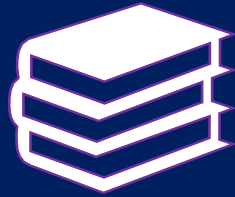


Judicial Elections: TN Legal and Ethical Considerations

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**General Sessions Judges Conference
October 6, 2021**



ELECTION CODE REQUIREMENTS

TRIAL JUDGES

PRIMARY ELECTION – MAY 3, 2022

GENERAL ELECTION – AUGUST 4, 2022

Qualifying Deadlines:

- Independent and primary candidates – noon the third Thursday in February – **FEBRUARY 17, 2022**
- No primary – noon the first Thursday in April – **APRIL 7, 2022**

QUALIFYING PETITION

- Signed by candidate and 25 or more registered voters
- MUST include name, signature and address of each registered voter
- Must sign certifying that you are licensed to practice law
- NOT issued more than 60 days before qualifying deadline
- Filed in county where candidate is a resident



PROHIBITIONS

- Cannot qualify as an independent and primary candidate for same office
- Cannot qualify as candidate in primary election with more than 1 political party
- Cannot submit qualifying petition or otherwise qualify and be nominated or appear on ballot for more than one county-wide office in any election or primary





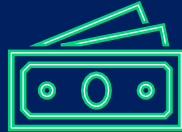
WRITE-IN CANDIDATES

- Must file notice in each county of the district no later than noon 50 days before election to have any write-in votes counted
- To receive party nomination – must receive write-in votes equal to or greater than 5% of total number of registered voters of district – unless there are candidates listed on the official ballot
- Candidate defeated in primary election cannot run as a write-in candidate in general election

Q: WHEN CAN I START CAMPAIGNING AND FUNDRAISING?

- A:RJC 4.2 (B) provides that a judge or judicial candidate can establish a campaign committee, speak on behalf of his or her candidacy through any medium, and seek, accept or use endorsements from any person or organization no earlier than 365 days before the first applicable election; Comment [1A] to Rule establishes primary election as the first applicable election.
- RJC 4.4 (B) (2) - judge or judicial candidate can direct campaign committee to solicit or accept contributions no earlier than 365 days before election and no later than 90 days after last election in which candidate participated.

CAMPAIGN FINANCE REQUIREMENTS



- Appointment of Political Treasurer – required to certify name and address of political treasurer to Registry of Election Finance **BEFORE** you may receive a contribution or make an expenditure
- Must include office you are seeking and year of election
- Must notify Registry of any changes regarding political treasurer

CAMPAIGN DISCLOSURE REPORTS

- Filed with local county election commission
- Signed by candidate and political treasurer
- Reports are NOT cumulative for primary and general elections
- **Reports due in 2021:**
 - Mid-year Supplemental – was due July 15, 2021 – covers date of first contribution or first expenditure, whichever occurred first, through June 20, 2021
 - Year-End Supplemental – due January 31, 2022 – covers period of July 1, 2021 through January 15, 2022

REPORTS DUE IN 2022 – ELECTION YEAR

- 1st Quarter – due April 11, 2022 – covers period of January 16 through March 31, 2022
- Pre-Primary – due April 26, 2022 – covers period of April 1 through April 23, 2022
- 2nd Quarter – due July 11, 2022 – covers period of April 24 through June 30, 2022
- Pre-General – due July 28, 2022 – covers period of July 1 through July 25, 2022 –only required if candidate in August General Election
- 3rd Quarter – due October 11, 2022 – covers period of July 26 through September 30, 2022 if candidate in August election; otherwise covers period of July 1 through September 30, 2022
- 4th Quarter – due January 25, 2023 – covers period of October 1 through December 31, 2022

CIVIL PENALTIES

- Class 1 offense – late filing of report (not including 5-day grace period) – civil penalty of \$25.00 per day up to maximum of \$750
- Class 2 offense – failure to file report within 35 days of assessment letter – civil penalty of not more than \$10,000

ADDITIONAL “PENALTY”

- Failure to pay civil penalty after it becomes final – candidate is ineligible to qualify for election to any state or local public office until penalty is paid. Tenn. Code Ann. § 2-10-110(c)(2).
- Failure to file report – ineligible to qualify for election to any state or local public office until report is filed. Tenn. Code Ann. § 2-10-110(d).

“TEN-DAY REPORT”

- Period runs from midnight of 10th day prior to election through midnight of election
- Required to report any contribution, loan or transfer of funds of \$2,500 or more
- If in-kind contribution, must include brief description and value
- If loan, must include name and address of lender, recipient of proceeds and name of any person making any type of security agreement
- Report must be filed by end of next business day on which contribution was reported as received





REPORT CONTENTS

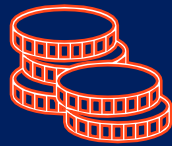
- Statement that contributions and expenditures during reporting period did not exceed \$1,000, **OR**
- List of all contributions received
 - Includes full name, address, occupation and employer of each person who contributed more than \$100
 - Date of each receipt
 - Contributions of \$100 or less are listed as a single total item
- List of all expenditures made:
 - Full name and address of each person paid more than \$100; purpose of payment shall clearly identify that it is an allowable expenditure
 - Credit card purchases to separate vendors reported as separate expenditures

IN-KIND CONTRIBUTIONS

- Required to be listed separately
- In-kind contributions of value of \$100 or more shall list category of contribution, name, address, occupation and employer
- Shall include date of receipt of contribution, i.e., deemed made and reportable when contribution is made or performed, not when cost is billed or paid.
- Actual cost is to be reported; if actual cost not know, estimate shall be reported and if actual cost differs, amount to be amended or adjusted on later report.
- In-kind contributions of value of \$100 or less can be listed together as single item

REPORTS DUE AFTER ELECTION

- Supplemental Semi-annual statement – required to file a supplemental semi-annual statement until campaign account shows no unexpended balance, continuing debts and obligation, expenditures or deficit.
- Closing statement – can close account by filing statement as long as statement on its face shows that there is no unexpended balance, continuing debts or obligations or deficit.



