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(Editor’s Note: Part II of this title was originally Part III of Title 204, Judicial System General Provisions.)

CHAPTER 33. CODE OF JUDICIAL CONDUCT

Subch.
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Subchapter A. CANONS

Canon

- 1. Judges should uphold the integrity and independence of the judiciary.
- 2. Judges should avoid impropriety and the appearance of impropriety in all his activities.
- 3. Judges should perform the duties of their office impartially and diligently.
- 4. Judges may engage in activities to improve the law, the legal system, and the administration of justice.
- 5. Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.
- 6. Compensation received for quasi-judicial and extra-judicial activities permitted by this code.
- 7. Judges should refrain from political activity inappropriate to their judicial office.
Compliance With The Code of Judicial Conduct.
Effective date of compliance.
Reliance on Advisory Opinions.

Source

The provisions of this Chapter 33 adopted November 21, 1973, effective January 1, 1974, 3 Pa.B. 2914; amended November 21, 2005, effective immediately, 35 Pa.B. 6647, unless otherwise noted. Immediately preceding text appears at serial pages (262113) to (262114), (198207) to (198212) and (294047) to (294050).

Canon 1. Judges should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. Judges should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Canon 2. Judges should avoid impropriety and the appearance of impropriety in all their activities.

A. Judges should respect and comply with the law and should conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Judges should not allow their family, social, or other relationships to influence their judicial conduct or judgment. They should not lend the prestige of their office to advance the private interests of others; nor should they convey or knowingly permit others to convey the impression that they are in a special position to influence the judge. Judges should not testify voluntarily as a character witness.

Official Note: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. Judges must avoid all impropriety and appearance of impropriety. They must expect to be the subject of constant public scrutiny. They must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The testimony of judges as character witnesses injects the prestige of their office into the proceeding in which they testify and may be misunderstood to be official testimonial. This Canon, however, does not afford them a privilege against testifying in response to an official summons.

Canon 3. Judges should perform the duties of their office impartially and diligently.

The judicial duties of judges take precedence over all their other activities. Their judicial duties include all the duties of their office prescribed by law. In the performance of these duties, the following standards apply:

A. *Adjudicative responsibilities.*

(1) Judges should be faithful to the law and maintain professional competence in it. They should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) Judges should maintain order and decorum in proceedings before them.

(3) Judges should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity, and should require similar conduct of lawyers, and of their staff, court officials, and others subject to their direction and control.

Official Note: The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

(4) Judges should accord to all persons who are legally interested in a proceeding, or their lawyers, full right to be heard according to law, and,

except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

(5) Judges should dispose promptly of the business of the court.

Official Note: Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(6) Judges should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to their direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Official Note: "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR7-107 of the Code of Professional Responsibility.

(7) Judges should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except that a judge may authorize:

(a) the use of electronic or photographic means for the presentation of evidence, for the perpetuation of a record or for other purposes of judicial administration;

(b) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings;

(c) the photographic or electronic recording and reproduction of appropriate court proceedings under the following conditions:

(i) the means of recording will not distract participants or impair the dignity of the proceedings; and

(ii) the parties have consented; and the consent to being depicted or recorded has been obtained from each witness appearing in the recording and reproductions; and

(iii) the reproduction will not be exhibited until after the proceeding has been concluded and all direct appeals have been exhausted; and

(iv) the reproduction will be exhibited only for instructional purposes in educational institutions.

(d) the use of electronic broadcasting, televising, recording and taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions of any trial court non-jury civil proceeding, however, for the purposes of this subsection 'civil proceedings' shall not be construed to mean a support, custody or divorce proceeding. Subsection (iii) and (iv) shall not apply to nonjury civil pro-

ceedings as heretofore defined. No witness or party who expresses any prior objection to the judge shall be photographed nor shall the testimony of such witness or party be broadcast or telecast. Permission for the broadcasting, televising, recording and photographing of any civil nonjury proceeding shall have first been expressly granted by the judge, and under such conditions as the judge may prescribe in accordance with the guidelines contained in this Order.

Official Note: Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.

Editor's Note

Canon 3(A)7(d) shall be effective from October 1, 1979, to September 30, 1980, at which time Canon 3(A)7 shall be reinstated, without further order of the court, in its form immediately prior to the entry of this amendment.

