend began when there were no express standards of judicial conduct, only self-imposed restrictions.²⁴ A general reluctance to restrict political activity was reflected in an 1884 decision by the Virginia Supreme Court which found limitations on the political activity of certain state officers, including judges, to be an unconstitutional violation of free speech.²⁵ This reluctance gave way to the Canons of Judicial Ethics, adopted by the ABA in 1924, which imposed restrictions on partisan political activity along with guidelines for other types of conduct.²⁶ The Canons represented an attempt to detail which

21. *Id.*

22. Seven of the ten pages in the opinion were devoted in whole or in part to discussion of political activity.

23. This tendency is common in other jurisdictions, particularly with cases involving political activity. *E.g.*, *In re Troy*, 364 Mass. 15, 306 N.E.2d 203 (1973) (large amount of political and nonpolitical misconduct); *In re Schamel*, 46 A.D.2d 236, 362 N.Y.S.2d 39 (1974) (running for other elective office three times and ignoring directions from presiding judge of Appellate Division); *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, 151 N.E.2d 17 (1958) (indefinite suspension, which court considered tantamount to removal, for judge who ran for another office without first resigning judgeship and exploited judgeship for political advantage), *cert. denied*, 358 U.S. 932 (1959). There are instances where courts cannot rely on the totality of circumstances, specifically when the violative political activity was one discrete act. In those situations, the penalty imposed usually does not reach the level of removal. *E.g.*, *In re Hayden*, 41 N.J. 443, 197 A.2d 353 (1964) (preparation of document used in political campaign not continuing course of partisan political activity, but single indiscretion); *In re Furey*, 17 A.D.2d 983, 234 N.Y.S.2d 174 (1962) (under Canons of Judicial Ethics, failure to resign before running for other office seen as single instance of good faith mistake).

24. *In re Terry*, 262 Ind. 667, 671-72, 323 N.E.2d 192, 194-95 (non-political misconduct; concise discussion of formalization of judicial ethics), *cert. denied*, 423 U.S. 867 (1975).

25. *Louthan v. Commonwealth*, 79 Va. 196, 206 (1884).

26. ABA CANONS OF JUDICIAL ETHICS 91 (1931). After promulgation by the ABA, the Canons of Judicial Ethics were adopted on a state-by-state basis. By the 1970s most states had accepted the Canons, often with some amendments. ABA

acts were acceptable and which were not, but the Canons' vague language concerning political activity resulted in what one opinion characterized as "gray area[s]." ²⁷ The defense of good faith mistake was not uncommon since the Canons could be confusing. ²⁸ The Code of Judicial Conduct, ²⁹ adopted by the ABA in 1972, has replaced the Canons in most states. ³⁰ The treatment of political activity is less ambiguous under Canon 7 of the Code and thereby helps to eliminate gray areas. ³¹

CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT 55 (1977).

27. *In re Pagliughi*, 39 N.J. 517, 521, 189 A.2d 218, 221 (1963) (argument presented that use of magistrate's home for voter registration was in boundary area between permissible and prohibited conduct, and court decided on other grounds).

28. *See id.* at 522, 189 A.2d at 221 (former magistrate reprimanded for political activity as defense of good faith mistake was undermined by court's finding of adequate knowledge); *Elias v. Ellenville Chapter of the NAACP*, 37 A.D.2d 316, 317, 325 N.Y.S.2d 302, 303 (1971) (justice found acting politically in good faith); *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, 36, 151 N.E.2d 17, 30 (1958) (court noted possible good faith mistake in applying state law to Canons of Judicial Ethics, but rejected it because found bad faith on part of judge), *cert. denied*, 358 U.S. 932 (1959).

29. ABA CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT (1977).

30. *Morial v. Judiciary Comm'n*, 565 F.2d 295, 307-08 (5th Cir. 1977) (court listed the states that had adopted the Code), *cert. denied*, 435 U.S. 1013 (1978).

