

GUIDELINES FOR CANDIDATES SEEKING JUDICIAL OFFICE

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Commission on Judicial Conduct
and the Arizona Judicial Ethics
Advisory Committee*

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“The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices.”

Arizona Code of Judicial Conduct,
Rule 4.1, comment 12.

The Arizona Code of Judicial Conduct¹

Canon 4 of the Arizona Code of Judicial Conduct (“Code”) applies to judges and to judicial candidates. The Code broadly defines a judicial candidate as follows:

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes, or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

A successful judicial candidate is subject to discipline by the Arizona Commission on Judicial Conduct for Code violations, even if the candidate was not a

¹ The Code of Judicial Conduct is available online at: www.azcourts.gov/azcjc.

judge during the period of his or her candidacy. An unsuccessful judicial candidate who is a lawyer is subject to discipline by the State Bar of Arizona for Code violations.

Select Code Provisions

Judicial candidates and members of candidates' campaign committees should read the entire Code, particularly Canon 4, and consult ethics opinions issued by the Arizona Judicial Ethics Advisory Committee, which are available at www.azcourts.gov/azcjc. Judicial candidates are responsible for ensuring that members of their campaign committees comply with the Code and other applicable laws.

Excerpts from Canon 4 appear below. Code commentary that follows some of the rules is not reproduced but is available at www.azcourts.gov/azcjc. The comments offer helpful guidance in interpreting and applying the rules.

Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General

- (A) A judge or judicial candidate shall not do any of the following:

- (1) act as a leader in, or hold an office in, a political organization;²
- (2) make speeches on behalf of a political organization or another candidate for public office;
- (3) publicly endorse or oppose another candidate for any public office;
- (4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law, or make total contributions in excess of fifty percent of the cumulative total permitted by law. See, e.g., A.R.S. § 16-905.

² “Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.3. See Terminology Section of the Code.

- (5) actively take part in any political campaign other than his or her own campaign for election, reelection or retention in office;
- (6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (7) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others, except as provided by law;
- (8) use court staff, facilities, or other court resources in a campaign for judicial office;
- (9) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or
- (10) 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.

- (B) 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 paragraph (A).
- (C) Except as prohibited by this code, a judge may:
 - (1) engage in activities, including political activities, to improve the law, the legal system and the administration of justice; and
 - (2) purchase tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.

Rule 4.2. Political and Campaign Activities of Judicial Candidates

- (A) A judicial candidate shall:
 - (1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

- (2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations;
- (3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and
- (4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities other than those described in Rule 4.4 that the candidate is prohibited from doing by Rule 4.1.

Rule 4.3. Campaign Standards and Communications

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements in the media, electronic communications, or a speech, press release, or any other public communication, shall not knowingly or with reckless disregard do any of the following:

- (A) Post, publish, broadcast, transmit, circulate, or distribute information concerning the judicial candidate or an opponent that would be deceiving or misleading to a reasonable person;
- (B) Manifest bias or prejudice toward an opponent that would be prohibited in the performance of judicial duties under Rule 2.3(B), which prohibition does not preclude a judicial candidate from making legitimate reference to the listed factors when they are relevant to the qualifications for judicial office;
- (C) Use the title of an office not currently held by a judicial candidate in a manner that implies that the judicial candidate currently holds that office;
- (D) Use the term “judge” when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by the words “elect” or “vote,” in prominent lettering, before the judicial candidate’s name or the word “for,” in prominent lettering, between the name of the judicial candidate and the term “judge”;
- (E) Use the term “re-elect” when the judicial candidate has never been elected at a

general or special election to the office for which he or she is a judicial candidate;

- (F) Misrepresent the identity, qualifications, present position, or any other fact about the judicial candidate or an opponent;
- (G) Make a false or misleading statement concerning the formal education or training completed or attempted by a judicial candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a judicial candidate; or the period of time during which a judicial candidate attended any school, technical program, college, or other educational institution;
- (H) Make a false or misleading statement concerning the professional, occupational, or vocational licenses held by a judicial candidate, or the candidate's employment history and descriptions of work-related titles or positions;
- (I) Make a false or misleading statement about an opponent's personal background or history;
- (J) Falsely identify the source of a statement, issue statements under the name of another person without

authorization, or falsely state the endorsement of or opposition to a judicial candidate by a person, organization, political party, or publication.

