



SUPREME COURT OF PENNSYLVANIA
JUDICIAL ETHICS ADVISORY BOARD

PENNSYLVANIA JUDICIAL CENTER
601 COMMONWEALTH AVENUE, SUITE 6100
PO Box 62333
HARRISBURG, PA 17106-2333

PHONE: 717-705-1785
FAX: 717-231-9594

EMAIL: JEAB@pacourts.us
WEBSITE: <https://JEAB.pacourts.us>

GENERAL GUIDANCE

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General Ethics Guidance No. 2-2023

FREQUENTLY ASKED QUESTIONS REGARDING ELECTIONS

The Supreme Court of Pennsylvania has designated the Judicial Ethics Advisory Board [“JEAB”] as the approved body to render Advisory Opinions and General Guidance regarding ethical concerns involving persons subject to the Code of Judicial Conduct. The Rules of the JEAB provide that, when a Judicial Officer complies with General Guidance of the JEAB, such compliance may be taken into account in determining whether discipline should be recommended or imposed. PA.J.E.A.B. RULE 206(c). This document qualifies as “General Guidance” of the JEAB.

In addition to reviewing the JEAB’s General Guidance, Judicial Officers and candidates for judicial office may request an ethics Advisory Opinion from the JEAB. The request must be in writing and must contain the following: (1) a statement of the material facts regarding the intended conduct; (2) a concise question of judicial ethics; and (3) references to the relevant section(s) of the Code, case law, and other authority the inquirer consulted. A request must relate to the inquirer’s own prospective conduct or conduct that occurred in the past and is ongoing. A request may not relate to hypothetical situations or to facts that are the subject of past or pending litigation, disciplinary investigation or disciplinary proceedings.

Where a Judicial Officer complies with JEAB advice that is subsequently adopted as a Board Opinion, such compliance shall be entitled to substantial weight in determining whether discipline should be recommended or imposed. PA. J.E.A.B. RULE 206(b). Where a Judicial Officer

complies with JEAB advice that is subsequently reversed or modified by the Board, compliance prior to the time the Judicial Officer is notified of the Board's action shall be taken into account in determining whether discipline should be recommended or imposed. *Id.* at RULE 206(b). These "Rules of Reliance" provide more protection to the judge or judicial candidate than the Rule of Reliance attained by reviewing general guidance of the JEAB.

The JEAB is pleased to present this summary of Frequently Asked Questions Regarding Elections [FAQs] for judges and judicial candidates. A separate "Retention Election Manual" is available for those judges standing for retention. All judges are bound by the Code of Judicial Conduct (Pa. Code Judicial Conduct). Candidates for judicial office who are not judges are bound by Canon 4 of the Code of Judicial Conduct. *See* Pa. Code Judicial Conduct, *Application* [4].

1. What activities may I engage in prior to filing as a candidate?

You may "test the waters" to gauge whether your campaign would be viable, and you may use your own money to seed your campaign if needed for these purposes. You may begin to form your campaign team. *However, you may not engage in the acts specified in Rule 4.2(B) of the Code of Judicial Conduct earlier than immediately after the General Election in the year before the calendar year in which the judicial election will be held.* If you intend to have a campaign committee, you must have a chairperson and a treasurer. They may not be the same person. ("Every political committee shall have a treasurer and a chairperson who may not be the same individual.")

2. May I contact political officials before I declare my candidacy?

Yes. As above, you may "test the waters," *e.g.*, you may meet individually and privately to explore the viability of your candidacy, but not for purposes of securing their support or assistance.

3. When may I become a candidate?

Rule 4.2(B) of the Code of Judicial Conduct permits a judicial candidate to engage in certain acts no earlier than immediately after the General Election in the year before the calendar year in which the judicial election will be held.

4. May I personally circulate my nominating petition?

Yes. A judicial candidate may personally circulate a nominating petition for himself or herself.

5. May I circulate or sign other candidates' nominating petitions?

You may not circulate other candidates' nominating petitions. However, you may sign the nominating petitions of candidates for the same judicial office for which you are a judicial candidate and candidates for any other elective judicial office appearing on the same ballot.

