

JUDICIAL ELECTIONS IN TENNESSEE

ELECTION CODE REQUIREMENTS

APPELLATE JUDGES

- I. **Qualification:** Written declaration of candidacy must be filed with State Election Commission by noon on January 6, 2022.
- II. **Withdrawal:** Notice of withdrawal must be filed with State Election Commission by noon on January 13, 2022.

TRIAL JUDGES

- I. **Qualification**
 - For May primary - qualifying deadline is noon on February 17, 2022.
 - If no May primary is called, then deadline for filing is noon on April 7, 2022.
 - Primary Election Day - May 3, 2022
 - General Election Day - August 4, 2022
- II. **Petitions**
 - Nominating petition is signed by candidate and 25 or more registered voters.
 - Petition must include name, signature and address of each registered voter in order to be counted.
 - Judicial candidates required to sign certifying that they are licensed to practice law in this state. *See also* Tenn. Code Ann. § 2-5-106.
 - No original petition accepted where any of the items required by (b)(1) and (2) (name, date, and office) have been photocopied.
 - Nominating petitions are only issued by county election commission; petitions are not issued more than 60 days before the qualifying deadline (approximately December 20, 2021).

- Multi-county districts: requires nominating petition to be filed with administrator of County Election Commission in county in which candidate is a resident and file certified duplicates with the administrators of the County Election Commissions in all counties wholly or partially within the area (judicial district) served by the office which the candidate seeks.
- If no county primary: Tenn. Code Ann. § 2-13-203 governs the process when political parties nominate by method other than primary - essentially it allows statewide and recognized minor parties to nominate candidates by any method permitted under party rules and requires Chairman of party to timely inform County Election Commission of the party's nominee.

III. **Withdrawal** - Tenn. Code Ann. § 2-5-204(b)(1)

Request to withdraw must be filed no later than noon on the 7th day after the qualifying deadline.

IV. **Miscellaneous Provisions**

- **Prohibitions** - Tenn. Code Ann. § 2-5-101(f)
 - Cannot qualify a candidate in primary election with more than 1 political party;
 - Cannot qualify as an independent candidate and as a primary candidate for the same office;
 - Cannot submit qualifying petition, or otherwise qualify and be nominated or appear on the ballot for more than one state office, constitutional county office or any other county-wide office in any election or primary.

- **Tenn. Const. Art. II, § 26**

“No judge of any Court of law or equity . . . shall have a seat in the General Assembly nor shall any person in this State hold more than one lucrative office at the same time;.”

- **Write-In Candidates** - Tenn. Code Ann. § 2-7-133(i) and Tenn. Code Ann. § 2-8-113(c)
 - Required to file notice in each county of the district no later than noon 50 days before primary or general election in order to have any write-in votes counted;
 - To receive party nomination as a write-in candidate, must receive write-in votes equal to or greater than 5% of the total number of registered voters of the district - unless there are candidate for the office listed on official ballot;
 - Candidate defeated in primary election cannot run as a write-in candidate in general election

- **Ballot** - Tenn. Code Ann. § 2-5-204(c)
 - If 4 members of county election commission find that a candidate's name on the ballot would be confusing or misleading, can require further identifying information or can omit any confusing or misleading portion of the name. If candidate's name will appear on ballot in more than 1 county, state election commission shall make determination.
 - No titles may be printed with candidate's name.
 - If candidate dies within 40 days before election, name shall remain on the ballot and if deceased candidate wins, then a vacancy exists.

CAMPAIGN FINANCE REQUIREMENTS

I. Appointment of Political Treasurer

- Candidate and each political campaign committee must file form certifying name and address of candidate's political treasurer to Registry, before candidate or commission may receive a contribution or make an expenditure.
- Statement must include office candidate is seeking and the year of the election.
- If candidate appoints someone other than candidate to be political treasurer, candidate must co-sign any statements required to be filed under this Act.
- Must notify Registry of any changes in Appointment of Political Treasurer.

