

Judicial Campaign Ethics

2014
Handbook



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Dear Judges and Judicial Candidates:

The 2014 judicial campaign season is well underway. On behalf of the Circuit and District Judges Education Committees and in conjunction with the Kentucky Supreme Court, we enclose the following information for your reference.

The judicial election landscape is constantly changing. The impact of *The Carey v. Wolnitzek* opinion has resulted in relatively recent changes to Ethical rules that govern both sitting judges and judicial candidates. It behooves all judicial candidates to be familiar with the opinion and the modifications to the rules.

While no reference volume could easily contain all of the relevant information necessary to prepare for and conduct a demanding judicial campaign, we hope that the Judicial Campaign Ethics Handbook information is helpful.

To reference the Judicial Campaign Ethic Handbook, visit the Kentucky Court of Justice website at, <http://courts.ky.gov/Pages/default.aspx>, scroll to the bottom of the page, under Helpful Links, click on Judicial Campaign Ethic Handbook.

Should you have any questions, we urge you to direct your inquiries in a timely fashion to the responsible agency.

Sincerely,

David A. Tapp, Chair, Circuit Judges Education Committee

Karen Thomas, Chair, District Judges Education Committee

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SCR 3.130(8.2) Judicial and legal officials

Currentness

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

SUPREME COURT COMMENTARY

1989:

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Baldwin's Kentucky Revised Statutes Annotated [Currentness](#)

Rules of the Supreme Court

→ IV Judicial Conduct Commission ([Refs & Annos](#))

→ **SCR 4.000 Scope**

This Part IV of these rules applies to all proceedings before the Judicial Conduct Commission involving the discipline, retirement or removal of justices of the Supreme Court and judges of the Court of Appeals, circuit court and district court, pursuant to [section 121 of the Constitution of Kentucky](#), as well as the disciplining of lawyers seeking judicial office who during their candidacy shall be deemed subject to the jurisdiction and discipline of the Commission.

→ **SCR 4.010 Definitions**

In Part IV of these rules, unless the context or subject-matter otherwise requires:

- (a) “Commission” means the Kentucky Judicial Conduct Commission.
- (b) “Court of Justice” means the Supreme Court, Court of Appeals, circuit court and district court.
- (c) “Judge” means any judge or justice of the Court of Justice or other officer of the Court of Justice performing judicial functions. In addition, where context so requires, the term judge shall include lawyer or layperson subject to the jurisdiction of the Commission.
- (d) “Chair” includes the acting chair or vice-chair.
- (e) “Counsel” means the lawyer designated by the Commission to gather and present evidence before the Commission with respect to the charges against a judge.
- (f) “Mail” includes but is not limited to registered and certified mail.

→ **SCR 4.020 Jurisdiction**

(1) Commission shall have authority:

- (a) To order a temporary or permanent retirement of any judge whom it finds to be suffering from a mental or physical disability that seriously interferes with the performance of his duties, and to suspend temporarily from the

performance of his duties, without affecting his pay status, any judge (i) against whom there is pending in any court of the United States an indictment or information charging him with a crime punishable as a felony, or (ii) after notice and an opportunity to be heard, and upon a finding that it will be in the best interest of justice that he be suspended from acting in his official capacity as a judge until final adjudication of the complaint, any judge against whom formal proceedings have been initiated under Rule 4.180.

(b) To impose the sanctions, separately or collectively of (1) admonition, private reprimand, public reprimand or censure; (2) suspension without pay or removal or retirement from judicial office, upon any judge of the Court of Justice or lawyer while a candidate for judicial office, who after notice and hearing the Commission finds guilty of any one or more of the following:

(i) Misconduct in office.

(ii) Persistent failure to perform his duties.

(iii) Incompetence.

(iv) Habitual intemperance.

(v) Violation of The Code of Judicial Conduct, Rule 4.300.

(vi) Any willful refusal or persistent failure to conform to official policies and directives adopted by the Supreme Court and issued by the Chief Justice in his constitutional capacity as Chief Executive Officer of the Court of Justice.

(vii) Conviction of a crime punishable as a felony.

(c) After notice and hearing, to remove a judge whom it finds to lack the constitutional and statutory qualifications for the judgeship in question.

(d) To refer any judge of the Court of Justice or lawyer while a candidate for judicial office, after notice and hearing found by the Commission to be guilty of misconduct, to the Kentucky Bar Association for possible suspension or disbarment from the practice of law.

(2) Any erroneous decision made in good faith shall not be subject to the jurisdiction of the Commission.

→ **SCR 4.025 Authority of commission in certain situations**

(1) The Commission shall have the authority set out in [SCR 4.020](#) without regard to separation of a judge from office or defeat of a candidate in an election, except as specifically limited in [SCR 4.000](#) to [SCR 4.300](#).