B. Administrative responsibilities.

(1) Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) Judges should require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to judges.

(3) Judges should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Official Note: Disciplinary measures may include reporting a judge's or lawyer's misconduct to an appropriate disciplinary body.

(4) Judges should not make unnecessary appointments. They should exercise their power of appointment only on the basis of merit, avoiding favoritism. They should not approve compensation of appointees beyond the fair value of services rendered.

Official Note: Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

C. Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances where:

- (a) they have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- (b) they served as a lawyer in the matter in controversy, or a lawyer with whom they previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

Official Note: A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; judges formerly employed by a governmental agency, however, should disqualify themselves in a proceeding if their impartiality might reasonably be questioned because of such association.

- (c) they know that they, individually or as a fiduciary, or their spouse or minor child residing in their household, have a substantial financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- (d) they or their spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
 - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
 - (ii) is acting as a lawyer in the proceeding;

Official Note: The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “their impartiality might reasonably be questioned” under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Canon 3C(1)(d)(iii) may require the judge’s disqualification.

- (iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
 - (iv) is to the judge’s knowledge likely to be a material witness in the proceeding;
- (2) Judges should inform themselves about their personal and fiduciary financial interests, and make a reasonable effort to inform themselves about the personal financial interests of their spouse and minor children residing in their household.
- (3) For the purposes of this section:
- (a) the degree of relationship is calculated according to the civil law system;

Official Note: According to the civil law system, the third degree of relationship test would, for example, disqualify judges if their or their spouse’s parents, grandparents, aunts or uncles, siblings, nieces or nephews or their spouses were a party or lawyer in the proceeding, but would not disqualify them if a cousin were a party or lawyer in the proceeding.

(b) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;

(c) “financial interest” means ownership of a legal or equitable interest, if substantial, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a substantial “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially affect the value of securities.

Source

The provisions of this Canon 3 amended September 20, 1979, effective October 1, 1979, 9 Pa.B. 3365. Immediately preceding text appears at serial page (15318).

Canon 4. Judges may engage in activities to improve the law, the legal system, and the administration of justice.

Judges, subject to the proper performance of their judicial duties, may engage in the following quasi-judicial activities, if in doing so they do not cast doubt on their capacity to decide impartially any issue that may come before them:

A. They may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

B. They may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

C. They may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. They may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. They may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Official Note: As a judicial officer and person specially learned in the law, judges are in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that their time permits, they are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

Canon 5. Judges should regulate their extra-judicial activities to minimize the risk of conflict with their judicial duties.

A. Avocational activities.

Judges may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of their office or interfere with the performance of their judicial duties.

Official Note: Complete separation of judges from extra-judicial activities is neither possible nor wise; they should not become isolated from the society in which they live.

B. Civic and Charitable Activities.

Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in any court.

Official Note: The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to reexamine the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

- (2) Judges should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of their office for that purpose, but they may be listed as an officer, director, or trustee of such an organization. They should not be a speaker or the guest of honor at an organization's fund raising events, but they may attend such events.

- (3) Judges should not give investment advice to such an organization, but they may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

Official Note: A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

C. *Financial activities.*

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties, exploit their judicial position, or involve them in frequent transactions with lawyers or persons likely to come before the court on which they serve.

(2) Subject to the requirement of subsection (1), judges may hold and manage investments, including real estate, and engage in other remunerative activity including the operation of a family business.

Official Note: The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge engaged in a family business at the time this Code becomes effective.

(3) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment, they should divest themselves of investments and other financial interests that might require frequent disqualification.

(4) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

Official Note: Pursuant to the authority granted by Article V, Section 10 of the Pennsylvania Constitution, the Supreme Court adopted the Code of Judicial Conduct as the exclusive means of regulating the conduct of judicial officers under the supervision of the Supreme Court (see also Rules Governing Standards of Conduct of Magisterial District Judges). Disqualification from proceedings is the most appropriate means of ensuring judicial integrity and impartiality in proceedings, including, but not limited to, those arising from the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. § 1101 et seq.).

