

# **JUDICIAL RETENTION ELECTION MANUAL**

September, 2015

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## **Acknowledgments to the September, 2015 edition**

The Judicial Ethics Committee of the Pennsylvania Conference of State Trial Judges presents this Judicial Retention Election Manual to provide guidance to judges who are candidates for retention to their judicial office. This is a revision of the May, 2011 edition of the Judicial Retention Election Manual which was a revision of the August, 2007 Judicial Retention Election Manual.

The Judicial Ethics Committee acknowledges the following persons for their contribution to the production of this edition of the Manual in September, 2015:

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## JUDICIAL RETENTION ELECTION MANUAL

### I. INTRODUCTION

This manual is designed to provide guidance to judicial officers<sup>1</sup> facing a retention election. Retention elections apply to justices of the Supreme Court and to judges of the Superior, Commonwealth, Common Pleas, and Philadelphia Municipal Court. At the conclusion of their regular term of office, or a prior retention term, these judicial officers may file a declaration of candidacy and initiate the retention election process discussed below. Pa. Const., Art. V, § 15(b); 42 Pa.C.S. § 3153. The retention election process may be repeated until retirement or removal of the judicial officer. *Id.*

Retention election procedures do not apply to judicial officers completing a term to which they were appointed to fill a vacancy or to Magisterial District Judges (MDJs). These judicial officers must follow the procedures for seeking election to that position for a regular term of office, which are beyond the scope of this manual. Pa. Const., Art. V, § 15(b); 42 Pa.C.S. § 3131(b).

Although every effort has been made to make this manual as complete and accurate as possible, questions may arise that are not addressed herein. In such a situation, the reader is advised to seek the guidance of the Pennsylvania Department of State, Bureau of Commissions, Elections, and Legislation, for questions concerning the Election Code. See Appendix "A." For judicial ethics questions pertaining to the retention campaign, the reader should contact the

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<sup>1</sup> The term "judicial officer" is used throughout this manual to refer to those officers eligible to stand for retention election.

Ethics Committee of the State Conference of Trial Judges.<sup>2</sup> See Appendix "A" for contact information.

## II. GETTING ON THE BALLOT: DECLARATION OF CANDIDACY

### A. Declaration of Candidacy

#### 1. Procedure for Filing Declaration of Candidacy

A judicial officer elected to a regular term of office pursuant to 42 Pa.C.S. § 3131, or previously retained, may file a declaration of candidacy for retention election. Pa. Const. Art. V, § 15(b); 42 Pa.C.S. § 3153(a). The Department of State mails declarations of candidacy to judicial officers eligible for retention election near the end of their term of office. See Appendix "B." The declaration of candidacy is to be filed with the Secretary of the Commonwealth on or before the first Monday of January of the year preceding the year in which the judicial officer's term expires. *Id.* **A declaration of candidacy is considered to be filed when it is received by the Secretary of the Commonwealth, not when it is mailed.** *Walsh v. Tucker*, 312 A.2d 11 (Pa. 1973). Included with the declaration of candidacy is a judicial questionnaire and a cover letter. See Appendix "B." After the Department of State receives the declaration of candidacy and judicial questionnaire, it sends a letter confirming receipt of those items. See Appendix "B."

#### 2. Effect of Filing, Failing to File, or Withdrawing a Declaration of Candidacy

If a declaration of candidacy is filed, the judicial officer's name shall be submitted to the electors without party designation as a separate judicial question or in a separate column or line

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<sup>2</sup> The Ethics Committee of the Pennsylvania Conference of State Trial Judges renders advisory opinions on ethical concerns involving justices, judges and other judicial officers. These opinions are not *per se* binding on the Judicial Conduct Board, Court of Judicial Discipline or the Supreme Court of Pennsylvania, but action taken in reliance on such opinions will be taken into account in determining whether discipline should be recommended or imposed. Code of Judicial Conduct, Preamble [8]. This "rule of reliance" only applies to the specific judge who sought the committee's opinion. To benefit from the "rule of reliance" the judge should make a specific inquiry to the committee. Ethics Committee of the Pennsylvania Conference of State Trial Judges Website, <http://ethics.pacourts.us/>.

on the voting machine at the municipal (i.e. November) election immediately prior to the expiration of his or her term to determine only the question of whether he or she shall be retained in office. Pa. Const. Art. V, § 15(b); 42 Pa.C.S. § 3153(b). In a retention election there is no need for the judicial officer to file a nomination petition or paper in order to get on the ballot.

If no declaration of candidacy is filed, a vacancy shall exist upon the expiration of the judicial officer's term. Pa. Const. Art. V, § 15(b); 42 Pa.C.S. § 3153(a). The resulting vacancy is to be filled by election. *Id.*; 42 Pa.C.S. § 3132(c).

A judicial officer may withdraw a previously filed declaration of candidacy by notifying the Secretary of the Commonwealth in writing. 25 P.S. §§ 2938.2 & 2938.3. If a declaration of candidacy is withdrawn on or before the thirteenth Tuesday preceding the primary election, the Secretary of the Commonwealth shall include the judicial office in the certification notifying the county board of election of the offices for which candidates are to be nominated at the ensuing primary. 25 P.S. §§ 2938.2 & 2865. If a declaration of candidacy is withdrawn after the thirteenth Tuesday before the primary election but prior to sixty (60) days before the municipal election, the nomination to fill the vacancy shall be made by nomination certificates or nomination papers. 25 P.S. §§ 2938.3 and 2953.

## **B. Financial Disclosure**

### **Administrative Office of the Pennsylvania Courts**

Judicial officers are required to file with the Administrative Office of Pennsylvania Courts (AOPC) a statement of financial interest for each year no later than May 1st of the following year. 204 Pa.Code §§ 29.51; 29.52(b); 29.53. As sitting judicial officers, candidates standing for retention must file a statement of financial interest and failure to do so could result

in suspension. 204 Pa.Code § 29.55. The statement of financial interest is a public document available for inspection and copying.<sup>3</sup> 204 Pa.Code § 29.54.

### III. CONDUCT OF THE RETENTION CAMPAIGN

#### A. Campaign Finance Generally: political committees; contributions; expenditures; recordkeeping

##### 1. Political committee: formation and organization

Although the Pennsylvania Election Code does not require that a candidate for public office use a political committee to receive contributions and pay expenditures, the Code of Judicial Conduct states that candidates for judicial office may not "personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4." Code of Judicial Conduct, Rule 4.1(A)(7); see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015). A candidate's political committee is "any political committee formed on behalf of a specified candidate and authorized by said candidate." 25 P.S. § 3241(m).

A judicial officer need not have a committee if the judicial officer's campaign will not be accepting or soliciting funds. However, even if the judicial officer does not have a committee,

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<sup>3</sup> Public officials and candidates for public office are typically required to file a statement of financial interest with the State Ethics Commission. 65 Pa.C.S. § 1104. Candidates must also file a copy of the statement with their petition to appear on the ballot. *Id.* In *Kremer v. State Ethics Commission*, 469 A.2d 593 (Pa. 1983), the Pennsylvania Supreme Court ruled that these financial disclosure provisions infringe upon the judicial branch's powers. Even though *Kremer* did not specifically concern the filing of disclosure statements by candidates for judicial office, it was subsequently interpreted as exempting incumbent judges who were candidates for judicial office. *In re Nomination Petition of James H. Owen*, 922 A.2d 973 (Pa. Cmwlth. 2007), *affirmed*, 922 A.2d 878 (Pa. 2007). However, in discussing a case involving a magisterial district judge, the Commonwealth Court in *Owen*, determined that candidates for judicial office, including incumbent judicial officers, are required to file a statement of financial interest with the Ethics Commission. *Id.* In addition, on June 13, 2007, the Ethics Commission issued an advisory opinion in *Darlington*, Advice of Counsel 07-011, in which it determined that an incumbent magisterial district judge running for re-election had to file a statement of financial interest pursuant to § 1104(b).

It should be noted, however, that *Owen* and *Darlington* involved incumbent magisterial district judges running either for the Court of Common Pleas or for re-election and not for retention. Therefore, it is not clear what impact this distinction would have made in the outcome of the case. The specific language of § 1104(b) requires that a candidate's statement of financial interest be filed "on or before the last day for filing a petition to appear on the ballot for election." As previously stated, however, judicial officers running for retention file a declaration of candidacy and not a nomination petition to get on the ballot. In light of that distinction retention candidates do not have to file statements of financial interest with the State Ethics Commission.

the judicial officer (as an individual) must file campaign finance reports. *See* 25 P.S. § 3241(c) (defining election to include a retention election); § 3246 (setting forth the reporting requirements for candidates for election to public office). If the judicial officer has a "political committee", then the judicial officer (as an individual) and the committee must file their own separate campaign finance reports. A judicial officer may speak on behalf of his or her candidacy and establish a campaign committee pursuant to the provisions of Code of Judicial Conduct Rule 4.4 not earlier than immediately after the General Election in the year before the retention election. Code of Judicial Conduct Rule 4.2(B)(1), (2). The campaign committee of a retention candidate can solicit or accept funds no earlier than immediately after the General Election in the year before the retention election. Code of Judicial Conduct Rule 4.4(B)(2). In the event that between the general election and the end of the year before the year of the retention election a retention candidate chooses to form a committee and register the committee, or must register the committee because the committee has received \$250 or more, the committee must file an annual report and thereafter file all other reports required below.

**a. Formation of candidate's political committee**

**i. Registration**

Any political committee which receives aggregate contributions of two hundred fifty dollars (\$250.00) or more must file a registration statement designated by the Secretary of the Commonwealth with the Department of State within twenty (20) days of the date on which its total contributions reach this amount. 25 P.S. § 3244(a); 4 Pa.Code § 176.1(a).<sup>4</sup> The registration form must include: the names, addresses, and phone numbers of the political committee, its treasurer and its chairperson; the name, address and relationships of other

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<sup>4</sup> A copy of the registration statement Form DSEB-500 is available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObhJyy0KSp>

affiliated/connected organizations; the candidate and his or her name and addresses; the banks, safety deposit boxes or other repositories and their addresses used by the committee; and the proposed period of operation of the committee. 25 P.S. § 3244(b); 4 Pa.Code § 176.2. If there are any changes in this information, the committee must inform the Department of State within thirty (30) days by the filing of an amended registration statement. 25 P.S. § 3244(c); 4 Pa.Code § 176.3. A political committee which receives an aggregate amount of contributions of two hundred fifty (\$250.00) or more must be registered before it may make a contribution to any candidate or another political committee. 25 P.S. § 3244(d); 4 Pa.Code § 176.4.