See also Formal Opinion 2000-1 "Signing Nominating Petitions" of the Ethics Committee of the Pennsylvania Conference of State Trial Court judges (a predecessor to the JEAB) at <http://ethics.pacourts.us/formal.htm>.

6. When may I raise money for my campaign?

You may never personally solicit funds. Your committee may begin to raise money no sooner than immediately after the General Election in the year before the calendar year in which the judicial election will be held. *Also see* response to Question No. 7 below.

7. Is it necessary to form a campaign committee?

You are not required to form a campaign committee if you intend to fully self-fund your campaign; however, if your campaign intends to raise funds from others, it is necessary to form a campaign committee. The primary reason for a campaign committee is to raise funds from persons other than the candidate. Pennsylvania specifically prohibits judicial candidates from personally soliciting or accepting funds. Rule 4.1(A)(7) of the Code of Judicial Conduct states that, "Except as permitted by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not . . . personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4." The United States Supreme Court has held that a rule of judicial conduct that prohibits candidates for judicial office from personally soliciting campaign funds does not violate the First Amendment. *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 135 S. Ct. 1656 (2015).

8. How do I form and organize an authorized campaign committee?

The Code of Judicial Conduct does not provide requirements for the organization of an authorized campaign committee. The Pennsylvania Election Code, however, outlines the responsibilities of a campaign committee for any political candidate. The candidate must appoint a chairperson and a treasurer, and they may not be the same person. A vacancy in either of these offices prohibits the committee from receiving contributions or making expenditures. PENNSYLVANIA ELECTION CODE § 1622(a); 25 P.S. § 3242(a). For this reason, it may be useful to have a vice-chairperson and an assistant treasurer. A political committee may designate a vice chairperson to assume the chairperson's duties and responsibilities in the event of a temporary or permanent vacancy in that office. 4 PA. CODE § 176.5(b)(1). A political committee may also designate an assistant treasurer to assume the treasurer's duties and responsibilities in the event of a temporary or permanent vacancy in that office. 4 PA. CODE § 176.5(b)(2).

9. How do I register my campaign committee?

Campaign committee authorization and registration is handled by the Pennsylvania Department of State Bureau of Commissions, Elections, and Legislation, available at <http://www.dos.pa.gov> then Voting and Elections>Campaign Finance>Forms and Reports;>[Political Committee Registration Statement](#) (DSEB-500); [Authorization for a Political Committee to Receive Funds on Behalf of a Candidate](#) (DSEB-501). Before the committee may receive any contributions, the candidate must authorize the committee, in writing, by filing an [Authorization Form](#), available through the State Bureau of Campaign Finance & Lobbying Disclosure. Pennsylvania Election Code § 1623; 25 P.S. § 3243. Thereafter, upon receipt of contributions in an aggregate amount of \$250.00 or more, the committee is required to file a [Registration Statement](#) within twenty days of receipt of such amount. Election Code § 1624; 25 P.S. § 3244.

10. What authority does my campaign committee have?

Once authorized by the candidate, the campaign committee may make expenditures and receive contributions on behalf of the candidate. PENNSYLVANIA ELECTION CODE § 1622; 25 P.S. § 3242. Additionally, Rule 4.4(A) of the Code of Judicial Conduct authorizes the committee to “manage and conduct a campaign for the candidate, including seeking, accepting, and using endorsements from any person or organization, subject to the provisions of this Code.”

11. May I serve as chair or treasurer of my committee?

No. Rule 4.1(A) of the Code of Judicial Conduct prohibits a judicial candidate from soliciting or accepting campaign funds. Such activities are permitted only by the candidate’s committee. Because the committee is authorized to engage in activities that are not permitted by the candidate, the candidate may not serve as chair or treasurer of the committee.