DIGITAL CURRENCY

- Allowed to accept digital currency as a contribution – considered to be a monetary contribution with value being the market value at the time the contribution is received.
- Any increase in value must be reported as interest on statements.
- Must sell digital currency and deposit proceeds into campaign account before spending funds.

USE OF CAMPAIGN FUNDS

Tenn. Code Ann. § 2-10-114(b)(1): “Except as otherwise provided in subsection (a), no candidate for public office shall use any campaign funds for any other purpose other than a contribution or expenditure as defined by this part.”

“Personal use” is further prohibited – defined as “any use by which the candidate for public office or elected public official would be required to treat the amount of the expenditure as gross income under 26 USC § 361.

USE OF CAMPAIGN FUNDS CONTINUED . . .

- Contribution:

Any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, digital currency, gift or subscription of money or like thing of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of . . . Nomination for election or the election of any person for public office or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services.

- Expenditure:

A purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of . . . the nomination for election or election of any person to public office; also include the use of campaign funds by an officeholder for the furtherance of the office of the officeholder.

Examples of prohibited expenditures are listed in Tenn. Code Ann. § 2-10-114(b)(2).

USE OF UNEXPENDED CAMPAIGN FUNDS

- Can be retained or transferred to any campaign fund
- Can be returned to contributors in accordance with a formulate or plan
- Can be distributed to executive committee of candidate's political party
- Can be deposited in volunteer public education trust fund established under title 49, chapter 3, part 4
- Can be distributed to organization described in 26 USC § 170(c)
- Can be distributed to 501 (c) (3) or (c) (4) organization
- Can be used to defray an ordinary and necessary expenses incurred in connection with office of officeholder
- Can be distributed to any public or private education institution in state to any existing scholarship trust or program

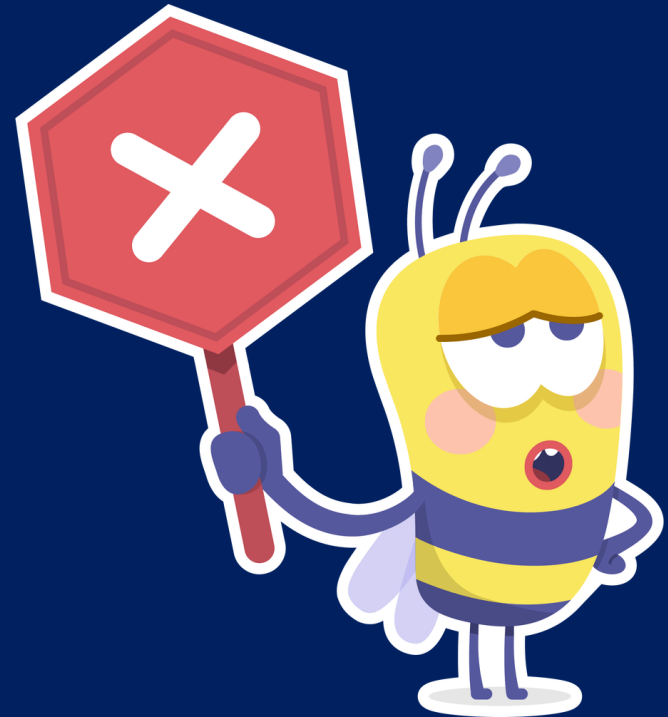


INVESTMENT OF CAMPAIGN FUNDS

- Must be deposited and maintained in FDIC insured institution or NCUA accredited credit union
- Any interest, dividends or income earned must be reported on disclosure reports
- Any contribution received in non-monetary form may be held in that form until contribution is to be used to pay expenditures – funds then must be deposited in accordance with the statute
- Any other investment of campaign funds is prohibited – violation is subject to maximum civil penalty of \$10,000 or 115% of the amount invested, whichever is greater.

CONTRIBUTION LIMITS

- Individual - \$1,600
- Multicandidate PAC - \$8,300
- Candidate
 - No candidate for other elections shall accept in aggregate more than \$126,600 from multicandidate PACS
 - Contributions from political party PACS not included in aggregate – contributions from political party PACs limited to \$33,900



INDIRECT CONTRIBUTIONS

- Contributions made to PAC authorized by candidate to accept contributions or to make expenditures on candidate's behalf considered to be contributions to candidate.
- Contributions made by a person, directly or indirectly, on behalf of particular candidate, including any earmarked or directed through intermediary or conduit, shall be treated as contributions to candidate.
- All contributions made by affiliated PACs considered to have been made by single PAC.
- Expenditures made in cooperation, consultation or concern with, or at request or suggestion of candidate, candidate's committee or their agents, shall be considered contribution to conduct.