No judge shall have a financial interest, as defined by Section 1512(B) of the Pennsylvania Race Horse Development and Gaming Act (4 Pa.C.S.A. § 1101 et seq.), in or be employed, directly or indirectly, by any licensed racing entity or licensed gaming entity, or any holding, affiliate, intermediary or subsidiary company thereof or any such applicant, or engage in the active ownership or participate in the management of any such entities and related companies. The term "judge" shall include justices, judges of the Superior Court, judges of the Commonwealth Court, judges of the Courts of Common Pleas and judges of Philadelphia Municipal Court, but shall not include lawyers and non-lawyers performing judicial functions, including but not limited to masters and arbitrators, for the Unified Judicial System.

Canon 3(C) of the Code of Judicial Conduct continues to govern the disqualification of judges where the interest in or relationship with a licensed racing or licensed gaming entity or related company thereto, or any such applicant therefor, of the judge or a family member is at issue.

D. *Fiduciary Activities.*

Judges should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of their family, and then only if such service will not interfere with the proper performance of their judicial duties. “Member of their family” includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary judges are subject to the following restrictions:

(1) They should not serve if it is likely that as a fiduciary they will be engaged in proceedings that would ordinarily come before them, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

Official Note: The Effective Date of Compliance provision of this Code qualifies this subsection with regard to a judge who is an executor, administrator, trustee, or other fiduciary at the time this Code becomes effective.

(2) While acting as a fiduciary judges are subject to the same restrictions on financial activities that apply to them in their personal capacity.

Official Note: Judges’ obligations under this Canon and their obligations as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5C(3).

E. *Arbitration.*

Judges should not act as an arbitrator or mediator.

F. *Practice of law.*

Judges should not practice law.

G. *Extra-judicial appointments.*

Judges should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. Judges, however, may represent their country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Official Note: Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judges created by today’s crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

Source

The provisions of this Canon 5 amended June 1, 2006, effective immediately, 36 Pa.B. 2954. Immediately preceding text appears at serial pages (315991) to (315993).

Canon 6. Compensation received for quasi-judicial and extra-judicial activities permitted by this code.

Judges may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing judges in their judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. *Compensation.*

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. *Expense reimbursement.*

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by judges and, where appropriate to the occasion, by their spouses.

Canon 7. Judges should refrain from political activity inappropriate to their judicial office.

A. *Political conduct in general.*

(1) A judge or a candidate for election to judicial office should not:

- (a) act as a leader or hold any office in a political organization;
- (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office; except as authorized in subsection A(2);

Official Note: Candidates do not publicly endorse another candidate for public office by having their name on the same ticket.

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions, except as authorized in subsection A(2);

(2) Judges holding an office filled by public election between competing candidates, or a candidate for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings on their own behalf when they are a candidate for election or reelection, or speak on behalf of any judicial candidate for the same office, identify themselves as a member of a political party, and contribute to a political party or organization.

(3) Judges should resign their office when they become a candidate either in a party primary or in a general election for a non-judicial office, except that they may continue to hold their judicial office while being a candidate for elec-

tion to or serving as a delegate in a state constitutional convention, if they are otherwise permitted by law to do so.

(4) Judges 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.

B. Campaign conduct.

(1) Candidates, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of a merit system election:

(a) should maintain the dignity appropriate to judicial office, and should encourage members of their family to adhere to the same standards of political conduct that apply to them;

(b) should prohibit public officials or employees subject to their direction or control from doing for them what judges are prohibited from doing under this Canon; and except to the extent authorized under subsection B(2) or B(3), they should not allow any other person to do for them what judges are prohibited from doing under this Canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent their identity, qualifications, present position, or other fact.

Source

The provisions of this Canon 7 amended March 18, 2008, effective immediately, 38 Pa.B. 1445. Immediately preceding text appears at serial pages (319848) to (319849).

(2) Candidates, including an incumbent judge, for a judicial office that is filled by public election between competing candidates should not themselves solicit or accept campaign funds, or solicit publicly stated support, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaign and to obtain public statements of support for their candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. Candidates' committees may solicit funds for their campaign no earlier than thirty days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities in connection with such judicial campaign shall terminate no later than the last calendar day of the year in which the judicial election is held. Candidates should not use or permit the use of campaign contributions for the private benefit of themselves or members of their family.