II. Campaign Disclosure Reports

- **Reports due in 2021:**
 - Mid-Year Supplemental - due July 15, 2021 - begins with the date of the first contribution or first expenditure, whichever occurred earlier, and extend through June 30, 2021)
 - Year-end Supplemental - due January 31, 2022 - covers the 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, 2022 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 a candidate in the August general 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

- **10-day Filing Requirements**

- During period from 12:00 midnight of 10th day prior to election through 12:00 midnight of such election, each candidate or PAC shall, by telegram, fax, hand delivery or overnight mail, file report which contains full name and address of each person from whom contribution, loan or transfer of funds is received and date of receipt if: (1) \$5000 or more for state public office; (2) \$2500 for local public office;
- If in-kind contribution, shall include brief description and valuation of such contribution;
- If loan, shall contain name and address of lender, recipient of proceeds of loan and name of any person who makes any type of security agreement;
- Report must be filed by end of next business day following day on which contribution to be reported as received (which means date when contribution was received by candidate, candidate's committee or treasurer).

- **Contents of Statements**

Short Form: includes statement that neither contributions received nor expenditures made during reporting period exceeded \$1000

Long Form: includes the following information:

- List of all contributions received, including full name, address, occupation and employer of each person who contributed total of more than \$100 and amount contributed during the reporting period.
 - *Required to show best efforts to obtain full name, address, occupation and employer - which includes notifying contributor by first class mail that further information is required under state law or by including on written solicitation a clear request for this information and by accurately stating that such information is required by state law.*
 - Statement shall also include date of receipt of each contribution, i.e., the date when the contribution was received by the candidate, candidate's committee, or treasurer.
 - Statement shall list as a single item total amount of contributions of \$100 or less.
 - Statement shall include list of expenditures made, including full name and address of each person to whom total amount of more than \$100 was paid; total amount paid and purpose of payment which shall clearly identify that it is an allowable expenditure under § 2-10-114.
 - Credit card purchases to separate vendors disclosed as separate expenditures.
 - Payments to a person as reimbursement for expenditures made by person on behalf of candidate or committee shall be disclosed as payments to the vendor who provided the item or service - Tenn. Code Ann. § 2-10-107(f).
- **In-Kind Contributions**
 - Contribution for which no monetary consideration is received - required to be listed separate and excluded from list of monetary contributions and expenditures.
 - In-kind contributions of value of \$100 or less can be listed together as single item.
 - In-kind contributions of value of more than \$100, shall list category of the contribution, name, address occupation and employer of each person who contributed it.
 - Requires similar "best efforts" to obtain information about contributor.
 - Statement shall also include date of receipt of in-kind contributions.

- In-kind contribution deemed to be made and reportable when contribution is made or performed, not when cost is billed or paid. Actual cost of contribution is to be reported; if actual cost not known, then an estimate of the cost shall be reported. If actual cost is different from estimate costs, such amount shall be amended or adjusted on later report.
- Registry required to promulgate rules enumerating a non-exclusive listing of examples of various categories of in-kind contributions; provide copy of such rules to each member of General Assembly and each qualified candidate for state office.
- **Supplemental semi-annual statements** - if final statement shows unexpended balance, continuing debts and obligations or expenditure deficit - required to file a supplemental semiannual statement until account shows no unexpended balance, continuing debts and obligations, expenditures or deficit.
- **Closing Statement** - any candidate who wants to close out a campaign account may do so at any time by filing statement to such effect as long as statement on its face shows that there is no unexpended balance, continuing debts or obligations or deficit.
- **Digital Currency**
 1. Allowed to accept digital currency as a contribution - considered a monetary contribution with the value being the market value at the time the contribution is received.
 2. Any increase in value shall be reported as interest on statements.
 3. Candidate or committee must sell digital currency and deposit proceeds into campaign account before spending funds.

III. Use of Campaign Funds

- **Allocation of *unexpended* campaign funds**
 1. May be retained or transferred to any campaign fund
 2. May be returned to contributors, in accordance with a formula or plan specified in disclosure of allocation
 3. May be distributed to executive committee of candidate's political party