## **ii. Authorization**

In order to be considered a candidate's political committee and receive money on behalf of a candidate, a political committee must be authorized in writing by the candidate on the form designated by the Secretary of the Commonwealth. 25 P.S. § 3243; 4 Pa.Code § 176.8. <sup>5</sup>

### **b. Organization of candidate's political committee**

A political committee must be organized in a particular manner. Every political committee must have both a chairperson and a treasurer and these posts cannot be held by the same person. 25 P.S. § 3242(a); 4 Pa.Code § 176.5(a). Moreover, the committee may not receive contributions or make any expenditures if there is a vacancy in either of these offices. *Id.*; 4 Pa.Code § 176.5(d). For this reason, it may be useful to have a vice/assistant 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

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<sup>5</sup> The form Authorization for a Political Committee to Receive Funds on Behalf of a Candidate (DSEB-501) is available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObhJyy0KSp>

who has been appointed to receive and disburse monies on behalf of the committee 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).

All receipts and disbursements of monies by the political committee must be made through its treasurer. 25 P.S. § 3242(a); 4 Pa.Code § 176.5(d). If someone other than the treasurer or a duly authorized assistant treasurer receives a contribution on behalf of the political committee, he or she must turn the contribution over to the treasurer or duly authorized assistant treasurer of the committee within ten (10) days of receipt.<sup>6</sup> 25 P.S. 3242(d); 4 Pa.Code § 176.6.

If a candidate has more than one authorized political committee, he or she must designate a sole treasurer to receive and disburse funds for all of the authorized committees. 25 P.S. § 3242(b); 4 Pa.Code § 176.5(a). A treasurer of a political party committee or a committee authorized to receive and expend money for more than one candidate may do so on behalf of those candidates even though a sole treasurer has been appointed.<sup>7</sup> *Id.* The sole treasurer may delegate his or her authority in writing to any number of assistant treasurers. 25 P.S. § 3242(b); 4 Pa.Code § 176.5(c). The appointment of a sole treasurer does not prohibit authorized individuals from selling tickets to fundraisers or soliciting funds, where these funds are deposited in the candidate's campaign committee account. 25 P.S. § 3242(b); 4 Pa.Code § 176.6.

## **2. Contributions**

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<sup>6</sup> The cited provision of the Election Code also allows the contribution to be turned over to the candidate; however, a judicial candidate cannot personally receive the contribution because Rule 4.1(A)(7) of the Code of Judicial Conduct prohibits a judicial candidate from personally accepting campaign funds (see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015)); only a candidate's committee may accept campaign funds. Rule 4.4 (B)(1), (2).

<sup>7</sup> The cited provision of the Election Code also allows the candidate to receive and expend money on his/her behalf; however, a judicial candidate may not personally receive a contribution because Rule 4.1(A)(7) of the Code of Judicial Conduct prohibits a judicial candidate from personally accepting campaign funds; only a candidate's committee may accept campaign funds. Rule 4.4 (B)(1), (2); see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015)..

**a. Defined**

The Election Code defines "contribution" as: "any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee made for the purpose of influencing any election in this Commonwealth or for paying debts incurred by or for a candidate or committee before or after any election." 25 P.S. § 3241(b); 4 Pa.Code § 172.1. "Contribution" also includes the purchase of tickets for events such as dinners, luncheons, rallies, and other fundraising events--including, but not limited to, advertising space in publications promoting the candidacy of certain individuals (e.g. ad-books); the granting of discounts or rebates not available on an equal basis to all candidates for the same office; and payments provided for the benefit of a candidate including payments for the services of a person serving as an agent of a candidate or political committee by a person other than the candidate or committee whose expenditures the candidate or committee must report under the Election Code. *Id.* The term "contribution" also includes the receipt or use of anything of value by the political committee from another political committee and any return on investments by a political committee. *Id.*

"Valuable thing" means "all securities, goods, facilities, equipment, supplies, personnel, advertising, services, membership lists commonly offered or used commercially or other in-kind contributions provided without compensation or at compensation which is below the usual and normal compensation for the items." 25 P.S. § 3241(k). Certain *de minimis* items are excluded from the definition of "valuable thing" and these are not considered either contributions or expenditures for purposes of reporting or recordkeeping. *Id.* These excluded items include:

- (1) voluntary personal services provided by people who volunteer part or all of their time on behalf of a candidate or political committee;

- (2) the operation of a motor vehicle owned or leased by a candidate or a member of his immediate family or for consumption of food or beverages by a candidate or his immediate family;
- (3) the use of real or personal property, including a community room or a church used on a regular basis by the members of a community for non-commercial purposes, and the cost of invitations, food and beverages voluntarily provided by an individual to any candidate in rendering voluntary personal services on the individual's premises or in the church or community room for the candidate-related activity, to the extent that the cumulative value of such invitations, food and beverages provided by such individual on behalf of any single candidate does not exceed two hundred fifty dollars (\$250) with respect to any single election;
- (4) the sale of any food or beverage by a vendor other than a corporation or unincorporated association for use in any candidate's campaign at a charge less than normal, if such charge is at least equal to the cost of such food or beverage to the vendor to the extent that the cumulative value of the reduced charge does not exceed two hundred fifty dollars (\$250) with respect to any single election;
- (5) any unreimbursed payment for travel expenses made by any individual on behalf of any candidate to the extent that the cumulative value of such travel by the individual on behalf of any single candidate does not exceed two hundred fifty dollars (\$250) with respect to any single election;
- (6) the use of the personal residence or the business or office space of the candidate other than a corporation or unincorporated association and the use of personal property owned or leased by the candidate as long as the cumulative value of the use of such property does not exceed one thousand dollars (\$1,000) with respect to any single election; and
- (7) the use of the personal residence or the business or office space of any volunteer, other than a corporation or unincorporated association and the use of the property owned or leased by a volunteer as long as the cumulative value of the use of the property does not exceed two hundred fifty dollars (\$250) with respect to any single election.

25 P.S. § 3241(k). The foregoing exceptions are not to be construed as permitting contributions or expenditures by national banks, corporations, or unincorporated associations that are

forbidden by 25 P.S. § 3253 unless otherwise permitted by *Citizens United v. Federal Election Commission*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876 (2010) and its progeny (discussed in more detail in section III(A)(2)(b)(ii) below). See Appendix “C”, Statement Regarding the Effect of the U.S. Supreme Court’s Decision in *Citizens United v. FEC* on Pennsylvania Law.

**b. Handling contributions**

**i. Time for fundraising**

As previously stated, a candidate for judicial office may not himself or herself solicit or accept campaign contributions, but may form a political committee to do so. Code of Judicial Conduct Rule 4.1(A)(7); see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_ (2015). A judicial candidate's political committee may not solicit contributions earlier than immediately after the General Election in the year before the retention election Code of Judicial Conduct, Rule 4.4 (B)(2). Before a judicial officer can engage in the activities permitted by Rule 4.2 (B), the judicial officer personally can spend his or her personal funds to “test the waters” to gauge whether a campaign would be viable. All fundraising activity in connection with the campaign must cease no later than December 31st of the year in which the election is held.<sup>8</sup> Rule 4.4 (B)(2). If the candidate withdraws, all fundraising must cease when the campaign debt is extinguished or by December 31st of the election year, whichever occurs first. Ethics Committee of the Pennsylvania Conference of State Trial Judges Formal Ethics Opinion 2002-1 (which can be found at <http://ethics.pacourts.us/formal.htm> and 207 Pa.Code

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<sup>8</sup> In an informal opinion limited to the circumstances presented, the Ethics Committee of the Pennsylvania Conference of State Trial Judges opined that fundraising could occur after December 31 of the year of the election where the general election result for a judicial office was not certified by December 31 due to challenges between candidates through a lawsuit and the small number of votes separating the winner from the loser. If the lawsuit was successful it would change the result, and the expense to maintain the lawsuit was substantial. To maintain and succeed in the lawsuit, the candidate's committee or others were required to raise additional funds after December 31. See also *Zeller v. Florida Bar*, 909 F. Supp. 1518 (N. D. Fla. 1993) (holding unconstitutional a provision of a code of judicial conduct that prohibited raising funds earlier than one year before the general election).

§02-1). See Appendix "D." Judicial candidates are forbidden from using campaign contributions for their, or others', private benefit. Code of Judicial Conduct, Rule 4.1(A)(6), 4.2(C)(1).

**ii. Restrictions on contributions**

- **Treasurer must generally handle contributions**

A political committee may not receive any contributions if there is a vacancy in either the office of chairperson or treasurer. 25 P.S. § 3242(a); 4 Pa.Code § 176.5(d). In addition, all money received by a political committee must be received through the treasurer. *Id.* If someone other than the treasurer or a duly authorized assistant treasurer receives a contribution on behalf of the political committee, he or she must turn the contribution over to the treasurer of the committee within ten (10) days of receipt.<sup>9</sup> 25 P.S. § 3242(d); 4 Pa.Code § 176.6. The appointment of a sole treasurer (discussed in section III(A)(1)(b)) does not prohibit authorized individuals from selling tickets to fundraisers or soliciting funds where these funds are deposited in the candidate's campaign committee account. 25 P.S. § 3242(b); 4 Pa.Code § 176.6.

- **Agent contributions**

It is unlawful for any person to contribute funds in his or her name that are designated or given to him or her by another person, firm or corporation. 25 P.S. § 3254(a); 4 Pa.Code § 180.1. Each person making a contribution must do so only in his or her own name. *Id.*

- **Anonymous contributions**

It is unlawful for a candidate or political committee to disburse money received from an anonymous source. 25 P.S. § 3254(b); 4 Pa.Code § 180.2. All money received from an

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<sup>9</sup> The cited provision of the Election Code also allows the contribution to be turned over to the candidate; however, Rule 4.1(A)(7) of the Code of Judicial Conduct prohibits judicial candidates from personally accepting campaign funds; see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015).

anonymous source must be turned over to the State Treasurer within twenty (20) days of receipt.

