

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 4 - 2022

RE: Campaign limitations for a candidate for probate judge.

FACTS

A city judge has become a candidate for probate judge. The judge has several questions regarding campaign limitations.

1) A campaign bank account has been created. The bank required that the judge have an Employee Identification Number (EIN) from the IRS. The judge is not aware of any other candidate being required to do so. The judge does have a campaign committee as required by Canon 5C(2). The judge inquires as to whether an EIN is required.

2) As a candidate, according to the Ethics Commission, the judge is required to do all filing on any campaign finances. The judge cannot personally accept campaign contributions, only the campaign committee can. The judge asks whether the judge's name may be listed on the bank account; if the judge can write checks or use a debit card for literature, signs, advertisements, etc.

3) Canon 5 states that committee may "solicit and accept reasonable campaign contributions" but does not address the differences in an election where a candidate is opposed vs. unopposed. A candidate with a committee may not know the status of opposed or unopposed until the end of the filing period. The judge asks for guidance on what is reasonable.

4) The judge asks whether, as a judicial candidate, if the judge is allowed to pay the filing fee from a campaign account to voter registration or must the judge have a committee member of the campaign do so? The judge must appear at the filing and voter registration must personally review the judge's signature on the filing form.

5) Canon 5 states that a candidate may appear in media and other events as a candidate. The judge inquires as to whether this also includes social media.

CONCLUSION

- 1) This Committee cannot opine as to the necessity of an EIN.
- 2) The judge should not write checks or use a debit card from the campaign committee account.

3) This Committee cannot provide further guidance as to what are reasonable campaign contributions.

4) A member of the campaign committee should write the check for the filing fee.

5) A candidate may appear in social media campaign events.

OPINION

Canon 5C(2) addresses judges and candidates subject to public elections and states:

A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate's committees may solicit contributions and public support for the candidate's campaign no earlier than one year before an election and no later than 90 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

This is the only part of the Code that addresses campaign funds for publicly elected judges. Title 8 of the South Carolina Code Ann. contains a chapter entitled "Ethics, Government Accountability, and Campaign Reform." S.C. Code Ann. § 8-13-100, et seq. Candidates for the office of probate judge are subject to that Act's provisions. S.C. Code Ann. § 8-13-100(13) states:

"Elective office" means an office at the state, county, municipal, or political subdivision level. **For the purposes of Articles 1 through 11, the term "elective office" does not include an office under the unified judicial system except that for purposes of campaign practices, campaign disclosure, and disclosure of economic interests, "elective office" includes the office of probate judge.**

Id. (emphasis added).

This Committee is wary of delving into the complex issues of campaign finance and defers to the state Ethics Commission on most of these issues. However, in the context of Canon 5, we address each of the issues raised by the judge below.

- 1) This Committee cannot opine as to whether an EIN is needed according to banking or IRS regulations. None of the Canons address this issue.
- 2) Canon 5C(2) states that the judge's campaign committee "may solicit and accept reasonable campaign contributions, *manage the expenditure of funds for the candidate's campaign* and obtain public statements of support for his or her candidacy." (emphasis added). Because the committee is responsible for the expenditures, we are of the opinion that the judge's name should not be listed as a signor on the account, nor should the judge issue checks or use a debit card from that account to pay for campaign expenses. All checks or other expenditures must be made by a committee member.
- 3) Canon 5 states that committee may "solicit and accept reasonable campaign contributions" but does not address the differences in an election where a candidate is opposed vs. unopposed or otherwise define reasonable. This Committee can provide no other guidance as elections can vary widely depending upon the location, the number of candidates and other factors. The committee/candidate must use their best judgment as what is reasonable.
- 4) For the reasons discussed in Paragraph 2), a member of the campaign committee should be the one to issue checks, including the filing fee to register.
- 5) Canon 5C(1)(b)(ii) states that a candidate may "appear in newspaper, television and other **media** advertisements supporting his or her candidacy[.]" (emphasis added). Media is not defined by the Canons. However, we have previously found that a judge could participate in social media in a non-campaign scenario. In Opinion 17-2009 we found there was no prohibition against a full-

time magistrate having a Facebook page, provided that other provisions of the Canons were observed. Thus, we believe that a candidate may appear in campaign events or advertisements on social media sites.

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES, CHAIR

s/ William H. Seals, Jr.
WILLIAM H. SEALS, JR.

s/ Keith M. Babcock
KEITH M. BABCOCK

March 11, 2022