4. May be deposited in volunteer public education trust fund established under title 49, chapter 3, part 4
 5. May be distributed to organization described in 26 USC § 170(c) (state, political subdivision, “non-profit” corporation, trust, community chest fund or foundation, post or organization of war veterans, or any auxiliary unit, society, trust or foundation of such post or organization, domestic fraternal society order, association or lodge, or “non-profit” cemetery company)
 6. May be distributed to a 501(c)(3) or (c)(4) organization
 7. May be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder - may include but not limited to cost of advertisements, membership fees and donations to community causes
 8. May be distribution to any institution of public or private education in the state for purpose of supplement funds of an existing scholarship trust or program
- **Personal use prohibited**
 1. 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.”
 2. “Personal use” - 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 § 61
 3. Expenditures specifically prohibited:
 - a. Any residential or household items, supplies or expenditures, including mortgage, rent or utility payments for any part of any personal residence of candidate or officeholder or a member of candidate or officeholders’ family
 - b. Mortgage, rent or utility payments for any part of any nonresidential property that is owned by a candidate or officeholder or a member of

candidate or officeholders' family and used for campaign purposes to extent payments exceed fair market value of property usage

- c. Funeral, cremation or burial expenses related to deaths within a candidate's or officeholder's family
- d. Clothing, other than items of de minimis value that are used in the campaign
- e. Tuition payments within a candidate's or officeholders' family other than those associated with training campaign staff or associated with an officeholder's duties
- f. Due, fees or gratuities at a country club, health club, or recreational facility unless they are part of a specific fundraising event that takes place on the organization's premises
- g. Salary payments to a member of a candidate's family unless member is provided bona fide services to the campaign. Any salary payment in excess of fair market value of services provided is a prohibited use.
- h. Admission to a sporting event, concert, theater, activity, charitable event or other form of entertainment unless an expense associated with legitimate campaign or officeholder activity where tickets to such event are provided to students attending schools, guests or constituents of candidate or officeholder or persons involved in candidate's or officeholders' campaign
- i. Payments for grooming or enhancing one's personal appearance unrelated to campaign activities
- j. Payment of any fines, fees or penalties assessed pursuant to chapter 10 or title 3 chapter 6

4. Violation is a Class 2 offense

- **Investment of Campaign Funds**

- 1. Campaign funds must be deposited and maintained in FDIC insured institution or NCUA insured credit union;

2. Any interest, dividends or income earned must be reported on disclosure report;
3. Any campaign 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 statute;
4. Any other investment of campaign funds is prohibited - and violation is subject to maximum civil penalty of not more than \$10,000 or 115% of the amount invested, whichever is greater.

IV. Contribution Limits - Tenn. Code Ann. § 2-10-302

Appellate Judges

- Individual - \$4,300
- Multicandidate PAC - \$12,700

Trial Judges

- Individual - \$1,600
- Multicandidate PAC - \$8,300

Other Limitations

- No candidate for statewide office shall accept in aggregate more than 50% of total contributions from multicandidate PACs.
- No candidate for state or local office shall accept in aggregate more than \$126,600 from multicandidate PACs.
- No candidate for statewide office shall accept in aggregate from political party PACs more than \$422,100; no candidate state or local office shall accept in aggregate more than \$33,900 from political party PACs.

Indirect Contributions

- Contributions made to PAC authorized by candidate to accept contributions on candidate's behalf considered to be contributions to candidate.

- Contributions made by PAC authorized by candidate to make expenditures on candidate's behalf considered contributions made by candidate
- Contributions made by a person, directly or indirectly, on behalf of particular candidate, including contributions in any way earmarked or otherwise directed through an intermediary or conduit to candidate, shall be treated as contributions from such person to candidate. Intermediary or conduit required to report original source and intended recipient of contribution
- All contributions made by affiliated PACs considered to have been made by single committee.
- Expenditures made in cooperation, consultation or concert with, or at request or suggestion of candidate, candidate's political campaign committee or their agents, shall be considered to be contribution to candidate. Note: financing of dissemination, distribution or republication in whole or in part of any broadcast or any written, graphic or other form of campaign materials prepared by candidate, candidate's political campaign committee or authorized agents shall be considered an expenditure.
- Corporate Contributions -there are no prohibitions against direct contributions from corporations.

Loans - limitations do not apply to loans that meet following 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. If written instrument does not specify portion of loan for which endorser or guarantor is liable, each is considered to have made a contribution in that proportion of unpaid balance that each bears to total number of endorsers or guarantors.