31. There is still uncertainty in the Code, primarily in two areas: the political activity of a judge's spouse and the conduct of judges during their own election campaigns. For a discussion of the political activity of a judge's spouse, see notes 61-66 and accompanying text *infra*. *See generally* *Nix v. Standing Comm. on Judicial Performance of Okla. Bar Ass'n*, 422 P.2d 203 (Okla. 1966) (Canons of Judicial Conduct provision stating that judge should resign before running for another office declared persuasive, not mandatory). *But see generally* *In re Schamel*, 46 A.D.2d 236, 362 N.Y.S.2d 39 (1974) (interpreted Canons as requiring resignation on seeking another elective office); *In re Furey*, 17 A.D.2d 983, 234 N.Y.S.2d 174 (1962) (under the Canons, failure to resign when seeking another elective office was unethical conduct); *Mahoning County Bar Ass'n v. Franko*, 168 Ohio St. 17, 151 N.E.2d 17 (1958) (under the Canons, a judge must resign before running for another office), *cert. denied*, 358 U.S. 932 (1959). These three cases illustrate one area of judicial electioneering where the Code has eliminated differences of opinion. Case law indicates agreement that the Code forbids a judge from running for another elective office while on the bench. *See* *Morial v. Judiciary Comm'n*, 565 F.2d 295 (5th Cir. 1977) (court upheld Code requirement for resignation of judge who runs for another elective office), *cert. denied*, 435 U.S. 1013 (1978); *Clark v. De Fino*, 80 N.J. 539, 546-47, 404 A.2d 621, 624-25 (1979) (surrogate exempted by another court rule).

Some controversy still exists about the Code's restrictions on a judge's behavior in an election for his own seat on the bench. These restrictions also apply to the

Notwithstanding the widespread adoption of the more specific terms of the new Code,³² courts often blend together all instances of a judge's misconduct and then administer punishment based on the totality of circumstances.³³ The *Briggs* decision followed this trend. While this technique may be satisfactory for handling judicial ethics violations,³⁴ it does pose two analytical problems. First, it is sometimes difficult to identify which particular activity violates which particular section of the Code. Second, it is difficult to obtain guidance as to which particular activity might be grounds for removal in a future action concerning political activity.

Judge Briggs was found to have arranged fund-raisers by recruiting leaders³⁵ for the projects and providing instructions concerning conduct of the meetings, logistics, and lists of prospective guests.³⁶ The court discussed this activity, reviewed other evidence of Judge Briggs' activities,³⁷ and concluded, "From this evidence it is clear respondent repeatedly breached the letter and spirit of Canons 1, 2, 7A(2) and 7A(4)."³⁸ Canon 7A(4) prohibits most forms of political activity³⁹ and Canon 7A(2) pro-

challenger. The Code forbids pledges or promises unless they concern performance of duty, presenting views on disputed issues of politics and law, or misrepresentations. ABA CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT 63 (1977). These proscriptions by the Code essentially attempt to regulate campaign rhetoric, an endeavor which can prove difficult. *See, e.g., In re Baker*, 218 Kan. 209, 542 P.2d 701 (1975) (per curiam). Compare Cohn, *Judicial Discipline in Illinois—A Commentary on the Judge Elward Decision*, 59 CHI. B. REC. 200 (1978) with Reuben & Ring, *Judges Have Rights, Too*, 59 CHI. B. REC. 220 (1978). Several articles address the ethical considerations of judicial electioneering. *E.g.,* Anderson, *Ethical Problems of Lawyers and Judges in Election Campaigns*, 50 A.B.A.J. 819 (1964); Woodward, *What the Moral Decision Means*, 61 JUDICATURE 422 (1978).

32. *See* note 31 *supra*.

33. *See* cases cited note 23 *supra*.

34. A decision based on the totality of the circumstances does allow for consideration of mitigating factors and circumstances. The same factors, however, could be addressed in a more systematic process. The basic desire of the courts seems to be retention of flexibility.

35. One of the recruits was a local attorney who consulted with Briggs on the particulars of conducting the activities. Following Judge Briggs' elevation to the circuit bench, the attorney was appointed to fill the vacancy left by Briggs on the associate circuit bench. 595 S.W.2d at 273 & n.2. For a discussion of attorney involvement, *see* note 50 *infra*.

36. 595 S.W.2d at 273.

37. *Id.* at 273-77.

38. *Id.* at 277.

39. "A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice." MO. SUP. CT. R. 2, Canon 7A(4).

hibits a judge from acting as a party leader.⁴⁰ Since the court found that Judge Briggs violated both of these Canons, it is unclear whether the arrangement of political fund-raisers violates Canon 7A(2),⁴¹ Canon 7A(4),⁴² or both. Since the court left this unclear, one can conclude only that the arrangement of fund-raisers is most likely a violation of Canon 7A(4), and is probably violative of Canon 7A(2) if such activity can be characterized as "acting as a party leader."⁴³ Discussed in context with Judge Briggs' arrangement of fund-raisers was his attendance at organizational meetings held to plan the affairs.⁴⁴ In view of this juxtaposition, it would be reasonable to assume that his attendance at those meetings was a component of any violation of Canon 7 which occurred in the arrangement of the fund-raisers.⁴⁵

40. Where it is necessary that a judge be nominated and elected as a candidate of a political party, an incumbent judge or candidate for election to judicial office may attend or speak on his own behalf at political gatherings, and may make contributions to the campaign funds of the party of his choice. However, he should neither accept nor retain a place on any party committee, nor act as party leader, nor solicit contributions to party funds.