(2) For any violation related to campaign conduct in a primary or general election, the authority of the Commission to take action shall be barred unless notice of preliminary investigation pursuant to [SCR 4.170](#) has been issued by the Commission within 180 days of the date of the general election following the campaign as to which the conduct relates.

(3) For any violation other than a campaign violation, the authority of the Commission to take action against a judge who has left office shall be barred unless notice of preliminary investigation pursuant to [SCR 4.170](#) has been issued within 180 days after the date the judge leaves office.

(4) Nothing in [SCR 4.000](#) to [4.300](#) shall bar proceedings against sitting judges who have left judicial office after a prior term of office concerning conduct not previously adjudicated by the Commission.

→ **SCR 4.030 Powers of commission**

As provided in [KRS 34.330](#), the commission may administer oaths, take testimony under oath, compel the attendance of witnesses, and compel the production of records and other evidence. It may also order the judge to undergo a physical or mental examination in appropriate cases.

→ **SCR 4.040 Court of Appeals member**

The Court of Appeals shall elect one of its judges as its representative on the commission in accordance with procedures to be established by the chief judge.

→ **SCR 4.050 Circuit court member**

(1) Nominating ballot.

The administrative director of the courts shall send to each circuit judge a nominating ballot on which shall be listed in alphabetical order the names of all circuit judges together with instructions to vote for one nominee and to return the ballot by a certain named date. Subject to the provisions of paragraph (3) of this rule regarding a tie vote, the two persons receiving the highest number of votes shall be nominees.

(2) Second ballot.

The names of the nominees shall be placed in alphabetical order on a second ballot which shall be sent by the administrative director of the courts to all judges, with the same instructions as provided on the nominating ballot. Subject to paragraph (3) of this rule, the person receiving the highest number of votes shall be the circuit court representative on the commission.

(3) Tie vote.

If the winners of the nominating ballot or the second ballot cannot be determined because of a tie vote among the candidates, the election shall be determined by lot in such manner as the administrative director of the courts directs, in the presence of not less than three other persons.

→ **SCR 4.060 District court member**

The district court representative on the commission shall be elected by the judges of the district court in the same manner as the circuit court member.

→ **SCR 4.070 Bar association member**

The board of governors of the Kentucky Bar Association shall appoint a member of the bar as the bar representative on the commission in the same manner in which it makes other appointments.

→ **SCR 4.075 Alternate members**

At the time and in the same manner as the Court of Appeals, circuit court and district court members are elected, an alternate member for each shall be elected. At the time and in the same manner as the bar association member is appointed an alternate member shall be appointed. The alternate member shall serve on the commission during such time as the member disqualifies or is otherwise unable to serve or a vacancy exists.

→ **SCR 4.080 Vacancies**

When a judge ceases to be a judge of the class of court from which he was elected, or whenever any member of the commission becomes ineligible for membership thereon, his membership shall terminate. Elections to fill uncompleted terms shall be conducted in the same manner as provided herein for regular elections.

→ **SCR 4.090 Disqualification**

(1) Grounds. A member or alternate member shall disqualify from participation as a member in all matters in which the member has an interest, relationship or bias that would disqualify a judge in a judicial proceeding.

(2) Procedure.

(a) A party seeking disqualification of a member or alternate member shall file a verified motion with the executive secretary who shall forthwith transmit the motion to the challenged member.

(b) The challenged member shall promptly file with the Executive Secretary a written response stating whether the member recuses. The response may include explanation of the member's position.

(c) If a member refuses to recuse, the recusal issue shall be decided by majority vote of the other members of the Commission by written findings not later than the meeting next following the filing of the member's response to the motion to recuse.

(d) Upon disqualification of a member, the disqualified member's alternate shall serve. If there be no alternate for the disqualified member, the matter shall be determined by the remaining members of the Commission.

→ **SCR 4.095 Term of office: transitional provisions**

(1) The 4-year terms of office of all members and alternate members of the commission shall be deemed as having commenced on the first Monday in January of 1976 except for the district court member and alternate member, whose terms shall commence on the first Monday in January of 1978. Selection or appointment of the initial member shall be for the unexpired portions of the respective terms of office.

(2) Except for the district court member the commission shall be fully constituted by election or appointment of its members as soon as practicable after initial appointment of the members of the Court of Appeals. The initial district court member and alternate member and the initial Court of Appeals, circuit court and bar association alternate members shall be selected as soon as practicable after the first Monday in January of 1978.

(3) Pending selection of the initial district court member the commission shall exercise the powers and authorities conferred upon it by [section 121 of the Constitution](#) and by these rules, except that beginning on the first Monday in January of 1978 the district court membership, though temporarily vacant, shall be counted in determining what is a majority vote of the commission under [KRS 34.340](#) and Rule 4.120.