12. May a spouse or other family member serve as treasurer of my committee?

While there is no specific prohibition against family members holding the position of treasurer on a campaign committee, there are several important considerations a candidate should note before appointing a family member as treasurer. First, the Supreme Court of Pennsylvania has specifically prohibited employees of the Unified Judicial System (including state-level court employees and county-level court employees) from participating in a broad range of political activities, including, but not limited to, performing volunteer work in a political campaign for a candidate running for publicly elected office. CODE OF CONDUCT FOR EMPLOYEES OF THE UNIFIED JUDICIAL SYSTEM, SECTION V (revised 01/2019); *see also, In re Dobson*, 534 A.2d 460, 465 (Pa. 1987). The Supreme Court of Pennsylvania has further precluded court employees from participating in judicial retention elections. *In re Cicchetti*, 743 A.2d 431, 442 (Pa. 2000). Therefore, any family member who is an employee of the Unified Judicial System shall not serve as a campaign committee member. Additionally, a judicial candidate who is considering appointing a spouse or family member as part of his or her election committee should consult Rule 4.2(A)(4) of the Code of Judicial Conduct, which provides that the candidate “shall ...take

reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by this Rule.” While this paragraph does not preclude any specific conduct on the part of a candidate’s family, it is meant as a general guideline; and a judicial candidate seeking to place a family member in a campaign committee position should consider it.

Finally, Rule 4.1(A)(6) of the Code of Judicial Conduct provides that “a judge or judicial candidate shall not . . . use or permit the use of campaign contributions for the private benefit of the judge or others.” This is especially important to note when a member of the candidate’s family holds the position of treasurer.

13. What are the campaign finance reporting requirements?

You as the candidate and your authorized campaign committee are each required to file separate campaign finance reports or statements. Though judicial candidates may solicit contributions only through an authorized campaign committee, judicial candidates are still required to file the individual candidate reports or in lieu of the candidate reports, the campaign finance statements required by the law. Pennsylvania Election Code § 1626(a); 25 P.S. § 3246(a). Statewide judicial candidates and their authorized campaign committees are required to file Sixth Tuesday Pre-Primary and Pre-Election Reports and/or Statements. All judicial candidates and their authorized campaign committees are required to file Second Friday Pre- and Thirty-Day Post-Primary and Election Reports and/or Statements. Pennsylvania Election Code § 1626(d); 25 P.S. § 3246(d).

Candidates and their authorized campaign committees who fail to file required campaign finance reports and statements are subject to late filing fees. Pennsylvania Election Code § 1632(a); 25 P.S. § 3252(a). Candidates cannot receive their commission and be sworn into office until all required reports and statements have been filed and all late fees have been paid. Pennsylvania Election Code § 1632(b); 25 P.S. § 3252(b).

14. May I personally seek endorsements for my campaign?

Yes. Rule 4.2(B)(5) of the Code of Judicial Conduct states, “A candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office: . . . seek, accept, or use endorsements from any person or organization.”

15. May my committee seek endorsements for my campaign?

Yes. Rule 4.4(A) of the Code of Judicial Conduct authorizes the committee to “manage and conduct a campaign for the candidate, including seeking, accepting, and using endorsements from any person or organization, subject to the provisions of this Code.”

16. May I campaign with other judicial candidates?

A candidate may publicly endorse or speak on behalf of candidates for the same judicial office for which s/he is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot. Pa. Code Judicial Conduct 4.2 (B)(3).

17. May I campaign with non-judicial candidates?

You may appear with non-judicial candidates at a fundraiser or event. However, you may not endorse or campaign on behalf of the non-judicial candidates.

18. May I have a joint committee with other judicial candidates?

No. A judicial candidate may not have a joint committee with another judicial or other candidate.

19. May I jointly file my campaign finance report and my committee's campaign finance report?

No. Each candidate must sign and file the candidate's campaign finance report, and the committee must file the committee's campaign finance report.

20. May I jointly advertise with other judicial candidates?

You may share advertising with another judicial candidate campaigning for the same office. The candidates may have joint television commercials, joint lawn signs, and joint palm or slate cards. The expenses of advertising and costs of election may be paid jointly by each judicial candidate's committee or by a political party.