LOANS

Contribution Limits do not apply to loans that meet requirements:

- Made in accordance with applicable law and in ordinary course of business
- Made on basis reasonably designed to assure repayment, evidenced by a written instrument and subject to payment due date or amortization schedule
- Bears usual and customary interest rate of lending institution
- Any endorsement or guaranty of loan shall be considered a contribution in amount of endorsement or guaranty and subject to limitations



CASH CONTRIBUTIONS

- No person can make cash contributions to any candidate, in the aggregate, that exceed \$50.
- No political campaign committee or multicandidate political campaign committee can make cash contributions to any candidate with respect to any election.



VIOLATIONS

- No candidate or PAC shall accept any contribution or make any expenditure in violation of Act; no officer or employee of PAC shall accept contribution made for benefit or use of candidate or make expenditure on behalf of candidate in violation of limitation provisions.
- Contribution made or accepted in excess of limits shall not be a violation if candidate or PAC returns or refunds contribution within 60 days of candidate's or committee's receipt of contribution.
- Civil Penalties – Registry can impose maximum penalty of not more than \$10,000 or 115% of amount of all contributions made or accepted in excess of limitation whichever is greater.



CONTESTED ELECTIONS

- Deadline – must be filed within 5 days after certification of election results (which is to be done by the third Monday after the election)
- Trial is to be held not less than 15 days nor more than 50 days from the day the complaint is filed and not less than 10 days after the complaint is served on the defendant
- Votes shown on voting machines SHALL be conclusive unless court finds reason to believe vote is not accurate
- Costs and attorney's fees shall be assessed if contest or appeal is maliciously or frivolously prosecuted.

Judicial Campaign-Related Decisions

Stanton v. State, 613 S.W.3d 368 (Ark. 2020).

Reversing a conviction for first-degree murder, the Arkansas Supreme Court held that a prosecutor's campaigning for judicial office in the courthouse during the trial created the appearance of impropriety and was "per se improper in the context of the fair and impartial administration of justice."

The Code of Judicial Conduct

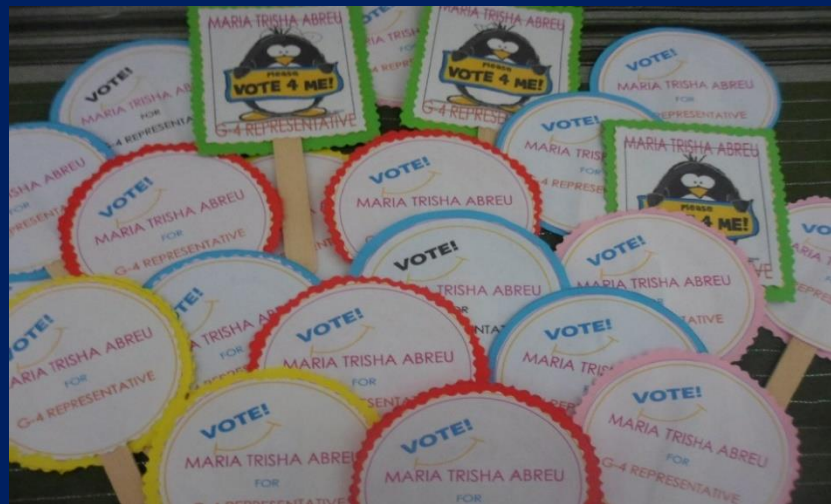
Canon 1

A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

Judicial Campaign-Related Decisions

Stanton v. State, 613 S.W.3d 368 (Ark. 2020).

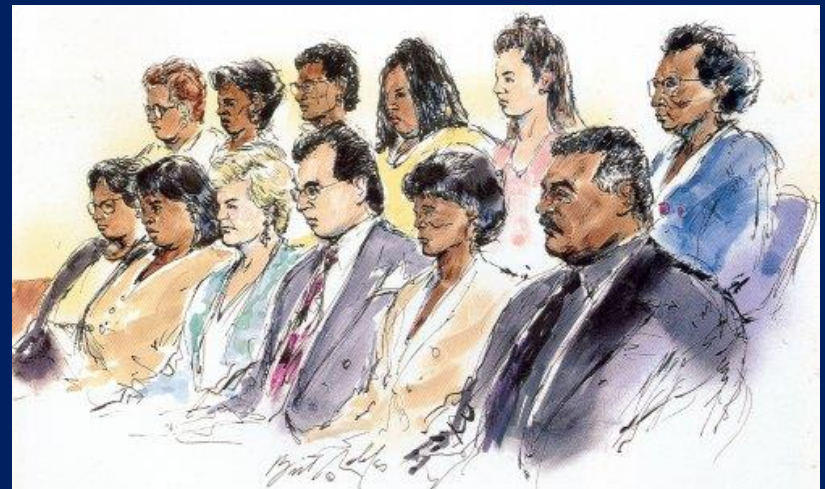
- solicited ballot signatures from prospective jurors and others as they entered the courthouse
- placed campaign materials containing her picture and qualifications at the security station



Judicial Campaign-Related Decisions

Stanton v. State, 613 S.W.3d 368 (Ark. 2020).

Problem 1: Jurors “became a captive audience bombarded with election petitions from [the prosecutor] and at least two other sitting circuit judges. This is an abuse and exploitation of the judicial system and the fundamental civic responsibility of jury service.”



Judicial Campaign-Related Decisions

Stanton v. State, 613 S.W.3d 368 (Ark. 2020).

Problem 2: “This abuse was furthered by the presence of [the prosecutor’s] campaign materials on the bailiff’s security table,” creating “an apparent endorsement by the circuit court” because the bailiff is a member of the court’s security staff and subject to the court’s control.