*Id.*

- **Currency contributions**

It is unlawful for any person to make contributions of cash (either of the United States or any foreign country) to, or for the benefit of, any candidate which in the aggregate exceeds one hundred dollars (\$100.00) per candidate. 25 P.S. § 3254(c); 4 Pa.Code § 180.3. No candidate or political committee may accept currency contributions that total more than one hundred dollars (\$100.00) for the benefit of any one candidate from any one source. *Id.*

- **Contributions by corporations, banks or unincorporated associations**

Corporations that are formed primarily for political purposes or as political committees may make a contribution and expenditure in connection with the election of a candidate or for any political purpose. 25 P.S. § 3253(a); 4 Pa.Code § 178.1(a). By Pennsylvania statute no other corporation, national or state bank or unincorporated association may make contributions or expenditures in connection with the election of a candidate or for a political purpose, except in connection with ballot questions. 25 P.S. 3253(a); 4 Pa.Code § 178.1(b). However, as a result of the decision in *Citizens United v. Federal Election Commission*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876 (2010), the Pennsylvania Department of State has adopted the view that a domestic corporation or unincorporated association may make an “independent expenditure.” An “independent expenditure” is defined at section 1621(e) of the Pennsylvania Election Code to mean “an expenditure by a person made for the purpose of influencing an election without cooperation or consultation with any candidate or any political committee authorized by that candidate and which is not made in concert with or at the request or suggestion of any candidate or political committee or agent [of a candidate or political committee].” 25 P.S. § 3241(e). The Pennsylvania

Department of State has stated that *Citizens United v. Federal Election Commission*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876 (2010), does not affect Pennsylvania statutes pertaining to campaign contributions or expenditures by foreign corporations. See Appendix “C”, Statement Regarding the Effect of the U.S. Supreme Court’s Decision in *Citizens United v. FEC* on Pennsylvania Law.

Pennsylvania statutes do not prohibit a national or state bank from loaning money in accordance with applicable banking laws and regulations in the ordinary course of business, although such loans must be reported. 25 P.S. § 3253(b). It is unlawful for any candidate, political committee or other person to knowingly receive or accept a prohibited contribution from a corporation, national or state bank, or unincorporated association. 25 P.S. § 3253(a); 4 Pa.Code § 178.1(c). Nothing in the Election Code is intended to prohibit the receipt of interest and dividends received in accordance with applicable banking laws and in the ordinary course of business. 25 P.S. § 3253(b). The interest or dividends must be included in the financial records and reported, where appropriate. *Id.*

The Election Code does not prohibit direct private communications by a corporation to its stockholders and their families or by an unincorporated association to its members and their families on any subject. Nor does the Election Code prohibit nonpartisan voter registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or an unincorporated association and its members and their families. Finally, the Election Code does not prohibit the creation and administration by a corporation or an unincorporated association of a separate segregated fund created by voluntary individual contributions and used for political purposes, however such a fund will be deemed to be a political committee (often referred to as a “political action committee” or “PAC”). 25 P.S. § 3253(c); 25 P.S. § 3241(h) & (l).

- **Contributions from partnerships, limited partnerships and limited liability companies**

A partnership, limited partnership or limited liability company may not make a contribution from any funds of any partner, limited partner or member that is a corporation to the extent that such a contribution would not be permitted by a corporation. See Contributions by corporations, banks or unincorporated associations, *supra*. 25 P.S. § 3253(d). A limited liability company that makes a contribution must confirm to the recipient that it is treated as a partnership for federal tax purposes and that the contribution does not contain corporate funds. *Id.*

- **Contributions from gaming applicants and licensees**

The Pennsylvania Race Horse Development and Gaming Act, 4 Pa.C.S. § 1101 *et seq.*, prohibits contributions from gaming applicants or licensees. Specifically, persons or entities who are applicants for, or holders of, a gaming license are prohibited from contributing money or making an in-kind contribution to a candidate for nomination or election to any public office in the Commonwealth or any political committee or state party, or to any group, committee or association organized in support of any such candidate, political committee or state party. 4 Pa.C.S. § 1513(A). However, in *DePaul v. Com.*, 600 Pa. 573, 969 A.2d 536, 554 (2009), the Supreme Court enjoined enforcement of 4 Pa. C.S. § 1513.

### **3. Expenditures**

#### **a. Defined**

The word "expenditure" is defined as:

- (1) The payment, distribution, loan or advancement of money or any valuable thing by a candidate, political committee or other person for the purpose of influencing the outcome of an election;
- (2) The payment, distribution, loan, advance or transfer of money or other valuable thing between or among political committees;

- (3) The providing of a service or other valuable thing for the purpose of influencing the outcome of a nomination or election of any person to any public office to be voted for in this Commonwealth; or
- (4) The payment or providing of money or other valuable thing by any person other than a candidate or political committee, to compensate any person for services rendered to a candidate or political committee.

25 P.S. § 3241(d). No candidate, chairperson or treasurer of any political committee shall make or agree to make any expenditure or incur any liability beyond the foregoing definition. 25 P.S. § 3254.1. In addition, certain *de minimis* items are excluded from the definition of "valuable thing" which are not considered to be expenditures for purposes of reporting or recordkeeping. 25 P.S. § 3241(k). The definition of "valuable thing" and the exceptions are set forth in section III(A)(2)(a) above.

**b. Handling expenditures**

**i. Time for paying expenditures**

An "expenditure" by a committee may be made as early as immediately after the General Election in the year before the calendar year in which the judicial election will be held. A candidate may pay expenses (whether they meet the definition of "expenditure" in the Election 3Code) to test the waters or to form a campaign team before that time. . However, a political committee cannot make a contribution to a candidate or another political committee until it has registered which is required as soon as the political committee has received an aggregate amount of \$250 or more. 25 P.S. § 3244(d); 4 Pa.Code § 176.4.

**ii. Restrictions on expenditures**

- **Treasurer must generally authorize expenditures**

A political committee may not make any expenditure if there is a vacancy in either the office of chairperson or treasurer. 25 P.S. § 3242(a); 4 Pa.Code § 176.5(d). All money

disbursed by a political committee must be done through the treasurer and no expenditure can be made for or on behalf of a political committee without the authorization of its treasurer or a duly authorized assistant treasurer. 25 P.S. § 3242(a); 4 Pa.Code § 176.5(e).

- **Prohibited expenditures**

Judicial candidates are forbidden from using campaign contributions for their, or others', private benefit. Code of Judicial Conduct, Rule 4.1(A)(6), 4.2(C)(1).

- **Use of anonymous contributions**

It is illegal for a candidate or political committee to disburse money received from an anonymous source. 25 P.S. § 3254(b); 4 Pa.Code § 180.2. All money received from an anonymous source must be turned over to the State Treasurer within twenty (20) days of its receipt. *Id.*

- **Expenditures by corporations, banks or unincorporated associations**

Corporations that are formed primarily for political purposes or as political committees may make an expenditure in connection with the election of a candidate or for any political purpose. 25 P.S. § 3253(a); 4 Pa.Code § 178.1(a). By Pennsylvania statute no other corporation, national or state bank, or unincorporated association may make contributions or expenditures in connection with the election of a candidate or for a political purpose, except in connection with ballot questions. 25 P.S. 3253(a); 4 Pa.Code § 178.1(b). However, as a result of the decision in *Citizens United v. Federal Election Commission*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876 (2010), the Pennsylvania Department of State has adopted the view that a domestic corporation or unincorporated association may make an “independent expenditure.” An “independent expenditure” is defined at section 1621(e) of the Pennsylvania Election Code to mean “an expenditure by a person made for the purpose of influencing an election without cooperation or

consultation with any candidate or any political committee authorized by that candidate and which is not made in concert with or at the request or suggestion of any candidate or political committee or agent [of a candidate or political committee].” 25 P.S. § 3241(e). The Pennsylvania Department of State has stated that *Citizens United v. Federal Election Commission*, \_\_\_ U.S. \_\_\_, 130 S. Ct. 876 (2010) does not affect Pennsylvania statutes pertaining to campaign contributions or expenditures by foreign corporations. See Appendix “C”, Statement Regarding the Effect of the U.S. Supreme Court’s Decision in *Citizens United v. FEC* on Pennsylvania Law.

The Election Code does not prohibit direct private communication by a corporation to its stockholders and their families or by an unincorporated association to its members and their families on any subject. The Election Code also does not prohibit nonpartisan voter registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families or an unincorporated association and its members and their families. Finally, the Election Code allows the creation and administration by a corporation or an unincorporated association of a separate segregated fund created by voluntary individual contributions and used for political purposes, however such fund will be deemed to be a political committee (often referred to as a “political action committee” or “PAC”). 25 P.S. § 3253(c); 25 P.S. § 3241(h) & (l).

- **Transfer of funds to another candidate/political committee**

A candidate for judicial office may contribute to a political organization or candidate for public office Code of Judicial Conduct, Rule 4.2(B)(6). A candidate for judicial office can also buy tickets for dinners or other events sponsored by a political organization or a candidate for public office. Code of Judicial Conduct, Rule 4.2(B)(4).

#### **4. Recordkeeping**

Each candidate and political committee must keep records of the names and addresses of each person from whom a contribution of more than ten dollars (\$10.00) has been received and a record of all other information required to be reported for a period of three (3) years after the information is reported. 25 P.S. § 3242(c).

Certain campaign finance records are accessible by the public. The candidate or committee treasurer must retain copies of vouchers for any expenditures in excess of twenty-five dollars (\$25.00). 25 P.S. § 3246(c); 4 Pa.Code § 177.2(c). These vouchers must be available for public inspection and copying if an individual files a written request with the Department of State. 25 P.S. § 3246(c); 4 Pa.Code § 177.2(d). Upon receiving such a request, the Department of State will notify the candidate or political committee who shall have the option of either forwarding the vouchers or copies to the Department of State or making them available directly to the requestor. *Id.* The costs of copying and delivery shall be borne by the requestor. *Id.*

Campaign finance records may be subject to a random independent audit. 25 P.S. § 3255. In addition, an audit may also be initiated by petition of any five electors and be conducted under court supervision. 25 P.S. § 3256.

#### **B. Campaign Finance Reporting**

A judicial officer engaged in a retention election campaign must follow all applicable campaign finance and reporting requirements of the Election Code as well as the Code of Judicial Conduct. Rule 4.2(A)(2). As with any other candidate for election to public office, the judicial retention candidate must comply with the requirements regarding reporting of campaign receipts and expenditures set forth in the Election Code. *See* 25 P.S. § 3241(c) (defining election to include a retention election); § 3246 (setting forth the reporting requirements for candidates

for election to public office). Even if the candidate does not have a campaign committee and does not raise funds, the candidate (as an individual) must file campaign finance reports.