(3) Incumbent judges who are candidates for retention in or reelection to office without a competing candidate may campaign and may obtain publicly stated support and campaign funds in the manner provided in subsection B(2).

Compliance With The Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

Senior Judge. Senior judges who receive the same compensation as full-time judges on the court from which they retired and are eligible for recall to judicial service should comply with all the provisions of this Code except Canon 5G, but they should refrain from judicial service during the period of an extra-judicial appointment not sanctioned by Canon 5G. All other senior judges eligible for recall to judicial service should comply with the provisions of this Code.

This Code shall not apply to magisterial district judges and judges of the Traffic Court of the City of Philadelphia.

Official Note: Specific rules governing standards of conduct of magisterial district judges, and judges of the Traffic Court of the City of Philadelphia, are set forth in the Rules Governing Standards of Conduct of Magisterial District Judges.

Effective Date of Compliance

Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it. If, however, the demands on their time and the possibility of conflicts of interest are not substantial, persons who hold judicial office on the date this Code becomes effective may:

(a) continue to act as an officer, director, or nonlegal advisor of a family business;

(b) continue to act as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of their family.

Reliance on Advisory Opinions

The Ethics Committee of the Pennsylvania Conference of State Trial Judges is designated as the approved body to render advisory opinions regarding ethical concerns involving judges, justices and other judicial officers subject to the Code of Judicial Conduct, and, although such opinions are not per se binding upon the Judicial Conduct Board, the Court of Judicial Discipline or the Supreme Court of Pennsylvania, action taken in reliance thereupon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

Commentary: The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), concluded that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” is violative of the First Amendment of the United States Constitution.

Source

The provisions of this Canon 7 amended September 9, 1991, effective September 7, 1991, 21 Pa.B. 4396; amended November 9, 1998, effective January 1, 1999, 28 Pa.B. 5849; order amended November 24, 1998, 28 Pa.B. 6069; amended November 21, 2002, effective immediately, 32 Pa.B. 5951. Immediately preceding text appears at serial pages (251691) to (251692) and (287549) to (287550).

Subchapter B. FORMAL OPINIONS

- Sec.
 99-1. Campaign Advertising.
 99-2. Reporting Suspected Tax Evasion.
 99-3. Judges and the Media.
 00-1. Signing Nominating Petitions.
 02-1. Time Withdrawn Judicial Candidates Must End Fund Raising.

§ 99-1. Campaign Advertising.

The Code of Judicial Conduct provides that a candidate for judicial office, including an incumbent judge, should maintain the dignity appropriate to judicial office (Canon 7). Campaign advertising must, therefore, be dignified and appropriate to judicial office. The electorate is best served by advertising which accurately showcases the candidate’s credentials. The ads should not pander to the electorate. The candidate must take particular care that the ad does not in any way suggest that he or she will favor any particular group of litigants or make decisions on any basis other than the facts and the law.

A campaign ad may compare a candidate’s credentials to those of other candidates for the same office. However, Canon 7 provides that a candidate should not

misrepresent his qualifications or any other fact. A candidate must be scrupulously careful that what the ads say about the candidate's opponents is accurate. Once again, the ads must be dignified. Vituperative personal attacks against one's opponents are per se undignified.

The Ethics Committee will not approve or disapprove any particular campaign ad. Moreover, if a candidate seeks and obtains advice from the Committee regarding campaign advertising, the candidate may not claim that the Committee's advice constitutes an endorsement or approval of a particular campaign ad.

A candidate is responsible for any ads published by his or her campaign committee. A candidate should not permit others nor suggest to others that they publish ads which contravene the constraints of the Canons.

- Canon 7 does not specifically proscribe “negative advertising.” While in some limited circumstances negative advertising may be appropriate, given the nature of political ads, the Committee strongly discourages negative ads. Given the time limits of television and radio ads (10 and 30 second spots), it is very difficult to say something negative about one’s opponent which is not misleading. One could, for instance, say of a sitting judge, “Judge X freed three accused murderers.” Though such a statement might be accurate, it might also be misrepresentation by innuendo. If, for instance, Judge X freed the accused murderers because either the judge or the jury acquitted the accused, then the effect of the ad would be to vilify someone for doing what was totally proper. The clear implication of the ad is that the judge treated murderers leniently, which is misleading.