Judicial Campaign-Related Decisions

Stanton v. State, 613 S.W.3d 368 (Ark. 2020).

Problem 3: “Disturbingly, solicitation of signatures from prospective jurors for political purposes is apparently a common practice for some sitting judges. Our concerns with [the prosecutor’s] conduct apply with equal force to the same conduct taken by sitting judges.”

Held: “This kind of conduct has no place in the administration of justice and should not have been permitted . . . a mistrial should have immediately been granted.” Reversed and remanded for a *fourth* trial.

Judicial Campaign-Related Decisions

In Re Staggs (Arizona Commission on Judicial Conduct, Nov. 17, 2020).

Judge Bruce Staggs was publicly reprimanded for:

- keeping campaign materials in his judicial office
- distributing nail files that stated “Bruce Staggs – Justice of the Peace” during court hours



Judicial Campaign-Related Decisions

In Re Staggs (Arizona Commission on Judicial Conduct, Nov. 17, 2020).

- referring to female court employees as “woman,” i.e., “Let’s go woman!” and “Get to work woman!”
- making a comment to a female court clerk about her pant’s being unzipped and wondering “if he would get the same reaction if he were unzipped.”

Judicial Campaign-Related Decisions

In Re Staggs (Arizona Commission on Judicial Conduct, Nov. 17, 2020).

Held: “Keeping political and campaign material in a judicial office gives an appearance of impropriety,” and the judge’s comments, while not intended to be offensive, “served to damage relationships with court staff and diminished confidence in his position as a judicial officer.”



Judicial Campaign-Related Decisions

Gentry v. Judicial Conduct Commission, 612 S.W.3d 832 (Ky. 2020).

Kentucky Supreme Court upheld the removal of Judge Dawn Gentry for:

- (1) coercing members of her guardian ad litem panel to donate the maximum amount to her campaign and to use personal time to campaign on her behalf;
- (2) using court staff to work on her campaign during work hours;

Judicial Campaign-Related Decisions

Gentry v. Judicial Conduct Commission, 612 S.W.3d 832 (Ky. 2020).

(3) retaliating against an attorney for failing to campaign on her behalf by removing him from her guardian ad litem panel;

(4) permitting staff members to store and consume alcoholic beverages in court offices;

(5) referring to a school liaison officer who supported her opponent as a “b***h” and refusing to recuse from her cases;

Judicial Campaign-Related Decisions

Gentry v. Judicial Conduct Commission, 612 S.W.3d 832 (Ky. 2020).

(6) making inappropriate sexual advances toward an attorney; and

(7) appointing friends who supported her campaign to represent persons seeking custodian status without requiring those individuals to come to court to receive appointments as was her normal practice.

Judicial Campaign-Related Decisions

Gentry v. Judicial Conduct Commission, 612 S.W.3d 832 (Ky. 2020).

Held: Removal was appropriate given the judge's (1) "extremely poor judgment," (2) "broad range of repeated and systemic misconduct" over time, and (3) failure to be candid and honest with disciplinary authorities.



Judicial Campaign-Related Decisions

Halverson v. Harada, 461 P.3d 869 (Mont. 2020).

The Montana Supreme Court suspended Judge Ashley Harada for 30 days without pay for:

- (1) publicly endorsing two Republican candidates for nonjudicial offices on her personal Facebook page;
- (2) having endorsements from candidates and a political organization on her campaign Facebook page;

Judicial Campaign-Related Decisions

Halverson v. Harada, 461 P.3d 869 (Mont. 2020).

(3) contributing to a candidate for nonjudicial office; and

(4) during her campaign, claiming experience under the student practice rules as two years of law experience and giving herself credit for approximately 80 jury trials while she was a law clerk for a federal judge.

Judicial Campaign-Related Decisions

Halverson v. Harada, 461 P.3d 869 (Mont. 2020).

Held: Judge Harada's misconduct shows "a flagrant disregard and threat to the rule of law and public confidence in the independence, impartiality, and integrity of our judicial system."

The Code of Judicial Conduct

Canon 1

A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

Judicial Campaign-Related Decisions

In the Matter of Almase (Nevada Commission on Judicial Discipline Oct. 22, 2018).

Judge Heidi Almase was publicly reprimanded for her campaign's posting of a photoshopped picture of herself next to an actor on her campaign Facebook page, misleading the public into believing that Dwayne "the Rock" Johnson had endorsed her re-election.

Judicial Campaign-Related Decisions

It just makes sense:
Re-Elect
Judge Heidi Almase

Dwayne Johnson
"The Rock"

*Dwayne Johnson
The Rock*

RE-ELECT *Judge* **HEIDI** **ALMASE**

For Municipal
Court Judge, Dept. 3

Judicial Campaign-Related Decisions

In the Matter of Almase (Nevada Commission on Judicial Discipline Oct. 22, 2018).

- The campaign did not have permission to use the actor's name or image.
- The Facebook post misled the public into believing that the actor had endorsed the judge's campaign.
- The judge had not taken measures to ensure that her campaign representatives complied with the Code of Judicial Conduct.

Judicial Campaign-Related Decisions

In the Matter of Almase (Nevada Commission on Judicial Discipline Oct. 22, 2018).

Held: “Campaign-related social media platforms, such as Facebook, maintained by a campaign committee or others, do not insulate [the candidate] from the strictures of the Code.”