21. May I jointly advertise with non-judicial candidates?

You may participate in a group photograph or advertising if the candidates are all of the same political party and the political party is sponsoring the photograph. The expenses may be paid by your campaign committee or by the political party. The judicial candidate may not endorse or speak on behalf of non-judicial candidates. You may not participate in a non-judicial candidate's campaign advertising if it benefits that candidate and does not involve all of the party's candidates; to do so could create the appearance of endorsing the non-judicial candidate.

22. May I wear a robe in any of my advertisements?

An incumbent judge may wear a robe in his or her political advertisements.

23. What if I have a question about a specific advertisement?

The Judicial Ethics Advisory Board does not comment on specific campaign advertisements. *See* Formal Opinion 99-1 “Campaign Advertising” of the Ethics Committee of the Pennsylvania Conference of State Trial judges (the predecessor to the JEAB) at <http://ethics.pacourts.us/formal.htm>. A candidate is responsible for any ads published by his or her campaign committee. A candidate shall not permit others or suggest to others that they publish ads which contravene the constraints of the Code of Judicial Conduct.

24. May I be on a slate card that lists all candidates of my party?

Yes. *But see* Question 20.

25. May I endorse other candidates?

You may not endorse non-judicial candidates, but you may endorse another judicial candidate who is running for the same office, *i.e.*, same level court, and candidates for any other elective judicial office appearing on the same ballot. Pa. Code Judicial Conduct 4.2(B)(3).

26. May I personally solicit campaign contributions?

No. You may not personally solicit or accept campaign contributions, but your campaign committee may do so. Pa. Code Judicial Conduct 4.1(A)(7). *See also Williams-Yulee v. Florida Bar*, 575 U.S. 433, 135 S. Ct. 1656 (2015). Your committee may solicit funds no earlier than immediately after the General Election in the year before the calendar year in which the judicial election will be held. Pa. Code Judicial Conduct 4.4(B)(2).

27. May I purchase tickets to political events?

You or your campaign committee may purchase tickets to a political event or political fundraiser. You may contribute money to your campaign committee to purchase tickets to this type of event.

28. May I hold a fundraiser at my home?

Your campaign committee may hold a fundraiser at your home. You may not personally solicit or accept campaign funds, nor may you solicit individuals to attend the function. However, your campaign committee may engage in these activities.

29. May I accept donations from attorneys?

No, but your campaign committee may. *See* Pa. Code Judicial Conduct 4.4 and Comment [3]. All candidates should be mindful that, if the total contributions from any one source is disproportionately large, it may provide the basis for a disqualification or recusal motion under the

United States Supreme Court’s analysis in *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 129 S. Ct. 2252 (2009). In addition, if a party, a party’s lawyer, or the law firm of a party’s lawyer has made a direct or indirect contribution to the judge’s campaign in an amount that would raise a reasonable concern about the fairness or impartiality of the judge’s consideration of a case involving the party, the party’s lawyer, or the law firm of the party’s lawyer, the judge must consider whether recusal would be appropriate. Pa. Code Judicial Conduct 2.11(A)(4). However, there is a rebuttable presumption that recusal or disqualification is not warranted when a contribution is less than or equal to \$250. Pa. Code Judicial Conduct 2.11(A)(4).

30. What can individuals do to help my campaign?

Individuals may do anything within the election laws to help your campaign – raise money, solicit support, distribute literature, *etc.* – unless they are judges, court employees, or Hatch Act employees, subject to the same or similar restrictions as you.

31. May I contribute to the party organization or candidate?

A judicial candidate, including a judge who is a candidate for judicial office, may contribute to a political party or organization or candidate for public office.

32. May I loan money to my campaign?

Yes. You may loan money to your campaign. You must disclose this on your campaign finance report filings.