- An ad should not paint an attorney with the reputation of his or her clients.
- An ad which either directly or by innuendo refers to the ethnic background of one’s opponent is improper.

- To suggest that one’s opponent favors one gender over another simply because he or she is of the opposite gender of the candidate being promoted by an ad would be a totally baseless falsification. If, on the other hand, a candidate acted in a manner which truly indicated gender bias, that fact would be fair comment.

- An ad can be accurate, but it can also be misleading. An ad which is factually accurate, but is intended to mislead the electorate by giving a false impression about one’s opponent violates Canon 7. Once again, the electorate is best served by ads which showcase a candidate’s credentials and seek the support of the electorate on the basis of those credentials.

In summary, Canon 7 provides that:

A candidate . . . should maintain the dignity appropriate to judicial office . . . [and] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other fact . . .

The principal parameters of campaign advertising are accuracy and dignity.

At the end of the Code of Judicial Conduct is a section entitled “Reliance on Advisory Opinions” which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The “rule of reliance” applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice

about the judge's particular set of facts and to which the "rule of reliance" will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

Source

The provisions of this Formal Opinion 99-1 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 99-2. Reporting Suspected Tax Evasion.

What, if any, is the responsibility of a trial judge to report suspected tax evasion to the appropriate tax authority?

This question was asked of the Committee by the administrative judge of a large metropolitan family court on behalf of the judges of that court. Recognizing the statewide implications of the inquiry, the Committee has decided to issue a formal opinion in this matter.

The Code of Judicial Conduct does not mandate reports of suspected tax evasion to tax authorities. The only mandatory reporting provision in the Code provides that:

A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

Clearly, this provision of the Canons does not apply to suspected tax evasion or fraud. The court is not an agent of the tax authorities.

In cases of obvious and egregious fraud, a judge should consider the possibility that his or her failure to report the fraud may undermine confidence in the integrity of the judiciary.

Canon 2 provides that:

A judge should respect . . . the law and should conduct himself at all times in a manner that promotes public confidence in the integrity . . . of the judiciary.

The decision as to whether and when a case rises to such a level must be made by the judge on a case-by-case basis.

If a judge makes a decision to report such facts to the appropriate tax authority, it is the recommendation of the Committee that the judge do simply that—report the facts without judgment.

At the end of the Code of Judicial Conduct is a section entitled "Reliance on Advisory Opinions" which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The "rule of reliance" applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice

about the judge's particular set of facts and to which the "rule of reliance" will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge's Conference zone.

Source

The provisions of this Formal Opinion 99-2 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 99-3. Judges and the Media.

A judge should not comment publicly about a proceeding pending before any court. Canon 3 provides, in pertinent part:

A judge should abstain from public comment about a pending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Commentary. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by DR 7-107 of the Code of Professional Responsibility.

The Committee notes that Pennsylvania's prohibition against public comment about pending proceedings is more restrictive than the Model Code of Judicial Conduct adopted by the American Bar Association in 1990. The Model Code provides as follows:

A judge shall not, while a proceeding is pending or impending in any court, make any public comment *that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing* (emphasis added).

The Committee suggests that the impact/fairness test of the Model Code is a good guide for deciding when a judge may make public statements in the course of his or her duties or explain the procedures of the court as permitted by Pennsylvania's Code. If there is a danger that the statement may affect the outcome of a proceeding, the judge must refrain from public comment.

Canon 3 also provides very extensive and detailed regulations with regard to the relationship between the court and the electronic media.

A judge should prohibit broadcasting, televising, recording or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions . . .

The Canon then goes on to outline certain circumstances in which electronic broadcasting is permitted in "trial court non-jury civil proceedings." The Canon specifically excludes support, custody and divorce proceedings from his section.

A judge must be particularly circumspect with regard to criminal matters. Rule 326 of the Rules of Criminal Procedure provides specific guidelines to be followed in widely publicized or sensational cases. Rule 327 places specific limita-

tions on court personnel. Finally, Rule 328 places very specific limitations on photography and broadcasting in the courtroom and its environs:

The taking of photographs in the courtroom or its environs or radio or television broadcasting from the courtroom or its environs during the progress of or in connection with any judicial proceedings, whether or not the court is actually in session, is prohibited. The environs of the courtroom is defined as the area immediately surrounding the entrances and exits to the courtroom.