MO. SUP. CT. R. 2, Canon 7A(2).

41. *Id.*

42. *Id.* Canon 7A(4). The prohibition in Canon 7A(4) applies to activities not allowed by other provisions of Canon 7. Where judges are chosen by election among candidates of political parties, an incumbent judge or a candidate for such a judgeship "may attend or speak on his own behalf at political gatherings, and may make contributions to the campaign funds of the party of his choice." *Id.* Canon 7A(2). A judge or candidate who falls into this category also "may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy." *Id.* Canon 7B(2). In addition, "[a]n incumbent judge who is a candidate for retention in or re-election to office without a competing candidate, and whose candidacy has drawn active opposition, . . . may obtain publicly stated support and campaign funds in the manner provided in subsection B(2)." *Id.* Canon 7B(3).

43. Another possible view of Briggs' action was that his assistance in organizing fund-raisers, combined with his personal delivery of \$40,000 to a Teasdale campaign official, amounted to solicitation of campaign funds. 595 S.W.2d at 273. Such solicitation is unprotected under Canons 7A(2) and 7B and, therefore, would be covered by Canon 7A(4). Regarding solicitation for another's campaign, *see, e.g., In re Larkin*, 368 Mass. 87, 88, 333 N.E.2d 199, 200 (1975) (censure) (attempt to deliver \$1,000 to Governor of Massachusetts); *In re Troy*, 364 Mass. 15, 306 N.E.2d 203 (1973) (removal) (solicited campaign funds from attorney who regularly appeared before him).

44. 595 S.W.2d at 272.

45. "Charge 5 accused respondent of 'arranging and/or attending Democratic political meetings and/or fund raisers . . .'" *Id.* Read narrowly, this

Judge Briggs was found to be a "patronage clearinghouse."⁴⁶ He initiated numerous contacts with and received contacts from Governor Teasdale,⁴⁷ the Governor's staff,⁴⁸ and other members of the state executive branch.⁴⁹ The purpose of the contacts⁵⁰ was to allow Judge Briggs to

charge conceivably could be based on attendance at political meetings. The court's inclusion in its narration of a reference to Judge Briggs' "attendance" could mean that the court adopted such a narrow construction. A more likely interpretation is that the court viewed Judge Briggs' attendance as a part of his arrangement of fund-raisers for Governor Teasdale. Thus, there would be no conflict with Canon 7A(2), which seems on its face to allow attendance at political meetings on one's own behalf, since Canon 7A(2) does not allow appearances on behalf of another. Language in the opinion supports this conclusion. "[T]he Commission found that respondent . . . involved himself in arranging 'and/or' attending political meetings and fund raisers for the gubernatorial candidate" *Id.* For the text of Canon 7A(2), see note 40 *supra*. See also *Rosenthal v. Harwood*, 35 N.Y.2d 469, 473, 323 N.E.2d 179, 182, 363 N.Y.S.2d 937, 941 (1974) ("They [judges] may appear at political meetings but must maintain political neutrality publicly, as to other candidates or issues not involving the courts.").

46. 595 S.W.2d at 274.

47. *Id.* at 273-75. Governor Teasdale had introduced Judge Briggs as the man to clear patronage appointments.

48. *Id.* at 274-75. The Governor's former chief of staff testified that, while chief of staff, he had between 15 and 20 contacts with Judge Briggs. Another member of the Governor's office also received written communications concerning patronage.

49. *Id.* at 276. Those who were contacted included the Director of Agriculture, the Director of Revenue, and the Legislative Liaison for the Governor.

50. Judge Briggs' various political activities involved numerous and repeated contacts with members of the Teasdale administration. See notes 43 & 47-49 and accompanying text *supra*; text accompanying notes 54-56 *infra*. There seems to be a rather pointed ethical problem for those administration members who dealt with Judge Briggs and who were also members of the Missouri Bar. Not only were they aware of Judge Briggs' unethical conduct, but it could be said they participated in it. The self-avowed purpose of the Code of Judicial Conduct is to maintain the integrity and independence of the judiciary. MO. SUP. CT. R. 2, Canon 1. An attorney's participation in violations of the Code of Judicial Conduct damages that integrity. As that participation may come under MO. SUP. CT. R. 4, DR 1-102(A)(5) ("A lawyer shall not . . . [e]ngage in conduct that is prejudicial to the administration of justice."), the attorneys who were involved arguably may have violated the Code of Professional Responsibility.