The Department of State website contains the necessary financial disclosure forms as well as a calendar of campaign finance reporting dates. The following subsections summarize key requirements pertaining to campaign finance reporting. For an excellent review of the topic that also includes the applicable statutory sections, see a publication of the Department of State entitled Campaign Finance Reporting Law, which is available on its website.<sup>10</sup>

### **1. Reports and Statements: why they must be filed**

No person shall be deemed to be elected to a public office, enter upon its duties or receive any salary or other benefits thereof unless all of the reports and statements of contributions and expenditures required to be filed by any candidate or treasurers of committees authorized by the candidate and due before that person may take office have been filed. 25 P.S. § 3252(b); 4 Pa.Code § 177.8. Moreover, a report or statement will not be considered filed until all late filing fees have been paid. 25 P.S. § 3252(a).

A successful candidate cannot take the oath of office until the Department of State certifies that all required reports have been filed and no official of either the Commonwealth or

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<sup>10</sup> The Pennsylvania Department of State website has helpful information for judicial candidates. See for example :

<http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Resources/Pages/default.aspx#.VObu3iy0KSo>

<http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObvISy0KSo>

The campaign finance reporting dates are posted at:

<http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Resources/Pages/Report-Filing-Deadlines.aspx#.VfLMyfC0KSp>.

The important dates to remember are posted at:

[http://www.dos.pa.gov/VotingElections/Documents/2015 important dates.pdf](http://www.dos.pa.gov/VotingElections/Documents/2015%20important%20dates.pdf)

its political subdivisions may issue a commission or administer the oath of office until that official receives such certification. *Id.* No certification may be issued until the Department of State receives post-election reports of any candidate and treasurer of any political committees authorized by the candidate. *Id.*

## **2. Reports and Statements: who must file**

A report of receipts and expenditures must be filed by each candidate for election to public office or retention and each treasurer of a political committee detailing receipts and expenditures if the amount received or expended, or liabilities incurred during the reporting period exceeds two hundred fifty dollars (\$250.00). 25 P.S. § 3246(a); 4 Pa.Code § 177.1(b). If the amount received or expended, or liabilities incurred during the reporting period does not exceed two hundred fifty dollars (\$250.00), the candidate or political committee treasurer shall file a sworn statement to this effect in lieu of a report. 25 P.S. § 3246(a); 4 Pa.Code § 177.1(c). A statement still must be filed even if nothing was received or expended and no liabilities were incurred during the reporting period.

## **3. Reports and Statements: what must be filed**

Candidates and political committees each have to file several different reports. These reports include pre-election reports, post-election reports, annual reports and termination reports.<sup>11</sup> The time periods for filing these reports are discussed in section III(B)(5) below. All campaign finance reports must be filed on the current version of Form DSEB-502, which is available from the Department of State or any county board of elections. 4 Pa.Code § 177.2(a). Campaign finance statements must be filed on Form DSEB-503.<sup>12</sup>

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<sup>11</sup> Copies of these reports can be obtained online at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObvISy0KSo>

<sup>12</sup> Copies of the Department of State Campaign Finance Report (DSEB-502) and Campaign Finance Statement (DSEB-503) are available at

**a. Different types of reports and statements**

**i. Pre-election reports and statements**

For candidates for retention to the Supreme, Superior and Commonwealth Court, or political committees supporting such candidates, two pre-election reports must be filed before the November election.<sup>13</sup> 25 P.S. § 3246(d). For candidates for retention to Common Pleas and Philadelphia Municipal Court, or political committees supporting such candidates, only one pre-election report must be filed before the November election. *Id.* The deadlines for filing each of the pre-election reports are discussed in section III(B)(5)(a) below.

If any authorized political committee receives any contribution or pledge of five hundred dollars (\$500.00) or more any day after the second Tuesday before the November election, the committee must report it within twenty-four (24) hours of receipt. 25 P.S. § 3248; 4 Pa.Code § 177.3(d)(1). The report can be made either in person or by overnight mail, facsimile transmission (717-705-0721), or by e-mail at: [ra-stcampaignfinance@state.pa.us](mailto:ra-stcampaignfinance@state.pa.us) by the candidate (on his or her own behalf or on behalf of his or her political committee), or the political committee chairperson or treasurer. *Id.* Note that the filing of reports via facsimile or email applies *only* to 24-hour reports. It does not apply to the filing of campaign finance reports.<sup>14</sup>

**ii. Post-election reports and statements**

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<http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObvISy0KSo>

<sup>13</sup> Since the retention candidate does not appear on the primary ballot, pre-election reports and post-election reports are not required for the primary election.

<sup>14</sup> A copy of the Department of State 24 Hour Reporting Form is available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Documents/24hrreports/reportingform.pdf>

In addition, candidates and political committees must each file a post-election report following the election. 25 P.S. § 3246(e). The post-election report shall be complete as of twenty (20) days after the election and must be filed not later than thirty (30) days after the election. *Id.*

### **iii. Annual reports and statements**

All candidates and political committees must each file an annual report every year until there is no balance or debt in the report of the candidate or political committee. 25 P.S. § 3247(a). If there has been no change since the last report, the candidate and/or political committee may instead file a statement to that effect. *Id.* The annual report shall cover the campaign activity of a candidate or political committee from the last prior report or statement through December 31st. *Id.* The annual report is to be filed on or before January 31st. *Id.*

### **iv. Termination reports and statements**

Report or statement forms designated by the Department of State contain boxes where the filer can indicate whether it is a termination report or a statement. 25 P.S. § 3247(a).<sup>15</sup> A termination report can be filed by way of a statement if the unpaid balance indicated in the previous report was not more than two hundred fifty dollars (\$250.00). Under the Campaign Finance law any residual funds may be used for any proper election expenditure (as discussed in section III(A)(3)) or returned to contributors on a *pro rata* basis. 25 P.S. § 3250; 4 Pa.Code § 177.5. However, judicial candidates are limited to disposing of residual funds by 1) making a donation to one or more political parties; 2) retaining the monies for future campaigns; 3) making a donation to a political action committee depending on whether the transfer will create

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<sup>15</sup> See copies of the Department of State Campaign Finance Report (DSEB-502) and Campaign Finance Statement (DSEB-503) available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObvISy0KSo>

the appearance of impropriety (Rule 1.2); whether the political action committee or an affiliated organization frequently appears before the judge or engages in invidious discrimination (Rules 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 Rules 2.7 or 2.11(A) if the political action committee or its affiliate would come before the judge or 4) returning the excess pro rata to the donors. If all residual funds are disbursed, a final report must be made by the next January 31st in accordance with § 3247 (annual reports). *Id.*

**b. Contents of reports**

**i. Contributions and other receipts**

Each report required to be filed must contain information regarding the source of contributions made to the candidate or political committee during the period covered by the report. The amount of detail that must be supplied depends on the amount of the contribution. For contributions from any one source in an aggregate amount or value greater than two hundred fifty dollars (\$250.00), the contributor's full name; mailing address; occupation; name of employer, if any; or principal place of business, if self employed; and the amount and date of each contribution must be supplied. 25 P.S. § 3246(b)(1); 4 Pa.Code § 177.2(b)(1). For contributions from any one source in an aggregate amount or value greater than fifty dollars (\$50.00) and up to two hundred fifty dollars (\$250.00), the contributor's full name, mailing address, and the amount and date of the contributions must be supplied. 25 P.S. § 3246(b)(2); 4 Pa.Code § 177.2(b)(2). For contributions from any one source in an aggregate amount or value up to fifty dollars (\$50.00), only the total of all such contributions must be supplied. 25 P.S. § 3246(b)(3); 4 Pa.Code § 177.2(b)(3). However, for contributions from any one source in an aggregate amount greater than ten dollars (\$10.00) and up to fifty dollars (\$50.00), the candidate

or committee must keep records of the names and addresses of each source. 25 P.S. § 3242(c). In other words, the campaign finance report will not include the names and addresses of contributors of \$50.00 or less, but the committee must keep records of the names and addresses of those contributors. The accuracy of the information supplied to the candidate or committee by the contributor is the responsibility of the contributor. 25 P.S. §§ 3246(b)(1) and 3246(b)(2).

The report shall also include any unexpended balance of contributions or other receipts carried forward from the previous report. 25 P.S. § 3246(b)(6); 4 Pa.Code § 177.2(b)(6).

#### **ii. Expenditures and debts/liabilities**

The report shall also include information regarding each expenditure, including the date it was made, the full name and address of the person or entity to whom it was made, and the purpose for which it was made. 25 P.S. § 3246(b)(4); 4 Pa.Code § 177.2(b)(4). If money was expended during the reporting period, it must be included on the report even if the invoice was not prepared until after the election. *In re Audit of Campaign Finance Reports of Cartwright*, 900 A.2d 448, 453 (Pa.Cmwlth. 2006). The report must include any unpaid debts or liabilities, the nature and amount of each, the date incurred and the full name and address of the person or entity to whom it is owed. 25 P.S. § 3246(b)(5); 4 Pa.Code § 177.2(b)(5).

#### **iii. Expense vouchers**

The candidate or committee treasurer must retain copies of vouchers for any expenditures in excess of twenty-five dollars (\$25.00). 25 P.S. § 3246(c); 4 Pa.Code § 177.2(c). The vouchers should include the name of the person to whom the expenditure was made, the amount of the expenditure, the particulars of the expenditure, and the date the expenditure was made. 4 Pa.Code § 177.2(c)(2). These vouchers are to be available for public inspection and copying in the manner as discussed in section III(A)(4) above.

#### **iv. Summary**

Each report must contain a summary of all of the information supplied regarding contributions, expenditures, debts and liabilities. 25 P.S. § 3246(f); 4 Pa.Code § 177.2(e). The summary must be on a separate page of the report. *Id.* As previously mentioned, the Department of State has preprinted campaign finance report forms that contain categories of all required information.<sup>16 17</sup>

#### **v. Signature and affidavit**

Each report must be subscribed and sworn to by the individual who submits it. 25 P.S. § 3249(a); 4 Pa.Code § 177.2(b). If the report is filed by a political committee authorized by a candidate and created solely for the purpose of influencing an election on behalf of that candidate, it must also be accompanied by an affidavit from the candidate which states that, to the best of the candidate's knowledge, the committee has not violated any campaign finance provisions of the Election Code. 25 P.S. § 3249(a); 4 Pa.Code § 177.2(f). The reporting form DSEB-502 contains a section for the affidavit which must be notarized. Any "willfully false, fraudulent or misleading statement or entry" made by a candidate or treasurer in any report or statement under oath constitutes perjury and is punishable as such in accordance with the laws of the Commonwealth. 25 P.S. § 3249(b). Any person convicted of making a willfully false, fraudulent or misleading statement or entry on a report or statement shall be disqualified from holding public office in the Commonwealth. 25 P.S. § 3249(c). In this context, conviction

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<sup>16</sup> Copies of the Department of State Campaign Finance Report (DSEB-502) and Campaign Finance Statement (DSEB-503) that are available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/FormsReports/Pages/default.aspx#.VObvISy0KSo>

<sup>17</sup> A copy of the Department of State 24 Hour Reporting Form that is available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Documents/24hrreports/reportingform.pdf>

includes a finding or verdict of guilt, an admission of guilt or a plea of *nolo contendere*. *Id.* In addition, a judicial officer accused of making willfully false, fraudulent or misleading statements can face disciplinary action. *See, e.g., In re Cicchetti*, 743 A.2d 431 (Pa. 2000).