This rule is not intended to prohibit the taking of photographs or radio or television broadcasting of proceedings such as naturalization ceremonies or the swearing in of public officials which may be conducted in the courtroom.

Once again, while the rules carefully circumscribe the coverage of matters pending before the court, they do not completely prohibit contact with the media. Canon 3 specifically permits public discussion of the work of the court. If, for instance, the court is establishing a new program, a judge may, in the course of his or her responsibilities, properly discuss the new program with the media, as long as the judge is careful to refrain from comment on any pending matter.

At the end of the Code of Judicial Conduct is a section entitled “Reliance on Advisory Opinions” which provides that although the advisory opinions of the Judicial Ethics Committee are not binding upon the [Judicial Conduct Board and the Court of Judicial Discipline] and the Supreme Court of Pennsylvania, the opinions shall be taken into account in determining whether discipline should be recommended or imposed. The “rule of reliance” applies to this Formal Opinion. However, before engaging in contemplated conduct, any judge who, out of an abundance of caution, desires a Committee opinion which will provide advice about the judge’s particular set of facts and to which the “rule of reliance” will also apply, may submit an inquiry to a member of the Committee, ordinarily, a member serving in the judge’s Conference zone.

Source

The provisions of this Formal Opinion 99-3 adopted December 10, 1999, effective December 11, 1999, 29 Pa.B. 6236.

§ 00-1. Signing Nominating Petitions.

(a) *Majority Opinion.*

The Committee has received several requests for advice asking whether it is permissible for a judge to sign a candidate’s nomination petition. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion. A bare majority of the Committee is of the opinion that signing a nomination petition is prohibited; a minority of the Committee is of the opinion that signing a nomination petition is permitted.

Candidates for elective office who wish to have their names placed on the ballot for the primary election of a major political party must obtain a certain num-

ber of signatures of the voters of the party on a nomination petition. *See generally* 25 P. S. sections 2862, 2869.

Code of Judicial Conduct 7A (1)(b) prohibits a judge or candidate for judicial office from publicly endorsing a candidate for public office except as authorized by section 7A (2). Code of Judicial Conduct 7A (2) permits a judge holding an office filled by public election between competing candidates, or a candidate for such office, among other things, “to speak on behalf of any other judicial candidate for the same office.”

Code of Judicial Conduct 7A (4) prohibits a judge from engaging “in other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.”

A majority of the Committee joins the Florida Committee and concludes that a judge may not sign a candidate’s nomination petition. Florida Committee on Standards of Conduct for Judges Opinion 92-32. A majority of the Committee declines to follow other committees which have permitted signing.

Note: Arizona (Judicial Ethics Advisory Opinion 96-7) permits signing under certain circumstances. New York (Advisory Committee on Judicial Ethics Opinion 89-89), which permits signing, prohibits participation in any political campaign, but unlike Pennsylvania, does not expressly prohibit publicly endorsing a candidate. Tennessee (Opinion 90-4), which permits signing, prohibits publicly endorsing a candidate and taking a public petition on political issues. New Mexico (Judicial Advisory Opinion 96-01), which permits signing, has a less restrictive prohibition on endorsing than Pennsylvania. New Mexico prohibits publicly endorsing a candidate through the news media or in campaign literature. Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), which permits signing, unlike Pennsylvania does not have an express general prohibition against political activity.

Signing a nomination petition is the legal equivalent of a public endorsement and public endorsements are prohibited by Code of Judicial Conduct 7A (1)(b). Signing a nomination petition is not similar to exercising the right to vote. For example, voting is private. In contrast, a nomination petition is public; it is filed with the Department of State and is available for public inspection.

Note: Although the majority is aware that other committees have concluded otherwise, e.g., New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7), the majority of the Committee rejects that view.

Moreover, the demographics of Pennsylvania suggest that signing nomination petitions would in most, if not all, judicial districts of small population be more likely to produce more harm than good and it is not appropriate for the conduct in question to have two entirely opposite results depend solely upon the size of the population of a judicial district.

