

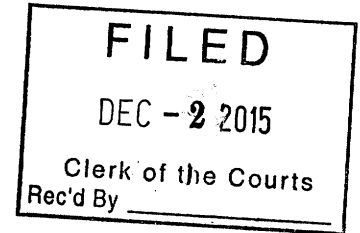
IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE

IN RE PROPOSED AMENDMENTS TO RULE 10,  
RULES OF THE TENNESSEE SUPREME COURT  
(CODE OF JUDICIAL CONDUCT)

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No. ADM2015-01092

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**ORDER**

On February 25, 2011, the Tennessee Bar Association filed a petition asking the Court to amend Rule 10, Rules of the Tennessee Supreme Court, and thereby adopt a revised Code of Judicial Conduct (“Code”). The TBA’s petition included as exhibits the TBA’s proposed revision of Rule 10 and related proposed amendments to other court rules. On March 11, 2011, the Court filed an order soliciting public comments on the TBA’s petition and proposed rules amendments. After considering the written comments received during the public-comment period, the Court filed an order on January 4, 2012, granting the TBA’s petition and adopting a revised Code of Judicial Conduct (and related rules amendments), effective July 1, 2012. The Court filed additional orders on June 13, 2012, June 26, 2012, and June 29, 2012, making modifications and corrections to the revised Code previously adopted on January 4, 2012. As modified and corrected, the revised Code of Judicial Conduct took effect on July 1, 2012.

During the time the TBA was developing its proposed revision of the Code of Judicial Conduct, the Tennessee Judicial Conference and the Tennessee Trial Judges Association formed a Joint Committee (“Joint Committee”) to review the TBA’s draft revision of the Code. The Joint Committee submitted a report to the TBA’s task force that was then drafting the proposed revision of the Code, and the Joint Committee issued a second report in the fall of 2011, during the public-comment period on the TBA’s petition. In the fall of 2014, the Tennessee Judicial Conference reconstituted its prior committee to review the revised Code in light of experience over the two years since the revised Code was adopted and to make recommendations as to any proposed amendments

to the revised Code.

On June 8, 2015, the Tennessee Judicial Conference transmitted to Chief Justice Sharon G. Lee the Joint Committee's "Report to the Tennessee Judicial Conference on Revisions to the Tennessee Code of Judicial Conduct." The Supreme Court decided to treat the Joint Committee's Report as a petition to amend Rule 10 (Code of Judicial Conduct). On June 15, 2015, the Court filed an order soliciting public comments on the proposed amendments set out in the Report. The comment period expired August 14, 2015.

After due consideration of the Joint Committee's Report and the written comments received during the public-comment period, the Court hereby amends Rule 10 as set out in the attached appendix. The amendments shall take effect upon the filing of this order.

The Court expresses its gratitude to the members of the Joint Committee of the Tennessee Judicial Conference and the Tennessee Trial Judges Association for their diligent work in preparing the Report that was submitted to the Court. Although the Court did not adopt all of the amendments proposed in their Report, we sincerely appreciate their thoughtful presentation of the issues raised therein. The Court also expresses its thanks to the individuals and organizations submitting written comments during the public-comment period.

PER CURIAM

## *APPENDIX*

[Tenn. Sup. Ct. R. 10, Canon 4, is amended as set out below, effective upon the filing of this Order; deletions are indicated by overstriking, and additions are indicated by underlining:]

**CANON 4. A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.**

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

(A) Except as permitted by law, or by RJC's 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate for public office; except that a judge or judicial candidate may solicit funds for a political organization or candidate for public office from a member of the judge's family or a member of the judicial candidate's family;

(5) [intentionally omitted];

(6) [intentionally omitted];

(7) [intentionally omitted];

(8) personally solicit or accept campaign contributions other than through a campaign committee authorized by RJC 4.4;

(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

(10) use court staff, facilities, or other court resources in a campaign for judicial office;

(11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(12) 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

(13) 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).

**Comment.**

*General Considerations*

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct. [Additionally, the Rules of Professional Conduct applicable to lawyers provide that “\[a\] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.”](#) Tenn. Sup. Ct. R. 8, RPC 8.2(b).

*Participation in Political Activities*

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by

paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit judges and judicial candidates from campaigning on their own behalf; [or from endorsing or opposing judges or judicial candidates in a partisan, nonpartisan, or retention election for judicial office. See Rules 4.2\(B\)\(2\), 4.2\(C\)\(4\), and 4.2\(D\).](#)

[4A] A judge's or a judicial candidate's attendance at a dinner or other event sponsored by a political organization or a candidate for public office does not, by itself, constitute a public endorsement of a candidate for purposes of (A)(3).

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

[6A] Paragraph (A)(4) prohibits judges and judicial candidates from soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate for public office, but the rule does not prohibit a judge or judicial candidate from making contributions to his or her own election campaign. [Additionally, paragraph \(A\)\(4\) allows a judge or judicial candidate to solicit funds for a political organization or candidate for public office from a member of the judge's family or a member of the judicial candidate's family.](#)

[6B] RJC 4.1(A)(10) prohibits a judge from using court staff in a campaign for judicial office. The rule does not preclude voluntary involvement of court staff in campaign activities during non-working hours.

*Statements and Comments Made ~~d~~During a Campaign for Judicial Office*

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their

committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

*Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office*

[11] 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. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in RJC 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal

views.

[14] 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.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See RJC 2.11.

