

**JUDICIAL ETHICS COMMITTEE
ADVISORY OPINION NO. 13-01**

August 15, 2013

Question:

The Judicial Ethics Committee has been asked for an opinion as to what extent, if any, a judicial candidate may engage in campaign activities prior to the beginning of the 180-day period before the primary election for the position.

Answer:

The Code of Judicial Conduct does not prohibit judicial candidates from publicizing and self-funding their campaigns prior to the 180-day period set out in Rule 4.4 of the Code of Judicial Conduct, but, in doing so, candidates must comply with Tenn. Code Ann. § 2-10-105(e)(1) regarding appointment of a political treasurer, as well as all other applicable ethics rules, election statutes, requirements, and regulations.

DISCUSSION

Canon 4.2(B), of the 2010 American Bar Association Model Code of Judicial Conduct, which was the starting point for our judicial conduct code, provides, in part, as follows:

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election:

- (1) establish a campaign committee pursuant to the provisions of Rule 4.4;
- (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature[.]

In adopting the Model Code, the Tennessee Supreme Court did not include the ABA version of Rule 4.2(B)(2):

(B)(1) A candidate for elective judicial office may, unless prohibited by law, and not earlier than 180 days before the first applicable primary election, caucus, or general or retention election, establish a campaign committee pursuant to the provisions of RJC 4.4.

(2)-(6) [Intentionally omitted].

Thus, although the ABA language does not appear to allow any judicial campaign activities to begin prior to 180 days before the primary, if any, the Tennessee Supreme Court did not adopt that restriction, or, otherwise, prohibit the commencement of certain activities prior to the beginning of the 180-day period. Accordingly, we conclude that, prior to the beginning of the 180-day period, judicial candidates may announce their candidacies, appoint political treasurers, and self-fund their campaigns. However, candidates should be mindful of several restrictions. Rule 4.2(B)(1) does not allow the appointment of a campaign committee earlier than 180 days before the first applicable primary election, caucus, general or retention election. Additionally, Rule 4.4(B)(2) does not allow solicitation or acceptance of contributions more than the 180-day period established by Rule 4.2(B)(1). Thus, judicial candidates may not in any fashion solicit campaign contributions earlier than the 180-day period, including providing an address or other means for contributions to be made after that period or publicizing before the 180-day period a fund-raiser to be held within it.

FOR THE COMMITTEE:

ALAN E. GLENN, JUDGE

CONCUR:

JUDGE CHERYL A. BLACKBURN
JUDGE JAMES F. RUSSELL
JUDGE BETTY THOMAS MOORE
JUDGE PAUL B. PLANT
JUDGE TIMOTHY E. IRWIN
JUDGE JEAN A. STANLEY