Rule 4.4. Campaign Committees

- (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this code and other applicable law. See generally A.R.S. § 16-901 *et seq.*
- (B) A judicial candidate subject to public election shall direct his or her campaign committee to solicit and accept only such campaign contributions as are permissible by law and to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions.

Judicial Ethics Advisory Opinions

The Judicial Ethics Advisory Committee (“JEAC”) is an Arizona Supreme Court committee that offers advice about ethics issues, including campaign activities. Judicial candidates may seek ethics advice about *their own prospective conduct* by contacting:

April P. Elliott, Staff Director
Judicial Ethics Advisory Committee
aelliott@courts.az.gov

JEAC formal opinions that address judicial campaign activities include the following:

Opinion 18-04: Publicizing Campaign Endorsements by Constables

- Distinguishes constables from law enforcement personnel, and permits a constable’s endorsement to be publicized, provided the endorsement is not portrayed as one from law enforcement and should not display the constable’s badge in campaign materials, including social media.
- Potentially requires disqualification, or remittal of the disqualification, under

Rule 2.11 should the constable appear as a witness before the judge in a contested proceeding.

Opinion 10-02: Using Judicial Titles and Robes in Election Campaigns

- Incumbent judges may use their judicial title and appear in photos/ads wearing robes.
- A non-incumbent candidate may not wear a judicial robe in campaign materials or use the title “judge.”

Opinion 96-12: Endorsement of a Judicial Candidate by a Law Enforcement Official

- Judicial candidates may not solicit or publicize endorsements that portray them as a “law enforcement” candidate, including endorsements from law enforcement officials.

Opinion 03-05: Participation of Judges, Family Members, and Judicial Employees in Political Activities

- Judges and judicial candidates may not circulate nominating petitions on behalf of candidates other than themselves.

- Nominating petitions may not be circulated at courthouses.
- Judges and judicial candidates may generally sign nominating petitions as long as the petitions “are not intended to be used by candidates as endorsements.” But individuals in “sparsely-populated counties” should exercise caution because “fewer signatures are required,” and a signature “is more likely to draw attention and could be perceived as an endorsement.”

Opinion 08-01: Political Activities of Judicial Candidates

- Distinguishes between endorsing other candidates and accepting third-party endorsements.
- Discusses publicizing party affiliation.
- Notes that although judicial candidates may publicly announce their views on legal and political issues as permitted by Rule 4.1, a successful judicial candidate may be disqualified from hearing cases regarding those issues in the future.

Disciplinary Sanctions for Campaign-Related Violations

The Commission on Judicial Conduct has imposed discipline for campaign-related violations of the Code, including in the following relatively recent matters:

- A non-incumbent candidate for justice of the peace was reprimanded for using a logo that stated his name, followed by “Justice of the Peace,” without including the word “elect” before his name or the word “for” between his name and the position sought, as required by Rule 4.3(D). The candidate also obtained a domain name an opponent stated he would be using and redirected internet traffic from that site to his own site, in violation of Rules 4.2 and 4.3.
- A justice of the peace was reprimanded for gathering nominating petition signatures for a constable candidate and publicly endorsing that candidate.
- A justice of the peace was publicly reprimanded for announcing his candidacy for a non-judicial office via a social media site without first resigning.

- A part-time city court magistrate (a Part D judge under the Application section of the Code) was publicly reprimanded for abusing the prestige of judicial office when he used his judicial title in campaign materials for a non-judicial office in violation of Rule 1.3.
- A justice of the peace was publicly reprimand for, in part, improperly keeping campaign and political materials in his judicial office and distributing campaign materials in the court during court hours in violation of Rules 1.2 and 4.1(A)(8).
- A justice of the peace was suspended for 90 days for misconduct related to his reelection campaign. Violations included using court email for the campaign, using improper photographs, posting campaign materials at a U.S. post office in violation of federal law, campaigning during court hours, and using crude, offensive and disparaging language directed at his opponent.

Questions?

A judicial candidate who has questions about his or her own prospective conduct under the Code of Judicial Conduct may send an email to the Staff Director of the Arizona Judicial Ethics Advisory Committee:

aelliott@courts.az.gov

The email message should describe the facts and circumstances in question.

The Judicial Ethics Advisory Committee cannot answer questions about whether another person has violated the Code. Code violations may be reported to the Commission on Judicial Conduct. Information about filing a complaint is available at:

www.azcourts.gov/azcjc/How-to-File-a-Complaint