Judicial Campaign-Related Decisions

In the Matter of Callaghan, 796 S.E.2d 604 (West Virginia 2017).

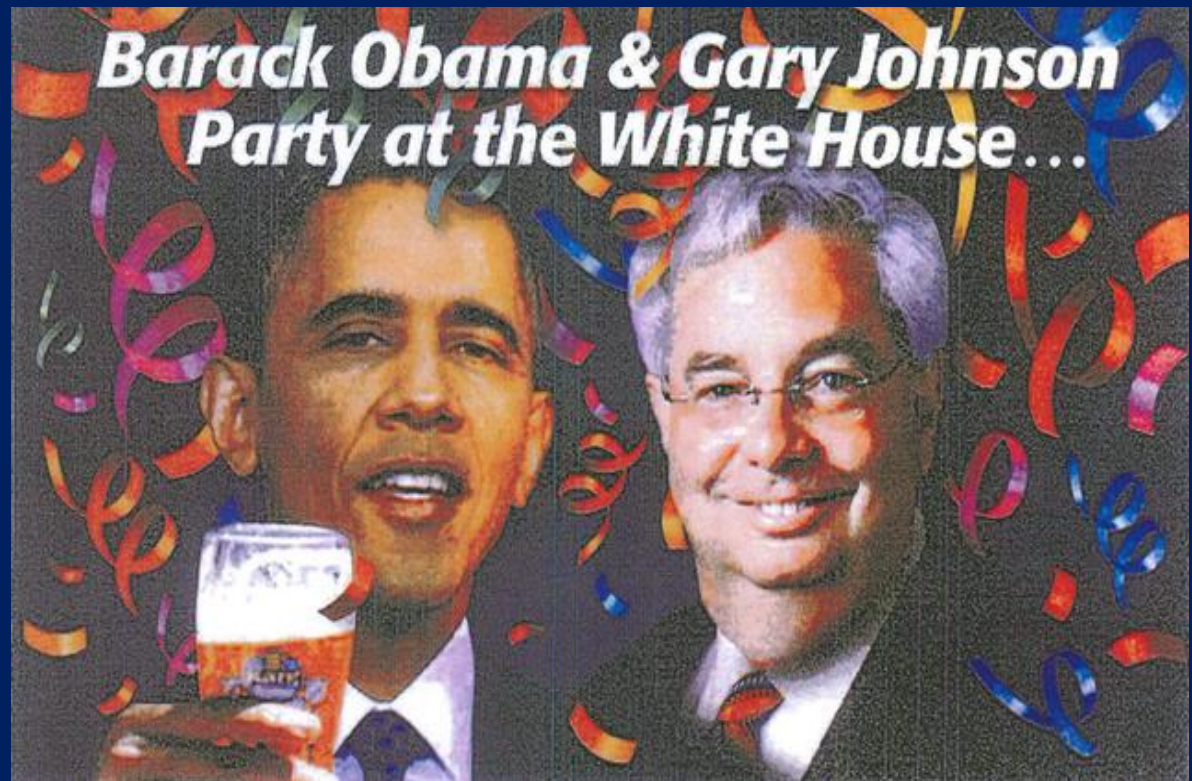
Judge Stephen Callaghan was suspended for *two years without pay and fined \$15,000* after posting on his campaign and personal Facebook pages a photoshopped campaign flyer depicting his opponent (the incumbent judge) partying with President Obama.

Judicial Campaign-Related Decisions

In the Matter of Callaghan, 796 S.E.2d 604 (West Virginia 2017).

The flyer was mailed to voters five days before the election.

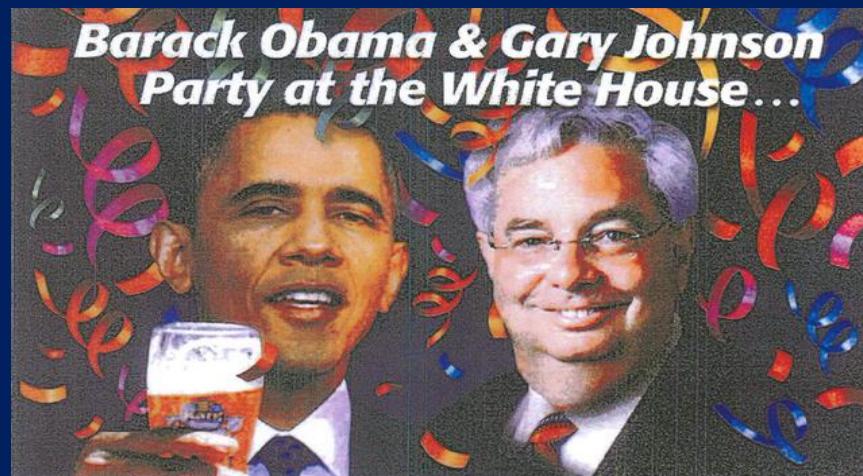
Judge Callaghan won by 227 votes.



Judicial Campaign-Related Decisions

In the Matter of Callaghan, 796 S.E.2d 604 (West Virginia 2017).

Held: “We sincerely expect that these sanctions will indeed have a devastatingly chilling effect [on judicial candidates] pondering the idea of disseminating falsifications for the purpose of attaining an honored position of public trust.”



Judicial Campaign-Related Decisions

In the Matter of Kohout (West Virginia Oct. 7, 2016).