The election process routinely causes or leads candidates to seize upon whatever tactical advantages exist without regard for undesirable collateral effects. When a judge signs a nomination petition often, especially in judicial districts

with small populations, the candidate may publicize it as an endorsement regardless of the signer's intent. Because the judge in exercising the right to sign a nomination petition may prove to be one of the many casualties of an election war despite the judge's best efforts to stay off the field of battle, a uniform prohibition on signing nomination petitions is required.

Further, signing a nomination petition is prohibited as other political activity under Code of Judicial Conduct 7A (4).

Therefore, a majority of the Committee concludes that a judge is prohibited from signing a nomination petition.

(b) *Dissenting Opinion.*

A substantial minority of the Committee is of the opinion that a judge may sign a nomination petition of a candidate. This opinion agrees with the clear majority of other ethics committees which have addressed the issue. New York (Advisory Committee on Judicial Ethics Opinion 89-89), Tennessee (Opinion 90-4), New Mexico (Judicial Advisory Opinion 96-01), Michigan (Judicial Tenure Commission Advisory Opinion 25 (July 23, 1981)), and Arizona (Judicial Ethics Advisory Opinion 96-7) all permit signing a nomination petition.

Note: We do not agree with the single committee, Florida's committee, which has expressed a contrary view. Florida Committee on Standards of Conduct for Judges Opinion 92-32.

Signing a nomination petition is not the legal equivalent of a public endorsement. It is merely an act to permit a candidate to stand for election in a primary. It is similar to exercising the right to vote. New York (Advisory Committee on Judicial Ethics Opinion 89-89); New Mexico (Judicial Advisory Opinion 96-01); Arizona (Judicial Ethics Advisory Opinion 96-7).

The Arizona Judicial Ethics Advisory Opinion 96-7 states:

A nominating petition does not contain a promise to vote for the nominee or any endorsement of the nominee. The restriction on the number of petitions that any given elector may sign appears to be a device to ensure the earnestness of signatories and does not imply an endorsement. Accordingly, we find nothing inappropriate in the signing of a petition. Such activity is normal participation in the political process by a voter that Canon 5A intends to permit.

Moreover, the right to vote is a fundamental right. A Code of Judicial of Conduct provision which infringes upon a judge's fundamental right may be unconstitutional. *E.g., Matter of Sanders*, 955 P.2d 369 (Wash. 1998) (First Amendment right outweighs Canons of Judicial Conduct).

The possibility that candidates may publicize the judge's signing as evidence of the judge's support is not sufficient to restrict judges from exercising their rights. A judge should not be stripped of the right to sign a nomination petition merely because candidates may improperly exploit the situation; the judge's right should not be lost because of the conduct of others.

Not all political activity is prohibited by Canon 7. Canon 7A (4) is a “catch-all” provision which prohibits a judge from engaging in political activity other than the activities specifically prohibited or permitted in Canon 7A (1) through 7A (3), and other than measures to improve the law, the legal system, or the administration of justice. The title to the Canon itself says that “a Judge should refrain from political activity inappropriate to his judicial office.” Furthermore, Canon 7A (1)(b) and (c) specifically except from the prohibitions contained therein the activities authorized by Canon 7A (2). Canon 7A (2) authorizes the activities therein described for “[a] judge holding an office filled by public election between competing candidates . . .” This is every judge in Pennsylvania, because all judicial offices in Pennsylvania are filled by such public election. In addition, voting is part of the political process, yet obviously, it also is not prohibited by the “other political activity” mentioned in Canon 7A (4).

The political activity forbidden by Canon 7A (4) is activity, other than that specifically prohibited or authorized by Canon 7, which is designed to persuade others to achieve a political result. Simply signing a nomination petition is not activity designed to persuade others to achieve a political result. It is a simply an act of one individual which when combined with the similar and independent acts of a sufficient number of other individuals permits a candidate’s name to be placed on the ballot. By signing, a judge is acting as an individual, not as a judge, and he or she is not attempting to persuade others to sign the candidate’s nomination petition any more than the act of voting is an attempt to persuade others to vote for a particular candidate.

In contrast, a judge may not solicit others to sign a nomination petition and may not circulate a nomination petition. *Accord* New York (Advisory Committee on Judicial Ethics Opinion 89-89); *contra* New Mexico (Judicial Advisory Opinion 96-01). Those activities are attempts to influence others which are political activities forbidden by Canon 7A (4).