Another violation of the Code of Professional Responsibility may have occurred because several attorneys were aware of Judge Briggs' misconduct, but did not report it. The failure to report the misconduct of another lawyer can be a violation itself. See *id.* DR 1-103. If a judge is considered a lawyer for the purposes of DR 1-102, then an attorney's failure to report a judge's violation of DR 1-102 would be a violation of DR 1-103. Since DR 1-103(B) specifically mentions lawyers and judges, it could be argued that DR 1-103(A) was intended to be read

obtain state patronage jobs for citizens he identified as deserving. The court's narration of this type of activity was interwoven with descriptions of other acts of misconduct which were labeled as, in toto, violations.⁵¹ If the court had addressed this activity directly in terms of specific violations of Canon 7, one can speculate it would have found a violation of Canon 7A(4) since influencing patronage is political activity not exempted from Canon 7A(4) by Canon 7A(2) or Canon 7A(3). In addition, there is a strong possibility that a violation of Canon 7A(2) could be found since acting as a dispenser of patronage might constitute "acting as a party leader."⁵² The extent of this type of violation, and of the court's concern, is reflected in the large portion of the opinion devoted to the descriptions of patronage activities.⁵³

Judge Briggs was found to have "held himself out as a political counselor"⁵⁴ for Governor Teasdale. He advised the Governor and the Governor's staff concerning key people to be cultivated as political assets.⁵⁵ He also advised them on the obtainment of political support in the area and on the manipulation of public matters for political effect.⁵⁶ The court intermixed a description of these actions with the general factual discussion of the opinion.⁵⁷ If the court had specified the violations which were grounded in this type of activity, it most likely would have cited Canon 7A(4).⁵⁸

with DR 1-102 as requiring an attorney to report DR 1-102 violations on the part of a judge. On the other hand, it could be argued that DR 1-103(B) identifies lawyers and judges as distinct categories, and it is intended they be treated as such in reference to DR 1-102, which mentions lawyers, not judges; thus, DR 1-103(A) would not require an attorney to report judicial misconduct which would amount to a violation of DR 1-102. Less ambiguous is Missouri case law which indicates that judges may be considered lawyers for disciplinary purposes. In *In re Hasler*, 447 S.W.2d 65 (Mo. En Banc 1969), the court disbarred a judge, imposing a penalty ordinarily imposed on attorneys. "The '[m]isconduct of a lawyer acting as a judge may justify his disbarment as a member of the bar.'" *Id.* at 65. In *In re Williams*, 233 Mo. App. 1174, 128 S.W.2d 1098 (K.C. 1939), an attorney was suspended from the bar for two years. The misconduct occurred in large part while the attorney was serving as a probate judge. Thus, for actions as a judge an attorney was punished as an attorney. Given *Hasler* and *Williams*, it can be argued that judges should be considered lawyers for disciplinary purposes and that DR 1-102 applies to judges. An attorney's failure to report a judicial violation of DR 1-102, therefore, would be a violation of DR 1-103(A).

51. See text accompanying note 37 *supra*.

52. MO. SUP. CT. R. 2, Canon 7A(2).

53. Approximately half of the court's narration of Judge Briggs' political activity dealt with his patronage activities. 595 S.W.2d at 271, 273-77.

54. *Id.* at 272.

55. *Id.* at 274-75.

56. *Id.*

57. See text accompanying note 37 *supra*.

58. See note 39 *supra*. Political counseling is not among the political ac-

Judge Briggs was found to have made a direct contribution to Governor Teasdale's campaign of \$200 and two indirect contributions, totaling \$1,300, through his wife.⁵⁹ The court found that making the three contributions violated Canon 7A(4).⁶⁰ Finding that the indirect contributions violated the Canons involved the critical distinction between the use of a spouse as a front for a judge's own political activity and the spouse's right to participate in politics on his or her own initiative and behalf.⁶¹ Canon 7B addresses a spouse's political conduct only in the limited context of election activities of a candidate for a judgeship and omits any delineation of a spouse's rights in other contexts.⁶² Because of this omission, the court has

tivities allowed under Canons 7A(2) and 7B. *See* discussion at note 42 *supra*. Therefore, if it is a violation, as this decision seems to indicate, it must come under the broad, unequivocal prohibition of Canon 7A(4). Such a restriction creates a difficult problem for many judges who are likely to have accumulated a large amount of political knowledge, expertise, and valuable personal contacts in the careers which led them to the bench. They are likely to count several politicians among their close friends. Strict application of Canon 7A(4) could affect a judge's relationship with those friends.

59. 595 S.W.2d at 272.

60. *Id.* at 273. For the text of Canon 7A(4), see note 39 *supra*.