#### **4. Reports and Statements: where to file**

The reports or statements required to be filed by a candidate or political committee are to be filed with the Secretary of the Commonwealth (Department of State). 25 P.S. § 3251; 4 Pa.Code § 177.4(a)(1). In addition, a copy must be filed with the board of elections of the county in which the candidate resides. 25 P.S. § 3251(1)(ii); 4 Pa.Code § 177.4(b).

#### **5. Reports and Statements: when to file**

Each of the different types of reports has a specific deadline.<sup>18</sup>

##### **a. Time periods for filing various reports**

##### **i. Pre-election reports**

For retention candidates for the Supreme, Superior and Commonwealth Court, or political committees supporting such candidates, two pre-election reports must be filed before the November election, one on or before the sixth Tuesday prior to the election and the second on or before the second Friday prior to the election. 25 P.S. § 3246(d); 4 Pa.Code § 177.3(a)(1) and (a)(2). The sixth Tuesday reports should be complete as of the fiftieth (50th) day prior to the election. *Id.* The second Friday reports should be complete as of fifteen (15) days prior to the election. *Id.*

For retention candidates for the Common Pleas and Philadelphia Municipal Court, or political committees supporting such candidates, a pre-election report must be filed on or before the second Friday prior to the November election. 25 P.S. § 3246(d); 4 Pa.Code § 177.3(a)(3).

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<sup>18</sup> For a sample of the Department of State campaign finance reports deadlines, go to <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Resources/Pages/Report-Filing-Deadlines.aspx#.VObzxy0KSp>

**ii. Post-election reports and statements**

All retention candidates or political committees who are required to file reports must file a post-election report on or before thirty (30) days after the November election. 25 P.S. § 3246(e); 4 Pa.Code § 177.3(c). The post-election report shall be complete as of twenty (20) days after the election. *Id.*

**iii. Annual reports and statements**

All retention candidates and political committees shall file an annual report by January 31st which shall be complete as of December 31st of the prior year. 25 P.S. § 3247(a). The annual report shall be filed every year until there is no balance or debt in the report of the candidate or political committee. *Id.*

**iv. Termination reports and statements**

Each report or statement form designated by the Department of State contains a box where the filer can indicate whether it is a termination report or statement. *Id.* There is no deadline for filing a termination report.

**b. Late reports and statements**

If a report or statement is not filed on time, a late fee of ten dollars (\$10.00) per day is due for each day or part of a day (excluding Saturdays, Sundays, and holidays) that the report is overdue. 25 P.S. § 3252(a); 4 Pa.Code § 177.6. An additional ten dollars (\$10.00) per day is due for each of the first six (6) days the report or statement is overdue. *Id.* The maximum late fee for any single overdue report or statement is two hundred fifty dollars (\$250.00) after which no further late fees will be incurred. *Id.* The filer should contact the Campaign Finance Division of the Election Bureau to determine the exact amount of late fees due. See Appendix "A."

A late report or statement must be received by the filing office even if the late fee has not been paid; however, the report or statement will not be considered filed until these fees are paid. *Id.* If a candidate or candidate's committee does not file all reports and pay any and all late fees, the candidate may not take office. 25 P.S. § 3252. The late fee is a personal liability of the candidate or treasurer of the political committee and cannot be paid from contributions to the candidate or committee nor is it to be considered a campaign expenditure. 25 P.S. § 3252(a); 4 Pa.Code § 177.6.

#### **6. Reports and Statements: how to file**

Campaign finance reports and statements may be filed by mail or hand delivery. A mailed report or statement is deemed to have been filed within the required time period if it is sent by first class mail and is postmarked by the United States Postal Service on the day before the final day on which the report or statement is due. 25 P.S. § 3252(a).

A report may also be filed on a CD, provided that it meets the Department of State's technical requirements and is accompanied by a cover page and signed affidavit. 4 Pa.Code § 177.9(b). Information regarding technical requirements can be obtained by contacting the Election Bureau or from its website.<sup>19</sup> See Appendix "A."

Reports (but not statements) may also be filed online through the Department of State website. The Department of State website states that if you are filing online, a copy of the report's cover page must be printed, the required notarized affidavits and signatures provided, and the cover page must be mailed to the Department. The online report must be submitted by the filing deadline and the affidavits must be received by the Department within ten (10) days after the filing deadline. In contrast a campaign finance statement may be prepared online but

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<sup>19</sup> <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Resources/Pages/Technical-Specifications.aspx#.VOB36Sy0KSo>

cannot be submitted online. The statement must be printed, signed, the proper affidavits executed, and filed or hand delivered with the Department of State by the filing deadline.<sup>20</sup>

### **C. Political Activity/Campaign Conduct and Judicial Ethics**

#### **1. Caveat**

In the Preamble [8] of the Code of Judicial Conduct is a section which sets forth the “rule of reliance”:

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, other judicial officers and judicial candidates subject to the Code of Judicial Conduct. 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 thereon and pursuant thereto shall be taken into account in determining whether discipline should be recommended or imposed.

The Ethics Committee of the Pennsylvania Conference of State Trial Judges answers judicial ethics inquiries from judicial candidates and judges about the inquirer’s prospective campaign conduct as well as other ethical concerns.

The following subsections are based on prior opinions rendered by the Ethics Committee and are included for guidance to retention candidates; however factual differences or changes in the law may qualify the general advice, and a judge desiring the benefit of the “rule of reliance” must submit an inquiry, to the member of the Ethics Committee serving that judge’s zone, or to any other member of the Ethics Committee. For current committee members see Appendix “A.”

#### **2. Time for campaigning, fundraising, seeking support, general conduct**

Not earlier than immediately after the General Election in the year before the retention election, a judicial officer, who is a candidate for retention may:

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<sup>20</sup> A copy of the Department of State Report Filing Deadlines is available at <http://www.dos.pa.gov/VotingElections/CandidatesCommittees/CampaignFinance/Resources/Pages/Report-Filing-Deadlines.aspx#.VObzxyy0KSp>

- (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;
- (3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, or publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot;
- (4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (5) seek, accept, or use endorsements from any person or organization;
- (6) contribute to a political organization or candidate for public office;
- (7) identify himself or herself as a member or candidate of a political organization; and
- (8) use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office.

Code of Judicial Conduct Rule 4.2(B).

A candidate is permitted to seek individual support or publicly stated support, for his or her candidacy from anyone in the community, including lawyers, on a one-to-one basis. A candidate may personally send letters asking committee persons and private individuals for private support, but the candidate must make it clear that the candidate is not asking for financial support. A candidate may lend his or her campaign committee funds at any time immediately after the general election in the year before the year of the retention election. A candidate can hire a campaign consultant/manager at any time even before the date of the general election in the year before the year of the retention election.

A candidate is prohibited from personally soliciting or accepting campaign funds. Code of Judicial Conduct Rule 4.1(A)(7); see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015). A candidate is also prohibited from making speeches for a political organization or candidate and from publicly endorsing a candidate for public office except a judicial candidate on the same ballot. Code of Judicial Conduct Rule 4.1(A)(2) and (3),

4.2(B)(3). Candidates do not publicly endorse another candidate for public office by having their name on a political party's ticket. Candidates should not use or permit the use of campaign contributions for the private benefit of themselves or others. Code of Judicial Conduct Rule 4.1(A)(6), 4.2(C)(1).

A candidate may buy tickets for dinners or other events sponsored by a political organization or a candidate for public office and may contribute to a political organization or candidate for public office from personal funds rather than the candidate's campaign committee funds. A candidate and the candidate's campaign committee may not sell tickets to events of a political organization or a candidate for public office.

A candidate may not be the honoree at a political organization's general fund raising event, but may attend and speak on his or her own behalf and on behalf of other judicial candidates on the same ballot at an event sponsored by a political organization. A judicial officer's campaign committee (which can only come into existence after the judicial officer becomes a candidate) may seek publicly-stated support at any time, including the support of a political party. A judicial retention candidate's political committee may not solicit contributions earlier than immediately after the General Election in the year before the retention election. Code of Judicial Conduct Rule 4.4(B)(2). A judicial officer's political committee is prohibited from soliciting future commitments for funds earlier than the time to solicit funds.

In accepting campaign contributions all candidates should keep in mind that if the total amount of the contributions from any one source is disproportionately large, that may provide the basis for a disqualification or recusal motion pursuant to Rule 2.11(A)(4) and Rule 2.11 comment [6]; and 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. Code of Judicial Conduct Rule 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. Code of Judicial Conduct Rule 2.11 (A)(4).

### **3. Campaign committee**

At any time after the general election in the year before the year of the retention election a judicial officer may, but need not, create a campaign committee. A judicial officer may personally ask persons, including lawyers to be members of the campaign committee. A judicial officer may not serve as chair or treasurer of the judicial officer's own campaign committee.

A judicial officer cannot personally accept or solicit campaign contributions. Code of Judicial Conduct Rule 4.1(A)(7); see also *Williams-Yulee v. Florida Bar*, U.S. Supreme Court No. 13-1499, 575 U.S. \_\_\_\_ (2015). However, a judicial officer can establish a committee to perform these activities. Code of Judicial Conduct Rule 4.4. If a judicial officer does not engage in these activities, then the judicial officer need not establish a committee. However, if a judicial officer intends his or her campaign to accept or solicit contributions then the judicial officer must establish a "political committee" (see III A 1 above) which must register with the Pennsylvania Department of State if the political committee has received an aggregate amount of contributions of \$250 or more. 25 P.S. § 3244. A registered political committee must file campaign finance reports regardless of the amount of funds it receives.

However, as stated previously (see III B above), a judicial officer as an individual must still file campaign finance reports even if the judicial officer does not raise funds and does not have any committee. The judicial candidate's individual campaign finance report must reflect all funds expended by the judicial candidate, including any funds given or loaned to his or her committee.