**Rule 4.2. Political and Campaign Activities of Judges and Judicial Candidates in Public Elections.**

(A) A judge or judicial candidate in a partisan, nonpartisan, or retention ~~public~~-election 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 of this jurisdiction;

(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 RJC 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 RJC 4.4, that the candidate is prohibited from doing by

RJC 4.1.

(B)(1) A candidate for elective judicial office may, unless prohibited by law, and not earlier than 180365 days before the first applicable primary election, caucus, or general or retention election;:

(1) establish a campaign committee pursuant to the provisions of RJC 4.4.

(2) (6) [Intentionally (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) [intentionally omitted];

(4) [intentionally omitted];

(5) seek, accept, or use endorsements from any person or organization; and

(6) [intentionally omitted].

(C) A judge or judicial candidate may, except as prohibited by law, at any time

(1) purchase tickets for and attend political gatherings, subject to the limitations in (C)(3);

(2) identify himself or herself as a member of a political party; ~~and~~

(3) 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

(4) publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office.

(D) Judges and judicial candidates running 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.

**Comment.**



[1] Paragraphs (B), (C), and (D) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by RJC 4.1.

[1A] It is possible for some judicial offices to be subject to a primary and general election. It is possible for some counties to have a partisan primary for a particular office whereas another county might only have a nonpartisan general election for the same office. It is also conceivable that the decision as to whether or not to hold a primary might not be made until within the 180-day period before the primary. Therefore, for the sake of uniformity, the 180-day period for all judicial offices that can possibly be subject to a primary election, whether or not there actually is a primary, shall begin to run from the date the primary would be held.

[2] Paragraph (C) provides a limited exception to the restrictions imposed by RJC 4.1 and permits judges or judicial candidates at any time to be involved in limited political activity. Note that Paragraph (C) is equally applicable to judges or judicial candidates subject to partisan, non-partisan, and retention elections. Paragraph (C)(3) allows a judge or judicial candidate to contribute to a political organization or candidate in an amount not to exceed the contribution limits provided in Tenn. Code Ann. § 2-10-301, et seq. This limitation includes the purchase of tickets set out in Paragraph (C)(1).

[2A] Paragraph (C)(4) allows a judge or judicial candidate to “publicly endorse or oppose judges or judicial candidates in a partisan, nonpartisan, or retention election for any judicial office.” The term “judicial office” refers only to an elected judgeship; paragraph (C)(4) does not allow a judge or judicial candidate to publicly endorse or oppose candidates for other elected (non-judge) positions within the judicial system, such as elected court clerks, district attorneys general, and district public defenders.

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] [Intentionally omitted]

[5] [Intentionally omitted]

[6] [Intentionally omitted]

[7] [Intentionally omitted]

[7A] Paragraph (D) provides that judges and judicial candidates running for judicial office in partisan, nonpartisan, or retention elections may group themselves into slates or other alliances

[to conduct their campaigns more effectively.](#)

[8] Compliance with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction includes, but is not limited to, the provisions of Tennessee Code Annotated sections 2-10-101 et seq., the Campaign Financial Disclosure Act, and Tennessee Code Annotated sections 2-10-301 et seq., the Campaign Contribution Limits Act.

#### **Rule 4.3. Activities of Candidates for Appointive Judicial Office.**

A candidate for appointment to judicial office may:

(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization.

#### **Comment.**

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See RJC 4.1(A)(13).

#### **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.

(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 ~~one hundred eighty (180)~~[365](#) days before an election (see RJC 4.2 Comment [1A] as to the calculation of this time period), nor more than ninety (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. ~~Tennessee law requires, for example, that a judicial candidate personally file campaign finance reports.~~

**Comment.**

[1] Judges and judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See RJC 4.1(A)(8).

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees. ~~Tennessee law requires, for example, that a judicial candidate file and swear or affirm to the truth of contents of campaign disclosure statements. Required information includes the identity of contributors who contributed more than one hundred dollars, as well as the amounts of their contributions. See, e.g., Tenn. Code Ann. § 2-10-105.~~

~~[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are allowable by law. The campaign committee may receive a contribution from a lawyer not to exceed the amount authorized by law. More specifically, Tennessee Code Annotated sections 2-10-301 et seq. set the campaign contribution limits applicable to judicial candidates. The candidate should instruct the campaign committee to be cautious in connection with contributions from parties with pending litigation or those in managerial positions with parties with pending litigation, assuming the committee is aware that the contribution is from such a person. Such contributions could create grounds for disqualification if the candidate is elected to judicial office. See RJC 2.11. There is no requirement that the judicial candidate advise the committee of pending litigation.~~

~~[3] [Intentionally omitted]~~

~~[4] RJC 4.2(D) provides that judges and judicial candidates who are running 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.” In such circumstances, and to the extent permitted by other law, the joint campaign committee may solicit and accept campaign contributions, manage the expenditure of campaign funds (including the establishment of a joint campaign bank account), and generally conduct a joint campaign on behalf of the group of aligned judges and judicial candidates.~~

**Rule 4.5. ~~Activities of Judges Who Become and Judicial Candidates for Seeking~~ Nonjudicial Office.**

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

(C) No judicial candidate may also simultaneously be a candidate for an elected nonjudicial position.

**Comment.**

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate. For the same reasons, paragraph (C) precludes a person who is not already a judge from simultaneously being a candidate for an elected judicial position and an elected nonjudicial position.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

*[end of Appendix]*