Judicial candidate censured for posting on Facebook: “Folks. I’m shameless[ly] asking for campaign contributions. . . . [I]’m gonna need to buy signs etc. I’d appreciate any help you can send.”

Rule: A judge or judicial candidate “shall not personally solicit or accept campaign contributions other than through a campaign committee.” RJC 4.1(A)(8).

Judicial Campaign-Related Decisions

In the Matter of VanWoeart (New York Commission on Judicial Conduct March 31, 2020).

Judge Michelle VanWoeart was publicly censured after she reacted on her campaign Facebook page to others' posts about her opponent, another judge.

- She “liked” a post stating “time to take out the trash!!” in reference to her opponent, Judge Norm Miller.



Judicial Campaign-Related Decisions

In the Matter of VanWoeart (New York Commission on Judicial Conduct March 31, 2020).

- She replied “thank you” to a comment on her campaign Facebook page which described her opponent as “Dirt Bag Norm” and “this SH*T HEAD.”
- She “liked” a comment on her campaign Facebook page that stated, “I’d like to shove [campaign] flyers up Norm’s butt!”

Judicial Campaign-Related Decisions

In the Matter of VanWoeart (New York Commission on Judicial Conduct March 31, 2020).

Held: Judge VanWoeart “failed to meet [high standards of conduct] when she responded favorably to crude social media comments about her judicial opponent. By her conduct, respondent undermined the dignity and integrity of the judiciary.”



Judicial Campaign-Related Decisions

State v. Griffin, 610 S.W.3d 752 (Tenn. 2020).

The trial judge served as a deputy district attorney general in Knox County at the time the defendants were indicted for, among other things, first degree murder. After a subsequent appointment to serve as a judge on the Knox County Criminal Court, the judge was assigned the defendants' cases.

The defendants moved for recusal, arguing that the judge had supervisory authority over their cases as a prosecutor per his campaign website and judicial application.

Judicial Campaign-Related Decisions

State v. Griffin, 610 S.W.3d 752 (Tenn. 2020).

Held: “Although . . . recusal is not required in this case, we also use this opportunity to caution applicants and candidates for judicial positions about potential adverse consequences arising from statements in applications or campaigns. *Applicants and candidates must carefully refrain from overstating past experiences and responsibilities.* Such actions can have significant unintended consequences.” (Emphasis added.)



Judicial Campaign-Related Decisions

Misleading campaign materials can implicate:

- RJC 4.1(A)(11) (a candidate for judicial office shall not knowingly or with reckless disregard for the truth make false or misleading statements) and
- RJC 4.2(A)(1) (a judicial candidate shall act at all times in a manner consistent with the integrity of the judiciary).



Judicial Campaign-Related Decisions

Public Warning of Cox (Texas Commission on Judicial Conduct Dec. 4, 2020).

Judge Lonnie Cox was publicly admonished for endorsing a candidate for county tax assessor. Judge Cox attended a fundraiser hosted by Galveston County Tax Assessor Cheryl Johnson in support of her re-election campaign.



Judicial Campaign-Related Decisions

Public Warning of Cox (Texas Commission on Judicial Conduct Dec. 4, 2020).

The judge introduced Johnson to those in attendance, stating:

“She’s the best damn tax assessor-collector that we have in this country. And so you’d be making a huge mistake . . . if you even give any attention to anybody else that runs for that office. So I encourage you, don’t waste your vote. Don’t vote for someone who will not be watching your back. That’s one thing I like about Cheryl, she watches my back. . . . I try to watch her back, that’s what we do.”

Judicial Campaign-Related Decisions

Public Warning of Cox (Texas Commission on Judicial Conduct Dec. 4, 2020).

A member of Johnson's campaign staff recorded the judge's remarks on her cell phone and streamed it live on Facebook.

Held: Judge Cox was “publicly warned for [1] endorsing Ms. Johnson in her campaign for re-election and [2] lending the prestige of his judicial office to advance Ms. Johnson's private interests” in violation of Rules 1.3 (lending the prestige of office to benefit others) and 4.1/4.2 (judges may endorse or oppose judicial, but not nonjudicial, candidates).

Judicial Campaign-Related Decisions

Public Admonition of Metzger (Texas Commission on Judicial Conduct Nov. 12, 2020).

Judge Bill Metzger was publicly admonished for removing a campaign sign from his neighbor's property.



Judicial Campaign-Related Decisions

Public Admonition of Metzger (Texas Commission on Judicial Conduct Nov. 12, 2020).

The Dallas ABC affiliate reported “Caught on camera: Candidate said judge destroyed campaign sign,” which linked to a YouTube video that showed the judge removing from his neighbor’s property the campaign sign of a candidate for the Texas House of Representatives, Jim Phaup.

Phaup said the person shown removing the sign is “very recognizable. It’s Judge Bill Metzger.”

Judicial Campaign-Related Decisions

Public Admonition of Metzger (Texas Commission on Judicial Conduct Nov. 12, 2020).

The judge said that he was “unable to be sure” if he was the person shown removing the sign.

He later admitted that it was him on the video but claimed that he had not “improperly” removed the sign from his neighbor’s property but properly removed it from his own property.

The Commission found that the judge’s testimony was not credible.

Judicial Campaign-Related Decisions

Public Admonition of Metzger (Texas Commission on Judicial Conduct Nov. 12, 2020).

The judge did not timely respond to the Commission's written inquiries regarding the matter, and he was disciplined for that too.