#### **4. Campaign advertisements, photographs, non-judicial candidates' advertisements**

A judicial candidate for retention may permit a political party to run an advertisement in which the judicial officer's photograph and name appear with the photographs, names, and lever numbers of other candidates of the political party.

A judicial candidate may participate in a group photograph, to be included in political literature and otherwise disseminated with non-judicial candidates for office.

However, a judicial candidate for retention may not agree to a request by a candidate or candidates for non-judicial office to appear in a photograph with that candidate and with other candidates on that candidate's slate. The joint photograph would create the appearance that the judicial candidate was endorsing the non-judicial candidates.

The Judicial Ethics Committee will not approve or disapprove any particular campaign advertisement and no candidate may assert that the Committee's advice constitutes an endorsement or approval of any campaign advertisement.

A judicial officer who is a candidate for retention to judicial office may use the title "judge" with his or her name, e.g. "Judge John Doe," in campaign material.

Any advertisement authorized by the candidate or his or her political committee must clearly and conspicuously state that the advertisement has been authorized. 25 P.S. § 3258(a)(1); 4 Pa.Code § 181.1(a)(1). The foregoing rule does not apply to bumper stickers, pins, buttons,

pens and similar small items where the authorization statement cannot be conveniently printed.

4 Pa.Code § 181.1(b).

#### **5. Joint campaigns**

Judicial candidates for the same office may conduct a joint election campaign, including joint direct mail and radio and television advertising. Each candidate may also conduct his or her individual campaign. Each judicial officer must have a separate campaign committee and separately file campaign finance statements.

#### **6. Stationery, use of office facilities, and court employees**

A judicial officer may not use his or her publicly-provided office or office facilities to conduct the campaign, except that the courthouse or courtroom may be used as a visual if equally available to the public. Code of Judicial Conduct Rule 4.1(A)(8), Rule 4.2 (B)(8), Rule 4.2 (C)(2). Court employees may not participate in the campaign. *In re Cicchetti*, 743 A.2d 431, 442 (Pa. 2000); Code of Conduct for Employees of the Unified Judicial System, article V. See also Campaign Conduct of the Judicial Candidate's Staff, below.

A candidate may not use judicial stationery to thank contributors. Campaign or personal stationery may be used.

#### **7. Thank you notes**

A judicial officer may sign thank you notes to contributors before and after the election.

#### **8. Post election**

A judicial officer who has won a retention election may hold a victory party after the election.

A judicial officer's campaign committee may hold fundraisers after the election; however, all fundraising must end by December 31. Code of Judicial Conduct Rule 4.4 (B)(2). The

fundraising efforts must be commensurate with the campaign debt (the committee is not permitted to raise funds for a future campaign); and the judicial officer may attend the fundraisers.<sup>21</sup> Care should be taken to avoid being too aggressive or too successful either by obtaining amounts from lawyers or persons who regularly appear before the court such that the prevailing facts and circumstances could engender a substantial question in reasonable minds that the judicial officer would be influenced by their generosity or by ending up with funds substantially more than the amount of the debt. Code of Judicial Conduct Rule 2.7 comment [2], Rule 2.11 (A)(4). It bears repeating that in accepting campaign contributions all candidates should keep in mind that if the total amount of the contributions from any one source is disproportionately large, that may provide the basis for a disqualification or recusal motion pursuant to Rule 2.11 (A)(4) and Rule 2.11 comment [6] and 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. Code of Judicial Conduct Rule 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. Code of Judicial Conduct Rule 2.11 (A)(4).

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<sup>21</sup> In an informal opinion limited to the circumstances presented, the Ethics Committee of the Pennsylvania Conference of State Trial Judges opined that fundraising could occur after December 31 of the year of the election where the general election result for a judicial office was not certified by December 31 due to challenges between candidates through a lawsuit and the small number of votes separating the winner from the loser. If the lawsuit was successful it would change the result, and the expense to maintain the lawsuit was substantial. To maintain and succeed in the lawsuit, the candidate's committee or others were required to raise additional funds after December 31. See also *Zeller v. Florida Bar*, 909 F. Supp. 1518 (N. D. Fla. 1993) (holding unconstitutional a provision of a code of judicial conduct that prohibited raising funds earlier than one year before the general election).

The campaign committee accounts of an unsuccessful candidate for judicial office may remain open after the election and carry a negative or positive balance. However, the campaign committee must comply with the election law reporting requirements and cannot raise funds after the end of the year in which the election was held. Code of Judicial Conduct Rule 4.4 (B)(2).

Candidates should not use or permit the use of campaign contributions for the private benefit of themselves or others. Code of Judicial Conduct Rule 4.1(A)(6), 4.2(C)(1).

In the event the campaign committee concludes with a positive cash balance and the judicial candidate wishes to close the account, the remaining funds may be disbursed by 1) making a donation to one or more political parties; 2) retaining the monies for future campaigns; 3) making a donation to a political action committee depending on whether the transfer will create the appearance of impropriety (Rule 1.2); whether the political action committee or an affiliated organization frequently appears before the judge or engages in invidious discrimination (Rules 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 Rules 2.7 or 2.11(A) if the political action committee or its affiliate would come before the judge or 4) returning the excess pro rata to the donors.

## **9. Questionnaires and Campaign Speech**

There is no *per se* prohibition to respond to questionnaires. In fact, in an election for public office, such as in a judicial race or a retention election, it is likely that voters will question candidates about their background and positions on matters of interest to them in order to provide information by which to distinguish between candidates for office or for retention. It is the candidate's decision whether or not to respond after studied analysis of the question.

The seminal case of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), held that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” violates the First Amendment.

The Pennsylvania Supreme Court amended old Canon 7B(1)(c) in light of the U.S. Supreme Court decision in *Republican Party of Minnesota v. White*, *supra*. Moreover, now new Code of Judicial Conduct Rule 4.1(A) provides that a judge or judicial candidate shall not:

(10) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending in any court;

\* \* \*

(12) in connection with cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

Pursuant to Code of Judicial Conduct Rule 4.1(A)(10), (12), comments [7, 8, 9, 10], a candidate for judicial office may state personal views on legal, political or other issues, but may not make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of judicial office, or make commitments with respect to cases, controversies or issues that are likely to come before the court. See also Code of Judicial Conduct Rule 2.11(A)(5)(requiring disqualification for certain public statements). In other words, the general principle is that one may make statements or announcements about personal views, but may not make pledges or promises about future decision making.

However, 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.” Code of Judicial Conduct Rule 4.1 comment [10].

It is axiomatic that a judicial candidate or judicial officer should overwhelmingly acknowledge the judicial obligation to apply the law, without regard to his or her personal views in a fair and impartial manner. Code of Judicial Conduct Rule 4.1 comment [9]. A candidate who chooses to state his or her personal views, should consider qualifying such comments with “regardless of my personal views, my obligation as a judicial officer would be to keep an open mind and apply and uphold the law faithfully and impartially, even if it would conflict with my personal views,” or some variation of such language. A candidate, of course, does have the option of refusing to answer some or all of a questionnaire, with or without giving reasons, or to answer only in formats in which he or she is comfortable. Code of Judicial Conduct Rule 4.1 comment [11].

#### **D. Campaign Conduct of the Judicial Candidate's Staff**

The Code of Judicial Conduct states that a “judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under [Code of Judicial Conduct Rule 4.1] paragraph (A). Code of Judicial Conduct Rule 4.1 (B); see also Code of Conduct for Employees of the Unified Judicial System, article IV, E; V.

In addition, court employees<sup>22</sup> are prohibited from engaging in partisan political activity. See *In re Dobson*, 534 A.2d 460 (Pa. 1987) (establishing guidelines barring partisan political

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<sup>22</sup> The prohibition on partisan political activity does not apply to court-appointed employees who are duly sworn full-time masters or members of Board of Viewers who are attorneys in good standing admitted to the practice of law in Pennsylvania who become candidates for higher judicial office. 204 Pa.Code § 29.472(b); Code of Conduct for Employees of the Unified Judicial System, V. Such employees are, however, subject to the applicable rules of judicial conduct during their candidacy. *Id.*

activity by court-appointed employees); 204 Pa.Code § 29.472 (barring partisan political activity by court-appointed employees); Code of Conduct for Employees of the Unified Judicial System, article V (barring partisan political activity by employees of the Unified Judicial System).

The term "court-appointed employees" includes, but is not limited to, "all employees appointed to and who are employed in the court system, statewide and at the county level, employees of the Administrative Office of Pennsylvania Courts, Court Administrators and their employees and assistants, court clerks, secretaries, data processors, probation officers, and such other persons serving the judiciary." 204 Pa.Code § 29.471(b).

The term "Employees of the Unified Judicial System" includes all state-level court employees, and all county-level court employees who are under the supervision and authority of the President Judge of a Judicial District of Pennsylvania, unless otherwise indicated by Supreme Court order or rule. Code of Conduct for Employees of the Unified Judicial System, article II.

The term "partisan political activity" includes, but is not limited to: "running for public office, serving as a party committee-person, working at a polling place on Election Day, performing volunteer work in a political campaign, soliciting contributions for political campaigns, and soliciting contributions for a political action committee or organization." 204 Pa.Code § 29.471(b); Code of Conduct for Employees of the Unified Judicial System, V. Partisan political activity does not include involvement in non-partisan or public community organizations or professional groups. *Id.*

The purpose of this prohibition is to "maintain not only the independence, integrity and impartiality of the judicial system but also the appearance of these qualities." *In re Cicchetti*, 743 A.2d 431, 442 (Pa. 2000) (quoting *Dobson*, 534 A.2d at 465). Consequently, court-appointed employees may not participate in judicial retention election campaigns. *Id.* Any

court employee who engages in prohibited political activity must cease doing so or be terminated from his or her employment. 204 Pa.Code § 29.473; Code of Conduct for Employees of the Unified Judicial System, V. If a court-appointed employee chooses to become a candidate for any public office his or her employment shall be terminated effective as of the close of business on the first day nominating petitions for that office are circulated. *Id.* An employee's decision to engage in partisan political activity will be considered to constitute willful misconduct for purposes of determining the right to unemployment compensation. *County of Luzerne v. Unemployment Compensation Board of Review*, 611 A.2d 1335 (Pa.Cmwlth. 1992). The President Judge of each appellate court or county Court of Common Pleas is responsible for implementing the guidelines regarding political activity by court employees in the courts subject to his or her supervision and is subject to review by the Judicial Conduct Board and Court of Judicial Discipline for failure to enforce these guidelines. 204 Pa.Code § 29.474; Code of Conduct for Employees of the Unified Judicial System, V.