33. What may I say or not say during my campaign?

A candidate for judicial office may state personal views on legal, political, or other issues but may not make pledges or promises other than the faithful and impartial performance of the duties of office. *See* Pa. Code Judicial Conduct 4.1, Comments 7, 8, 9, 10, and 11. Also, a candidate shall not knowingly or with reckless disregard for the truth, make or permit or encourage others, including his or her campaign committee, to make any false or misleading statement; or make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court. *See also* Pa. Code Judicial Conduct 4.2, Comments 6, 7, 8, 9, and Question 33.

34. May I comment on “hot button” issues such as abortion, gun rights, and the death penalty?

Generally, you may make statements or announcements about personal views, but you may not make pledges or promises directly or inferentially about decision-making. Pa. Code Judicial Conduct 2.10(B), 2.11(A)(5). A candidate is prohibited from making commitments with respect to cases, controversies or issues that are likely to come before the Court. If you do announce your views on a particular issue, you may be required to disqualify yourself from deciding that issue

should it come before you. As a judge, your duty is to decide cases; and you should avoid knowingly placing yourself in a position that invites recusal. The test is whether a reasonable person looking at the totality of the statement would believe that the candidate has specifically undertaken to reach or is committed to a particular end result.

You should also be aware that Rules 4.1(A)(10) and (12) of the Code of Judicial Conduct prohibit a judge or judicial candidate from making pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office in connection with cases, controversies or issues that are likely to come before the court and from making any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.

35. May I make any promises or pledges if elected?

A candidate for judicial office may state personal views on legal, political, or other issues but may not make pledges or promises other than the faithful and impartial performance of the duties of office. “A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.” Pa. Code Judicial Conduct 4.1 Comment [10].

36. May I respond to questionnaires?

Yes. Rule 4.1, Comment [11], of the Code of Judicial Conduct provides, “Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. [Rule 4.1] Paragraph (A)(12) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates’ responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating [Rule 4.1] paragraph (A)(12), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate’s independence or impartiality, or that it might lead to frequent disqualification. *See* Rule 2.11.” *See also* Questions 32-34.

37. Is there a time limit on ending my campaign once the election is over?

Yes. Under Rule 4.4(B)(2) of the Code of Judicial Conduct, a candidate’s campaign committee must terminate all fundraising activities in connection with the campaign “no later than the last calendar day of the year in which the judicial election is held.”

38. When are written thank-you letters to contributors permitted?

Your committee may thank your contributors at any time. A judicial officer may sign thank you notes to contributors before and after the election.

39. May I hold a post-election fundraiser to retire my debt and, if so, may I attend?

A judge's campaign committee may hold fundraisers after the election; however, the fundraising must end by December 31 of that same year. The fundraising efforts must be commensurate with the campaign debt (the committee is not permitted to raise funds for a future campaign); and while the Code does not prohibit your attendance, you are prohibited from personally soliciting contributions. *See also* Question 41.

40. May I keep working as an attorney after the election?

Yes. You may work until you take the oath of office. You should consult the specific rules about winding down a law practice, including Rule of Professional Conduct 1.17.

41. Does a judge have an obligation to remove his or her name from their former firm's listing upon taking office?

Yes.

42. What may I do if my campaign committee has a debt or a surplus after the election?

A committee may continue in existence after the election and retain a debt or surplus on its books. In those instances, the committee must continue to have a chairperson and treasurer who must continue to file reports with the State consistent with the Election Code. If there is a surplus, you are permitted to do one or more of the following: 1) make a donation to one or more political parties; 2) retain the monies for future campaigns; 3) make a donation to a political action committee depending on whether the transfer will create the appearance of impropriety (Pa. Code Judicial Conduct 1.2), whether the political action committee or an affiliated organization frequently appears before the judge or engages in invidious discrimination (Pa. Code Judicial Conduct 3.1(B) and 3.6), whether the amount of money transferred and the identity of the political action committee could raise issues of recusal or disqualification under Code of Judicial Conduct Rules 2.7 or 2.11(A) if the political action committee or its affiliate would come before the judge; or 4) return the excess *pro rata* to your donors. *See also* Question 38 regarding restrictions on the committee's continued fundraising.