Judicial Campaign-Related Decisions

Public Warning of Woodard (Texas Commission on Judicial Conduct Oct. 28, 2020).

Judge Lisa Woodard was publicly warned for her Facebook activities in support of a friend's campaign for city council and a court clerk's acceptance of a donation to her campaign at the courthouse.



Judicial Campaign-Related Decisions

Public Warning of Woodard (Texas Commission on Judicial Conduct Oct. 28, 2020).

- During Kelly Gray's re-election campaign, the judge shared a post and photograph of Gray on her Facebook page and stated "re-elect Kelly Allen Gray! Fort Worth City Council."
- The judge explained that she had not intended to endorse Gray but to show her support as a friend.

Judicial Campaign-Related Decisions

Public Warning of Woodard (Texas Commission on Judicial Conduct Oct. 28, 2020).

Held: Judge Woodard was publicly warned and ordered to undergo education for:

(1) her social media activities which could be viewed as endorsing a nonjudicial candidate for public office, and

(2) accepting a campaign contribution at the courthouse which could convey the impression that others were in a position to influence her.

Judicial Campaign-Related Decisions

In the Matter of Quinn (Minn. Board of Judicial Standards Mar. 9, 2021).

Judge Matthew Quinn was publicly reprimanded for posts and reactions to posts on his Facebook page endorsing and opposing candidates for the presidency.

- Posted photographs of himself wearing a MAGA hat and piloting a boat displaying Trump flags in a “Trump Boat Parade” on the Mississippi River.

Judicial Campaign-Related Decisions

In the Matter of Quinn (Minn. Board of Judicial Standards Mar. 9, 2021).



- Posted “here we are” with screenshots of pictures of himself in the boat parade published in a local newspaper.

Judicial Campaign-Related Decisions

In the Matter of Quinn (Minn. Board of Judicial Standards Mar. 9, 2021).

- Commented “Trump will steam roll this election. Those whose eyes are closed move their mouths more to make up for their insecurities.”
- “Liked” a post that said “I will never support Biden ever . . . he’s been in politics for 49 years . . . no wonder why the U.S. has so many problems.”
- “Liked” a post that said “Joe Biden is a disgrace . . . wake up people do we need someone like this as president?”

Judicial Campaign-Related Decisions

In the Matter of Quinn (Minn. Board of Judicial Standards Mar. 9, 2021).

- Commented “Dipshit Biden. Oops.”

Held: Judge Quinn’s Facebook activities (1) improperly endorsed and opposed candidates for public office and (2) abused the prestige of judicial office to advance the personal or economic interests of others, i.e., participation in the Trump Boat Parade was a “flagrant example.”

Judicial Campaign-Related Decisions

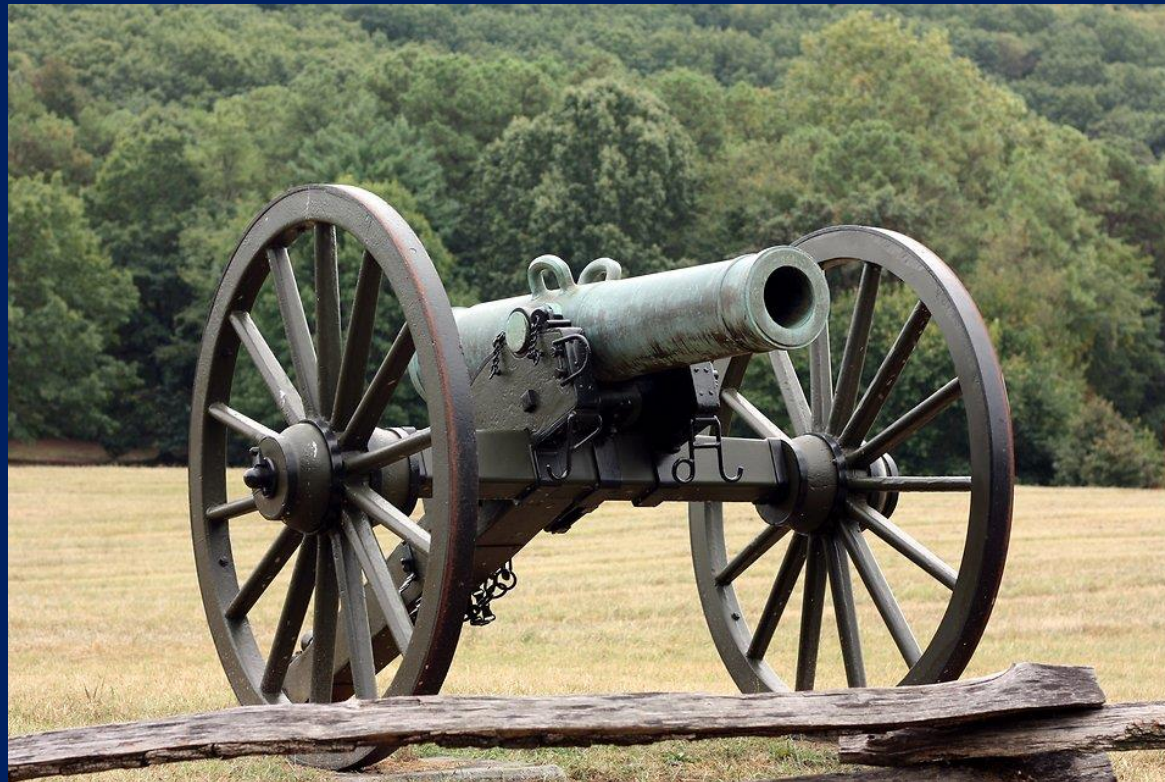
In the Matter of Sean Hatfield (Kansas Commission on Judicial Conduct June 4, 2021)



“Hi everybody! Watson here! I don’t really fill this seat well but ya know who does? My human Judge Sean Hatfield. Thank you for supporting him! You can continue to support my human by making sure you’re registered to vote. . . . You can find everything you need at this website! (It said it had cookies but I didn’t see any - how rude!”)