#### **E. Miscellaneous Tips**

Note that a straight party vote does not include a vote on retention judicial officers.

Retention candidates should obtain a copy of the proposed official ballot to make sure that the candidate's name appears on the ballot and to make any adjustments, if possible, to the placement of the candidate's name on the ballot. The Pennsylvania Department of State recommends to the county board of elections that the names of the retention candidates appear in alphabetical order.

### **IV. POST-ELECTION**

#### **A. Oath of Office and Commission**

If the judicial officer is successful in his or her retention contest and the election results are certified by the Secretary of the Commonwealth he or she may take the oath of office set forth in 42 Pa.C.S. § 3151 which states:

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and I will discharge the duties of my office with fidelity.

42 Pa.C.S. § 3151. Refusal to take the oath shall result in forfeiture of his or her office. *Id.* The oath form should be received from the Secretary of the Commonwealth. Once received, and the oath is administered, the oath form should be executed and filed with the Secretary of the Commonwealth (statewide judicial officers) or the office of the county prothonotary (all other judicial officers).

The Secretary of the Commonwealth tabulates the returns of each election for judges of every court and certifies the result to the Governor, who shall issue a commission to the winning candidate. 71 P.S. § 279; 25 P.S. §§ 3160(b) and 3165. In addition, as mentioned previously in III(B)(1), no commission may be issued or oath administered unless the Department of State certifies that all required campaign finance reports have been filed and all late fees paid. 25 P.S. § 3252. The commission should be filed in the Recorder of Deeds office of the county in which the judicial officer resides. *Cf.* 16 P.S. § 404 (requiring county officers receiving a commission from the Governor to record it in the Recorder of Deeds office); 16 P.S. § 3404.

**B. Other Post-Election Issues: compensation during recount**

If recount proceedings are required, the judicial officer, if successful, is entitled to "salary and emoluments" of the office for the period from when his or her term was due to begin until the date he or she actually took the oath of office. *Reed v. Sloan*, 360 A.2d 767 (Pa.Cmwlth. 1976), *affirmed*, 381 A.2d 421 (Pa. 1977). In *Reed*, although the plaintiff continued to practice

law during the election contest, the Commonwealth Court concluded that his judicial salary did not have to be reduced by the amount of compensation the plaintiff earned practicing law during this period. *Id.*

## APPENDIX "A"

## CONTACT INFORMATION

### ELECTION CODE QUESTIONS

For questions related to the Election Code (such as getting on the ballot, forming a campaign committee, handling contributions, expenses, and debts and finance reporting), contact:

**Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation**

Telephone 717-787-5280

Email for elections [RA-elections@pa.gov](mailto:RA-elections@pa.gov)

Email for campaign finance [ra-stcampaignfinance@pa.gov](mailto:ra-stcampaignfinance@pa.gov)

The Pennsylvania Department of State has helpful information for candidates:

[http://www.dos.pa.gov/VotingElections/CandidatesCommittees/Pages/default.aspx#.VfLSw\\_C0KSo](http://www.dos.pa.gov/VotingElections/CandidatesCommittees/Pages/default.aspx#.VfLSw_C0KSo)

### STATE ETHICS COMMISSION QUESTIONS

For questions related to the State Ethics Commission's statement of financial interest contact

**Pennsylvania State Ethics Commission**

PO Box 11470

Room 309 Finance Building

Harrisburg, PA 17108-1470

(717) 783-1610

800-932-0936 (toll free in PA)

(717) 787-0806 (fax)

<http://www.ethics.state.pa.us/portal/server.pt/community/home/8992>

### JUDICIAL ETHICS QUESTIONS

For judicial ethics questions contact a member of the Judicial Ethics Committee of the Pennsylvania Conference of State Trial Judges. A judge is encouraged, but not required, to contact the ethics committee member assigned to the judge's zone. A list of the current members of the committee is available on the web at <http://ethics.pacourts.us/members.htm>. The Chair of the committee is The Honorable Edward D. Reibman and the contact information of all the ethics committee members and their zones is set forth below:

**Pennsylvania Conference of State Trial Judges Judicial Ethics Committee**

**ZONE ONE**

Philadelphia

**The Honorable Patricia A. McInerney**

Judicial Ethics Committee

Room 364 City Hall

Philadelphia, PA 19107

215-686-2620

[patricia.mcinerney@courts.phila.gov](mailto:patricia.mcinerney@courts.phila.gov)

**The Honorable M. Teresa Sarmina**

Judicial Ethics Committee

Room 258 City Hall

Philadelphia, PA 19107

215-686-7920

[teresa.sarmina@courts.phila.gov](mailto:teresa.sarmina@courts.phila.gov)

**The Honorable Leon W. Tucker**

Judicial Ethics Committee

Room 692 City Hall

Philadelphia, PA 19107

215-686-7946

[leon.tucker@courts.phila.gov](mailto:leon.tucker@courts.phila.gov)

**ZONE TWO**

Berks, Carbon, Lehigh,  
Northampton, Schuylkill

**The Honorable Edward D. Reibman, Chair**

Judicial Ethics Committee

Lehigh County Courthouse

455 West Hamilton Street

Allentown, PA 18101-1614

610-782-3930

[edwardreibman@lehighcounty.org](mailto:edwardreibman@lehighcounty.org)

**ZONE THREE**

Adams, Cumberland, Dauphin,  
Franklin, Juniata, Lancaster,  
Lebanon, Perry, York

**The Honorable Richard K. Renn**

Judicial Ethics Committee

York County Judicial Center

45 North George Street

York, PA 17401

717-771-4377

[rkrenn@yorkcountypa.gov](mailto:rkrenn@yorkcountypa.gov)

**ZONE FOUR**

Bradford, Columbia, Lycoming,  
Montour, Northumberland,  
Snyder, Tioga, Union

**The Honorable Richard A. Gray**

Judicial Ethics Committee

Lycoming County Courthouse

48 West Third Street

Williamsport, PA 17701  
570-327-2370  
[rgray@lyco.org](mailto:rgray@lyco.org)

**ZONE FIVE**

Lackawanna, Luzerne, Monroe,  
Pike, Sullivan, Susquehanna,  
Wayne, Wyoming

**The Honorable Vito P. Geroulo**  
Judicial Ethics Committee  
Lackawanna County Courthouse  
200 North Washington Avenue  
Scranton, PA 18503  
570-963-6597  
[geroulov@lackawannacounty.org](mailto:geroulov@lackawannacounty.org)

**ZONE SIX**

Fayette, Greene,  
Washington, Westmoreland

**The Honorable Rita Donovan Hathaway**  
Judicial Ethics Committee  
Westmoreland County Courthouse  
2 N. Main Street  
Greensburg, PA 15601  
724-853-2140  
[rhathaway@co.westmoreland.pa.us](mailto:rhathaway@co.westmoreland.pa.us)

**ZONE SEVEN**

Clarion, Crawford, Erie  
Forest, Jefferson, McKean,  
Venango, Warren

**The Honorable James G. Arner**  
Judicial Ethics Committee  
Clarion County Courthouse  
421 Main Street, Suite 34  
Clarion, PA 16214  
814-226-9351  
[jarner@co.clarion.pa.us](mailto:jarner@co.clarion.pa.us)

**ZONE EIGHT**

Bedford, Blair, Cambria  
Fulton, Huntingdon,  
Indiana, Mifflin, Somerset

**The Honorable Linda Rovder Fleming**  
Judicial Ethics Committee  
Cambria County Courthouse  
200 South Center Street  
Ebensburg, PA 15931  
814-472-2173  
[lfleming@co.cambria.pa.us](mailto:lfleming@co.cambria.pa.us)

**ZONE NINE**

Bucks, Chester,  
Delaware, Montgomery

**The Honorable William J. Furber, Jr.**  
Judicial Ethics Committee  
Montgomery County Courthouse  
P.O. Box 311

Norristown, PA 19404-0311  
610-278-5900  
WFURBER@montcopa.org  
**The Honorable Nathaniel C. Nichols**  
Judicial Ethics Committee  
Delaware County Courthouse  
201 West Front Street  
Media, PA 19063  
610-891-4339  
[nicholsn@co.delaware.pa.us](mailto:nicholsn@co.delaware.pa.us)

**ZONE TEN**

Armstrong, Beaver,  
Butler, Lawrence, Mercer

**The Honorable Francis J. Fornelli**  
Judicial Ethics Committee  
Mercer County Courthouse  
Mercer, PA 16137  
724-662-2760  
[fornelli@roadrunner.com](mailto:fornelli@roadrunner.com)

**ZONE ELEVEN**

Cameron, Centre, Clearfield,  
Clinton, Elk, Potter

**The Honorable Pamela A. Ruest**  
Judicial Ethics Committee  
Centre County Courthouse  
102 S. Allegheny Street  
Room 206  
Bellefonte, PA 16823  
814-548-1190  
[paruest@centrecountypa.gov](mailto:paruest@centrecountypa.gov)

**ZONE TWELVE**

Allegheny

**The Honorable Alexander P. Bicket**  
Judicial Ethics Committee  
Court of Common Pleas of Allegheny County  
5069 Family Law Center  
440 Ross Street  
Pittsburgh, PA 15219  
412-350-5160  
[abicket@alleghencourts.us](mailto:abicket@alleghencourts.us)  
**The Honorable Robert J. Colville**  
Judicial Ethics Committee  
708 City-County Building  
414 Grant Street  
Pittsburgh, PA 15219  
412-350-0273  
[robert.colvillejr@alleghencourts.us](mailto:robert.colvillejr@alleghencourts.us)

## APPENDIX "B"



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
HARRISBURG, PENNSYLVANIA  
17120

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH  
717-787-7630

BUREAU OF COMMISSIONS,  
ELECTIONS & LEGISLATION  
717-787-5280

November 26, 2014

Honorable «Judge\_Name»  
«Office\_AddrLine1»  
«Office\_AddrLine2»  
«Office\_City», «Office\_State» «Office\_PostalCode»

Dear Judge «Judge\_LastName»:

Our records indicate that you are eligible to run for retention election in 2015. Pursuant to Article V, Section 15(b) of the Constitution of the Commonwealth of Pennsylvania, any justice or judge whose term of office expires on January 3, 2016, must file a Declaration of Candidacy with this office no later than January 5, 2015, in order to have his or her name placed on the November 3, 2015 ballot for judicial retention.