Source

The provisions of this § 00-1 adopted April 28, 2000, 30 Pa.B. 2125.

§ 02-2. Time Withdrawn Judicial Candidates Must End Fund Raising.

The Committee has received several requests for advice asking when judicial candidates who have withdrawn their candidacy must end fund raising. Because of the importance of this issue throughout the Commonwealth, the Committee issues this Formal Opinion.

History of Pennsylvania law

Effective January 1, 1999 the Supreme Court amended Canon 7B (2) of the Code of Judicial Conduct to expressly provide that fund raising of a judicial campaign must end “no later than the last calendar day of the year in which the judicial election is held.” Before the amendment the Code did not expressly provide when fund raising must end. However, before the amendment this Commit-

tee had decided that after an election, a judge could have only one fund raiser, the judge could not attend, and the fund raiser was required to be held within 6 months after the judge was sworn in.

The Pennsylvania Code of Judicial Conduct does not expressly address the time when a withdrawn judicial candidate must end fund raising.

Other Jurisdictions

In contrast to Pennsylvania, the Ohio Code of Judicial Conduct expressly provides the time when defeated or withdrawn judicial candidates must end fund raising. That time is the earlier of the time the campaign debt is paid off or 120 days after the defeat or withdrawal. Ohio Code of Judicial Conduct 7(C)(4)(b),(c). Candidates who participate in the general election may raise funds until 120 days after the general election. Ohio Code of Judicial Conduct 7(C)(4)(a).

In New York judicial candidates who do not run in the general election can raise funds for six months after the primary, convention, caucus, or meeting. New York Codes, Rules and Regulations sections 100.0 (Q), 100.5 (A)(5). Candidates who run in the general election may raise funds for six months after the general election. *Id.*

Some other jurisdictions measure the ending time for fund raising from the number days after the last election in which the candidate participates during the election year and do not expressly address withdrawn candidates. E.g., Nebraska Code of Judicial Conduct 5C (2) (30 days); Washington Code of Judicial Conduct 7B (2) (60 days); North Dakota Code of Judicial Conduct 5C (2) (90 days); Alabama Canons of Judicial Ethics 7B (4)(b) (120 days). The 1972 American Bar Association Model Code of Judicial Conduct and the 1990 American Bar Association Model Code of Judicial Conduct provide for 90 days.

The Kentucky Code of Judicial Conduct prohibits any fund raising after the general election. Kentucky Rules of the Supreme Court 4.300, Code of Judicial Conduct 5B (2).

Louisiana permits post election fund raising only for the purpose of extinguishing campaign debt resulting from that election. Louisiana Code of Judicial Conduct 7D (3).

Rationale for the Committee's Opinion

Pennsylvania Code of Judicial Conduct 7B (2) provides in pertinent part:

A candidate's committees may solicit funds for his campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions or the last day for filing a declaration of intention to seek reelection on a retention basis, and all fundraising activities *in connection with such judicial campaign* shall terminate no later than the last calendar day of the year in which the judicial election is held.

(Emphasis added).

The Committee observes that the Code limits candidates who participate in the general election to a post election fund raising period of less than sixty days, i.

e. from the date after the general election (which is held in November) to December 31. The Committee considered whether candidates who withdraw should be limited to fund raising after their withdrawal by the same number of days as candidates who participate in the general election have after the general election, a period of less than sixty days. However, because the language of the Code provides the date by which fund raising must end rather than the number of days after the general election and does not refer to the general election in selecting the ending date, the Committee rejected the view that fund raising must end by a period of less than sixty days after the candidate withdraws, i.e. the number of days a candidate in the general election would have to fund raise after the general election.

However, as indicated by the above underlined portions of the Code, in addition to the December 31 cut off date, the Code limits fund raising “for his campaign” and “in connection with such judicial campaign.” These limits require that a withdrawn judicial candidate end fund raising when the campaign debt has been extinguished. The reason is that for a withdrawn candidate, because such judicial campaign has ended, any fund raising after the debt has been extinguished could not be for “such judicial campaign.” To give effect to all the provisions of Code of Judicial Conduct 7B (2), a withdrawn judicial candidate must end fund raising when the campaign debt has been extinguished or by December 31 of the election year, whichever occurs first.

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