Use of Social Media

**“Lawyers who choose to post on social media must realize they are handling live ammunition.”
In Re Sitton, 618 S.W.3d 288 (Tenn. 2021).**



Use of Social Media

Rule: Judicial candidates may “speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, **websites**, or other campaign literature.” Rule 4.2

Judges, like anyone else, can use social media; but unlike other people judges have constraints.

Rule: Judges are prohibited from engaging in *personal activities* that would appear to a reasonable person to undermine the judge’s independence, integrity, and impartiality. Rule 3.1

Use of Social Media

Best practices: Do not

- investigate the facts using social media
- comment about a case, litigant, lawyer, witness, law firm, on social media
- “friend” a lawyer who appears before you (alternatively “friend” all lawyers)
- “friend” a litigant
- advance the economic or personal interests of another (i.e., praise/criticize a business, law firm, etc.)

Use of Social Media

Best practices: Do not

- use a profile picture in your judicial robe
- get political
- assume that using a pseudonym will prevent someone from discovering the sender is a judge
- assume private electronic communications will remain private

Use of Social Media

Guiding principle: While judges may utilize social media, they must “at all times remain conscious of the solemn duties they may later be called upon to perform.” *State v. Madden*, 2014 WL 931031, at *8 (Tenn. Crim. App. March 11, 2014).

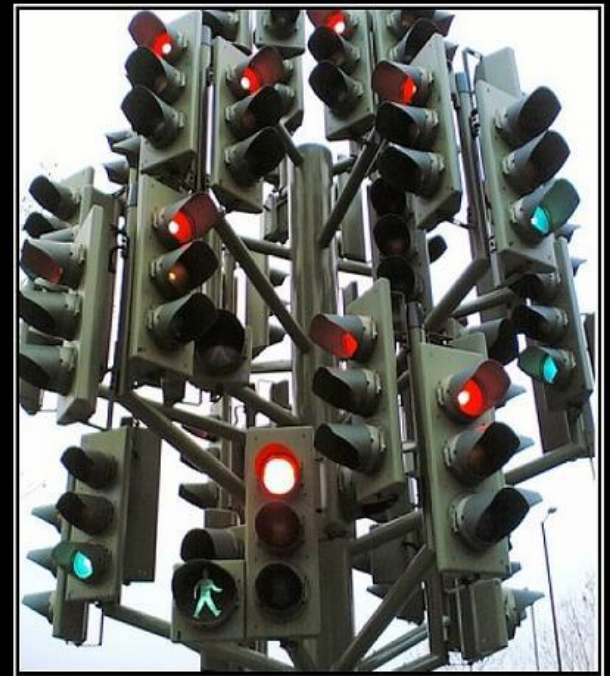
Don't say anything online that you wouldn't want plastered on a billboard with your face on it.

Questions?

Tennessee Judicial Ethics Committee

Consists of seven judges appointed by the Supreme Court.

Issues Formal Ethics Opinions on proper professional conduct when requested to do so by a judge.



ANALYSIS PARALYSIS

Then there's always the coin toss method

Questions?

Tennessee Judicial Ethics Committee

“A Formal Ethics Opinion shall constitute a body of principles and objectives upon which judges can rely for guidance.” Rule 10A.6

**An opinion may not be issued in a matter that is the subject of a pending disciplinary proceeding.
Rule 10A.4**



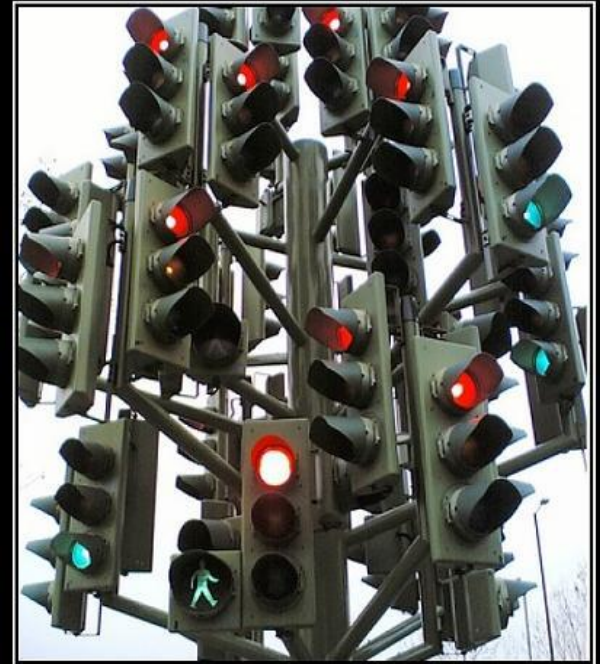
ANALYSIS PARALYSIS

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Questions?

Tennessee Judicial Ethics Committee

- Chair is Judge Ross Dyer
(901) 537-2978
- AOC liaison is Rachel Harmon
(615) 741-2687



ANALYSIS PARALYSIS

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