61. Until recently, there was some tendency toward restricting the spouse of a judge from political activity. This trend stemmed from an interpretation of the Canons of Judicial Ethics. " 'Opinion 113—a judge should not appear at political meetings and indicate support of candidates for office; nor should he permit his wife to give political teas.' " *In re Pagliughi*, 39 N.J. 517, 523, 189 A.2d 218, 222 (1963). In *In re Gaulkin*, 69 N.J. 185, 189-90, 351 A.2d 740, 742 (1976), the New Jersey Supreme Court had an administrative policy which barred a judge's spouse from political activity. A judge's wife who wished to run for an elective seat on a board of education challenged the ban and the court upheld the challenge. The court found the strict New Jersey rule to be an isolated exception. "A 50-state survey . . . discloses no policy concerning the non-judicial spouse essentially comparable to that of New Jersey." *Id.* at 195-96, 351 A.2d at 745. In overturning the ban, the court considered the modern state of the law, the absence of a ban in the new Code, and society's changing attitudes toward the marital relationship. It emphasized, however, that close examination would be focused on future spouse activities and that certain activities would still be considered improper: "We would regard the use of any part . . . [of marital assets] as degrading to the court The use of the marital home for a political or fundraising meeting or the making of political contributions from the common family funds would come within this objection." *Id.* at 199-200, 351 A.2d at 747-48. The Florida Supreme Court, in *In re Code of Judicial Conduct Status of Judges' Spouses*, 336 So. 2d 584 (Fla. 1976), displayed an example of the modern view. It modified Canon 7B(1) to eliminate mention of family and included a commentary at the end of Canon 7: "Any political activity engaged in by members of a judge's family should be conducted in the name of the individual family member, entirely independent of the judge and without reference to the judge or to his office." *Id.* at 586.

62. *See, e.g.*, MO. SUP. CT. R. 2, Canon 7B(1)(a).

great discretion when determining a spouse's right to political participation. In *Briggs*, the spouse's political activity was scrutinized carefully. The court noted that funds were drawn from a joint bank account⁶³ and that Judge Briggs' judicial salary was commingled with other funds in the account.⁶⁴ It concluded that "[t]he closely woven business and political aspects of their lives shown in the record negates his [Judge Briggs'] assertion that he knew nothing."⁶⁵ The court then applied a strict standard stating that "[s]uch contributions were facially improper and constituted violations . . . absent a showing of sufficient exculpatory and mitigating circumstances."⁶⁶ The court seems to say that a judge in similar circumstances will have the burden of showing that a contribution ostensibly made by the judge's spouse is not a violation of Canon 7A(4).

A review of *Briggs* reveals that a Missouri judge may be removed for misconduct of a political nature.⁶⁷ To determine the need for discipline, the court blends together all instances of a judge's misconduct and then imposes discipline based on the totality of the circumstances.⁶⁸ The court removed Judge Briggs for violations so numerous and pervasive that the misconduct can be characterized as being at a high level. Although one now can ascertain with some assurance whether a particular activity will violate a particular section of Canon 7, the severity of discipline that might be imposed when the misconduct is less severe cannot be predicted with confidence.

CLYDE W. CURTIS

63. 595 S.W.2d at 272. The ABA has recognized that "a candidate's spouse as a matter of legal right can hold an office in a political organization and can make speeches for other candidates for political office." E. THODE, REPORTER'S NOTES TO CODE OF JUDICIAL CONDUCT 98 (1973).

64. 595 S.W.2d at 272.

65. *Id.*

66. *Id.* at 273.

67. An interesting issue would be raised if a judge attempted to regain his seat by running for election after he was removed. Should he succeed, the public's right to elect its judges would clash with the judiciary's disciplinary system. If the public's interest in free election choice outweighs the court's interest in maintaining ethical standards in Missouri courts, then the Code of Judicial Conduct may be subject to erosion in its influence on judicial behavior.

The court has at least one potential weapon with which to prevent an electoral circumvention of its efforts to enforce ethical standards. As part of its actions against an offending judge, the court may order disbarment. Thus, the judge is precluded from holding office for which being an attorney is a requirement. "The [m]isconduct of a lawyer acting as a judge may justify his disbarment as a member of the bar. A violation of his judicial oath aggravates the offense of disregarding his oath as a lawyer." *In re Hasler*, 447 S.W.2d 65, 65 (Mo. En Banc 1969) (quoting *Nebraska ex rel. Nebraska State Bar Ass'n v. Conover*, 166 Neb. 132, 135, 88 N.W.2d 135, 138 (1958)).

68. See note 23 and accompanying text *supra*.