Political PAC Contributions

Contributions does not include the following:

- Payment of costs of preparation, display or mailing or other distribution of printed slate cards, sample ballot or other printed listing of 3 or more candidates who are opposed for election (but does not include listings made on broadcasting stations or in newspapers, magazines, and similar types of general public political advertising such as billboards);
- Payment of costs of voter registration and get-out-the-vote activities unless made on behalf of clearly identified candidate and payment can be directly attributed to that candidate;
- Expenditures for rent, personnel, overhead, general administrative, fundraising and other day-to-day costs of party committee, unless made on behalf of clearly identified candidate and payment can be directly attributed to that candidate;
- Expenditures for education campaign seminars and training of campaign workers unless made on behalf of clearly identified candidate and payment can be directly attributed to that candidate.

Limitations on 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

- Tenn. Code Ann. § 2-17-105 - deadline for filing election contest is 5 days after certification of election results (which is to be done by the third Monday after the election).
- Tenn. Code Ann. § 2-17-106 - trial of election contest is to be held not less than 15 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.
- Tenn. Code Ann. § 2-17-110(b) - total votes shown on voting machines shall be conclusive unless court finds reason to believe that the vote shown on the machine is not accurate.
- Tenn. Code Ann. § 2-17-112(a) - after hearing the case, the court shall give judgment either:
 - ❖ Confirming the election
 - ❖ Declaring the election void
 - ❖ Declaring a tie between persons who have the same number of votes if it appears that two or more persons who have the same number of votes have, or would have had if the ballots intended for them and illegally rejected had been received, the highest number of votes for the office; or
 - ❖ Declaring a person duly elected if it appears that such person received or would have received the highest number of votes had the ballots intended for such person and illegally rejected been received.

- Tenn. Code Ann. § 2-17-115 - costs and attorneys' fees shall be assessed against contestant or appellant if contest or appeal if maliciously or frivolously prosecuted.

CODE OF JUDICIAL CONDUCT REQUIREMENTS (Tenn. Sup. Ct. R. 10)

A. Rule 4.1 - except as otherwise permitted, a judge or judicial candidate shall not:

- Act as a leader in, or hold an office in, a political organization
- Make speeches on behalf of a political organization
- Publicly endorse or oppose a candidate for any public office
- Solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate for public office except from the judge's or judicial candidate's family
- Personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4
- Use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others
- Use court staff, facilities, or other court resources in a campaign for judicial office
- Knowingly or with reckless disregard for the truth, make any false or misleading statement
- 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
- 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.

A judge or judicial candidate shall also take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any of these prohibited activities.

II. Rule 4.2 - A judge or judicial candidate in a partisan, nonpartisan, or retention public election shall:

- Act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary
- Comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction
- Review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by RJC 4.4, before their dissemination, and
- Take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in RJC 4.4, that the candidate is prohibited from doing by RJC 4.1

Candidates for elective judicial office may, unless prohibited by law, and not earlier than 365 days before the first applicable primary election, caucus, or general or retention election:

- Establish a campaign committee pursuant to RJC 4.4
- Speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature
- Seek, accept, or use endorsements from any person or organization

Judge or judicial candidate may, except as prohibited by law, at any time:

- Purchase tickets for and attend political gatherings, subject to the limitations in Tenn. Code Ann. § 2-10-301, *et seq.*
- Identify himself or herself as a member of a political party

- Contribute to a political organization or a political candidate in an amount up to the limitations provided in Tenn. Code Ann. § 2-10-301, *et seq.*; and
- Publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office

Judges and judicial candidates for judicial office in a partisan, nonpartisan, or retention election may group themselves into slates or other alliances to conduct their campaigns more effectively, including the establishment of a joint campaign committee pursuant to RJC 4.4.

III. Rule 4.4 - Campaign Committees

- A. Judicial candidates subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with application provisions of the Code and other applicable law.
- B. A judicial candidate subject to public election shall direct his or her campaign committee:
 1. To solicit and accept only such campaign contributions allowable by law
 2. Not to solicit or accept contributions for a candidate's current campaign more than 365 days before an election, nor more than 90 days after the last election in which the candidate participates; and
 3. To comply with all applicable requirements for disclosure and divestiture of campaign contributions as required by law.