

**JUDICIAL ETHICS COMMITTEE
ADVISORY OPINION NO. 18-01**

March 16, 2018

The Judicial Ethics Committee has been asked to provide responses to the following questions:

Question 1:

Is a judge or a judicial candidate permitted to participate in fund-raising activities for another individual who is a candidate for office?

Response of the Committee to Question 1:

No. The Code of Judicial Conduct (“Code”) prohibits a judge or judicial candidate from participating in fund-raising activities for a candidate for office.

Question 2:

Does the Code permit judges and judicial candidates to engage in any political and campaign activities?

Response of the Committee to Question 2:

Yes. The Code permits judges and judicial candidates to participate in limited political and campaign activities.

DISCUSSION

Tennessee Supreme Court Rule 10, Canon 4, governs the political and campaign activities of judges and judicial candidates. The Code permits only limited political and campaign activities in order to preserve the independence, integrity, and impartiality of the judiciary. RJC, Comment 1.

RJC 4.1(A) sets out activities that are prohibited for judges and judicial candidates. In brief, they are prohibited from acting as a leader; holding an office; making speeches; soliciting funds, except from family members, for a political organization; or knowingly, or with reckless disregard, making a false or misleading statement.

As to the first question, RJC 4.1(A)(8) does not permit a judge or judicial candidate to “personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4.” In accordance with that section, judicial candidates are prohibited from personally fund-raising for themselves or another candidate for office but may direct their campaign committee to solicit and accept

contributions on the candidate's behalf. RJC 4.4 imposes upon judicial candidates the requirement that they and their campaign committee comply with the applicable solicitation and contribution provisions of the Code. It further provides the limited exceptions to the restrictions placed on judges and judicial candidates by RJC 4.1.

The phrase "personally solicit," found in RJC 4.1(A)(8), is applied broadly to include transmissions from the candidate sent via fax or email. In *Williams-Yulee v. Florida Bar*, 575 U.S. ___ (2015), the United States Supreme Court upheld the imposition of sanctions on a judicial candidate who had sent a letter bearing her signature to potential contributors, as well as posting the letter on her campaign website. The court concluded that the candidate did not have a First Amendment right to send or post a personal request for contributions, but was required to comply with the prohibitions of the Florida Code of Judicial Conduct against such actions.

Several opinions illustrate the RJC 4.1(A)(11) prohibition against false and misleading statements, which is sometimes violated by campaign materials. See *Winter v. Wolnitzek*, 834 F.3d 681, 693-94 (6th Cir. 2015); *Matter of Callaghan*, 796 S.E.2d 604 (W. Va. 2017) (judicial candidate's statement in campaign flyer, that President Obama and opposing judicial candidate had a "party" at White House in support of President's legislative agenda, could reasonably be perceived as stating actual facts and was not mere rhetorical hyperbole); and *Disciplinary Counsel v. Tamburrino*, 87 N.E.3d 158 (Ohio 2016) (judicial candidate violated rules of judicial conduct prohibiting candidate from knowingly or with reckless disregard disseminating false information concerning an opponent when candidate's campaign aired television commercials falsely, stating that sitting judge "doesn't think teenage drinking is serious" and "won't disclose his Taxpayer Funded Travel Expenses").

Regarding the second question, RJC 4.2 provides guidance for the conduct of judges and judicial candidates during campaigns. It further provides the limited exceptions to the restrictions placed on judges and judicial candidates by RJC 4.1.

RJC 4.2(A) provides the ethical requirements that a judge or judicial candidate must comply with during an election. A judge or judicial candidate must: (1) act with impartiality and integrity; (2) comply with all election and campaign fund-raising laws and regulations; and (3) review and approve the content of everything disseminated by the campaign committee.

RJC 4.2(B) provides the electives a candidate may select in support of his or her candidacy, which include: (1) creating a campaign committee; (2) speaking on behalf of his or her candidacy via any medium; and (3) seeking, accepting, or using endorsements from anyone or any organization.

RJC 4.2(C) allows judges or judicial candidates to:

- (1) purchase tickets for and attend political gatherings, subject to the limitations in (C)(3);
- (2) identify himself or herself as a member of a political party;
- (3) contribute to a political organization or a political candidate in an amount up to the limitations provided in Tenn. Code Ann. § 2-10-301 et seq.; and
- (4) publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office.

RJC 4.2(C) “provides a limited exception to the restrictions imposed by RJC 4.1” and only permits “limited political activity.” RJC 4.2(C), Comment 2.

While judges and judicial candidates may endorse or oppose candidates for judge, they shall not endorse or oppose candidates for non-judicial positions within the judicial system, such as elected court clerks, district attorneys general, and district public defenders.” RJC 4.2, Comment 2A. Additionally, judges and judicial candidates may not serve on event or host committees for fund-raisers for other judges, judicial or non-judicial candidates. Even though the judge or judicial candidate is only lending his or her name to the event and will not be selling tickets or otherwise raising money, prospective attendees will not be aware of this arrangement, making it appear that the judge or judicial candidate is violating fund-raising prohibitions of the RJC. Further, it will appear that the judge or judicial candidate is endorsing the person for whom the event is being held, which may present additional problems.

Finally, RJC 4.2(D) allows judges or judicial candidates to form group slates or alliances, including joint campaign committees, in order to run more effective campaigns.

NOTE: Those involved in judicial elections should thoroughly familiarize themselves with RJC 4.1 through 4.4, as well as the comments to these sections. Since judicial candidates also must comply with the rules and regulations of the Tennessee Bureau of Ethics and Campaign Finance, they also should familiarize themselves with these additional requirements. Questions regarding election matters may be directed to that bureau or the Administrative Office of the Courts.

FOR THE COMMITTEE:



ALAN E. GLENN, JUDGE

CONCUR:

JUDGE BETTY THOMAS MOORE

JUDGE PAUL B. PLANT

JUDGE TIMOTHY E. IRWIN

JUDGE JOHN CAMPBELL

JUDGE TAMMY HARRINGTON

JUDGE ROSS HICKS