For your convenience, I have enclosed a Declaration of Candidacy form. If you intend to run for retention election next year, please complete the enclosed form and return it to this office no later than January 5, 2015. In addition, please complete the enclosed questionnaire regarding information pertinent to your candidacy and return it with your executed Declaration of Candidacy. Your cooperation in this matter is greatly appreciated.

Should you have any questions or need additional information, please feel free to contact Jessica Mathis, of my staff, at (717) 772-4507.

Sincerely,

Jonathan Marks  
Commissioner

JM/jm

**DECLARATION OF CANDIDACY**  
**RETENTION ELECTION – NOVEMBER 3, 2015**

Under the provisions of Article V, §15(b) of the Constitution of Pennsylvania, I hereby declare my candidacy for retention election for the office and court in the district and/or county(s) named below at the Municipal Election to be held November 3, 2015, that being the year preceding the first Monday of January, 2016, which is the date my term of office expires. I request the same to be filed in the office of the Secretary of the Commonwealth. Pursuant to the above, I request that my name be certified to the proper County Board(s) of Elections at the Municipal Election to be held November 3, 2015.

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**Signature**

---

**Date**

---

**Printed Name**

---

**Office/Court**

---

**District**

---

**County(s)**



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
HARRISBURG, PENNSYLVANIA  
17120

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH  
717-787-6458

BUREAU OF COMMISSIONS,  
ELECTIONS & LEGISLATION  
717-787-5280

**JUDICIAL QUESTIONNAIRE**

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**Print name exactly as it should appear on Retention Ballot**

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**Name of Court**

---

**Judicial District Number / Statewide**

---

**County of Residence**

---

**Municipality of Residence (City, Borough, Twp., Ward)**

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<b>Mailing Address</b>	<b>City</b>	<b>State</b>	<b>Zip Code</b>
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**Telephone Number**

**Gender**

**NOTE: The mailing address provided above will be posted on all candidate listings distributed by the Department of State.**

Please complete this questionnaire and return it with your Declaration of Candidacy to the following address:

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF COMMISSIONS, ELECTIONS AND LEGISLATION  
210 NORTH OFFICE BUILDING  
HARRISBURG, PA 17120-0029

**Date Submitted:**

**Department of State  
Bureau of Commissions, Elections & Legislation  
Room 210, North Office Building  
Harrisburg, PA 17120**

**In accordance with Article V, Section 16(b) of the Pennsylvania Constitution, which requires Justices and Judges of the Courts of Pennsylvania to retire at the age of seventy, I hereby certify that my date of birth is:**

\_\_\_\_\_  
**Month - Day - Year**

**Name:**\_\_\_\_\_

**Signature:**\_\_\_\_\_

**Judicial District #:**\_\_\_\_\_

**County of:**\_\_\_\_\_

**Court:**\_\_\_\_\_



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
Bureau of Commission, Elections and Legislation  
210 North Office Building  
Harrisburg, Pennsylvania  
17120-0029

OFFICE OF THE  
SECRETARY OF THE COMMONWEALTH  
717-787-7630

BUREAU OF COMMISSIONS,  
ELECTIONS & LEGISLATION  
717-787-5280

«Date\_mailed»

Honorable «First\_name» «Last\_name»«Suffix»  
«Address»  
«Address\_2»  
«City», «State» «Zip\_code»

Dear Judge «Last\_name»:

This letter will confirm receipt of your duly executed Declaration of Candidacy and your completed Judicial Questionnaire. A date-stamped copy of your Declaration of Candidacy is enclosed for your records.

Pursuant to Article V, Section 15(b) of the Constitution of the Commonwealth of Pennsylvania, your name will be submitted to the electors of your judicial district at the November 3, 2015 Municipal Election to determine only the question of whether you shall be retained in office.

Should you wish to "revoke" your Declaration of Candidacy, you may do so by notifying the Secretary of the Commonwealth in writing of such fact. To ensure that a notice of revocation is authentic, I am asking that you provide such notice on your official letterhead. The notice of revocation can be mailed to the Department of State at the address above. If you plan to send the notice of revocation via overnight or express delivery, it may be necessary to provide the following full street address information: **210 North Office Building, 401 North Street, Harrisburg, PA 17120.**

To revoke your Declaration of Candidacy in time for the Secretary of the Commonwealth to include the office you currently hold in the certification of nominations to be made at the 2015 Municipal Primary, section 978.2 of the Pennsylvania Election Code, 25 P.S. § 2938.2, requires that the notice of revocation be **received** in the office of the Secretary of the Commonwealth on or before the thirteenth Tuesday preceding the primary (**February 17, 2015**).

Should you have any questions or need additional information, please feel free to contact Jessica Mathis, of my staff, at (717) 772-4507.

Sincerely,

Jonathan Marks  
Commissioner

## APPENDIX "C"

Statement Regarding the Effect of the U.S. Supreme Court's Decision in  
*Citizens United v. FEC* on Pennsylvania Law  
March 4, 2010

The U.S. Supreme Court's decision in *Citizens United v. FEC*, issued on January 21, 2010, affects the constitutionality of several provisions of the Pennsylvania Election Code relating to campaign finance and disclosure. Others are left unaffected. This statement of the Pennsylvania Department of State provides a summary of the *Citizens United* decision and the Department's view of its impact on Pennsylvania law.

**Summary of the Decision of the U.S. Supreme Court in *Citizens United v. FEC***

(1) In *Citizens United v. FEC*, the U.S. Supreme Court ruled that the provisions of the Federal Election Campaign Act (FECA) that prohibit corporations and labor unions from making "independent expenditures" in support of advertisements that advocate the election or defeat of a candidate for public office are **unconstitutional** under the First Amendment.

(2) The Court in *Citizens United* expressly declared to be **constitutional** the provisions of FECA that require all persons and entities to include with their political ads disclaimers that reveal the identity of the person or organization that paid for the advertisement.

(3) *Citizens United* also upheld as **constitutional** the provisions of FECA that require all persons and entities to file reports with the FEC detailing their campaign expenditures.

(4) The Court in *Citizens United* left **undisturbed** the provisions of FECA that prohibit corporations and labor unions from making contributions to candidates and political committees or coordinating their expenditures with candidates and political committees. The Supreme Court in previous decisions has held these provisions to be **constitutional**.

(5) The Court left **intact** the ability of corporations and labor unions to establish separate segregated funds or political action committees (PACs), which can make contributions to candidates and other political committees and to coordinate their expenditures with candidates and other political committees.

(6) The Supreme Court in *Citizens United* expressly left **undecided** whether the government constitutionally may prohibit foreign individuals or foreign corporations from making expenditures influencing the political process.

## Effects on Pennsylvania Campaign Finance Law

*Citizens United v. FEC* affects several provisions of the Pennsylvania Election Code relating to campaign finance:

(1) *Section 1633 of the Pennsylvania Election Code (relating to contributions or expenditures by national banks, corporations or unincorporated associations).*

- Section 1633(a) of the Election Code prohibits any corporation organized under the laws of any state or foreign country and any unincorporated association (including a labor union), except those corporations formed primarily for political purposes or as a political committee, to make a contribution or expenditure in connection with the election of any candidate or for any political purpose whatever, except in connection with any question to be voted on by the electors of the Commonwealth. *See* 25 P.S. § 3253(a).
- Under *Citizens United*, section 1633(a) cannot be administered constitutionally to prohibit a domestic corporation or unincorporated association from making “independent expenditures.” An “independent expenditure” is defined at section 1621(e) of the Pennsylvania Election Code to mean “an expenditure by a person made for the purpose of influencing an election without cooperation or consultation with any candidate or any political committee authorized by that candidate and which is not made in concert with or at the request or suggestion of any candidate or political committee or agent [of a candidate or political committee].” 25 P.S. § 3241(e).
- The provisions of section 1633(a) prohibiting expenditures **other than “independent expenditures,”** e.g., expenditures made in cooperation or consultation with a candidate or candidate’s political committee; or expenditures made in concert with or at the request or suggestion of a candidate, a candidate’s political committee or an agent of the candidate or political committee, **remain in full force and effect.**
- The provision of section 1633(a) prohibiting any expenditure (including independent expenditures) by a corporation organized under the laws of a foreign country **remains in full force and effect.**
- That part of section 1633(a) of the Election Code that prohibits banks, corporations and unincorporated associations (including labor unions) from making “contributions” **remains in full force and effect.** The term “contribution” is defined at section 1621(b) of the Election Code as including, among other things, “any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate or political committee for the purpose of influencing any election in this Commonwealth....” 25 P.S. § 3241(b).

- Corporations and unincorporated associations remain able under section 1633(c) of the Election Code to establish and administer separate segregated funds or political action committees (PACs). *See* 25 P.S. § 3253(c).

(2) *Section 1638 of the Pennsylvania Election Code (relating to advertising).*

- Section 1638(a) of the Election Code, requiring “disclaimers” identifying who paid for or authorized political advertising, is **constitutional** under *Citizens United* and **remains in full force and effect**.
- Section 1638(a) provides, *inter alia*, that “whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate, or ballot questions, through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising,” such communication must “clearly and conspicuously state the name of the person who made or financed the expenditure for the communication.” 25 P.S. § 3258(a)(2).

(3) *Section 1626(g) of the Pennsylvania Election Code (relating to reporting by candidate and political committees and other persons).*

- Section 1626(g) of the Election Code is **constitutional** under *Citizens United* and **remains in full force and effect**.
- Section 1626(g) requires “[e]very person, other than a political committee or candidate, who makes independent expenditures expressly advocating the election or defeat of a clearly identified candidate, or question appearing on the ballot, other than by contribution to a political committee or candidate, in an aggregate amount in excess of one hundred dollars (\$100) during a calendar year [to] file with the appropriate supervisor, on a form prepared by the Secretary of the Commonwealth, a report which shall include the same information required of a candidate or political committee receiving such a contribution and, additionally, the name of the candidate or question supported or opposed.” 25 P.S. § 3246(g). Reports required by section 1626(g) must be filed on dates on which reports by political committees making expenditures are required to report under that section.

Questions about the Department of State’s administration of the campaign finance law under *Citizens United v. FEC* may be directed to the Department’s Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure by telephone at 717-787-5280 or via email at [RA-stcampaignfinance@state.pa.us](mailto:RA-stcampaignfinance@state.pa.us).

## APPENDIX "D"

## **FORMAL OPINION 2002-1**

Judicial Ethics Committee of the

Pennsylvania Conference of State Trial Judges

### **Time Withdrawn Judicial Candidates Must End Fund Raising**

Canon 7B (2)  
campaign debt  
campaign funds and campaign contributions

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 Committee 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.

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 fundraising 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.