→ **SCR 4.100 Officers**

The members of the commission shall elect one of their number as chairman and one as vice-chairman, provided however that a judge member of the commission shall not be eligible to serve as chairman or vice-chairman. The commission shall employ an executive secretary and such other employees as the Chief Justice approves, subject to budgetary exigencies. The executive secretary shall have custody of its records.

→SCR 4.110 Counsel

The commission may request the attorney general to gather and present evidence before the commission and before the Supreme Court upon judicial review; or it may designate or employ any member of the Kentucky bar for that purpose.

→SCR 4.120 Quorum

A quorum shall be four members. The commission may act by majority vote of members present except in the suspension, retirement, censure or removal of a judge for good cause, when it must act by a majority of the full commission. Absence of a member or a vacancy upon the commission shall not invalidate its action.

→SCR 4.130 Confidentiality

All papers and information obtained by or on behalf of the Commission shall be confidential except as provided in this rule or by order of the Supreme Court.

(1) Following the procedure set forth in [SCR 4.170](#), upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission's internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(a) Following the procedure set forth in [SCR 4.170](#), upon filing of an answer to a notice of formal proceedings, or expiration of time for filing an answer, the notice and all subsequent pleadings filed with the Commission shall not be confidential, except that the Commission's internal papers such as investigative reports and staff memoranda, and similar matters, shall remain confidential and shall not be a part of the formal file.

(b) The Commission may reveal information to appropriate law enforcement authorities or to the judge under investigation that it believes is reasonable necessary in order to protect the public or the administration of justice.

(2) Hearings in formal proceedings shall be public, except that the Commission shall deliberate in executive session in reaching any decision involved in such hearings.

(3) The Commission may on its own initiative, and shall upon request of the director or Board of Governors of the Kentucky Bar Association, make available to the Kentucky Bar Association any of the Commission's records pertinent to a disciplinary matter or inquiry under investigation by the Commission or by the Association.

(4) Breach of confidentiality may be deemed contempt of court and grounds for removal of a member of the Commission and for discharge of any of its agents or employees.

→SCR 4.140 Privilege

The filing of papers with or the giving of testimony before the commission shall be privileged in any action for defamation. No other publication of such papers or proceedings shall be so privileged, except that the record filed by the commission in the Supreme Court shall continue to be privileged.

→SCR 4.150 Service of papers

Service of notices and other papers may be by personal service or by mail. Papers served on the judge shall be marked "Personal and Confidential."

→SCR 4.160 Civil rules apply

To the extent applicable and not inconsistent with these rules, the Rules of Civil Procedure shall apply to proceedings before the commission, except that the proof shall be by clear and convincing evidence.

→SCR 4.170 Complaint; preliminary investigation

(1) Upon its own motion or upon receiving a written complaint alleging facts indicating that there is probable cause for action concerning a judge, the Commission shall make a preliminary investigation to determine whether formal proceedings should be initiated.

(2) Notice of the investigation shall be given to the judge, and he shall be given an opportunity to appear informally before the commission. The name of the complainant shall not be included in the notice.

(3) If the commission concludes after its preliminary investigation that formal proceedings should not be initiated, it shall so inform the judge.

(4) After the preliminary investigation is completed and before formal proceedings are initiated under Rule 4.180, the Commission shall afford the judge under investigation an opportunity to examine all factual information, including the name of the complainant if relevant, and shall afford the judge an opportunity to furnish to the Commission any information the judge may desire bearing on the investigation.

(5) The Commission shall decide whether to initiate formal proceedings under [SCR 4.180](#) within 180 days of commencement of preliminary investigation, unless within such period or extension thereof the Commission for good cause shown and with the agreement of the judge extends such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.

→SCR 4.180 Formal proceedings

If the commission concludes that formal proceedings should be initiated, it shall notify the judge. He may file an

answer within 15 days after service of the notice. Upon the filing of his answer, or the expiration of time for so filing, the commission shall set a time and place for the hearing and shall give reasonable notice thereof to the judge.

→ **SCR 4.190 Amendments to notice or answer**

The notice or answer may be amended to conform to proof or to set forth additional facts, whether occurring before or after the commencement of the hearing. In case such an amendment is made, the judge shall be given reasonable time both to answer the amendment and to prepare and present his defense against the matters charged thereby.

→ **SCR 4.200 Extension of time**

The chairman of the commission may extend the time for filing an answer and for the commencement of a hearing before the commission.

→ **SCR 4.210 Procedural rights of judge**

(1) In proceedings involving his censure, retirement or removal, a judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, and other evidentiary matter.

(2) When a transcript of the testimony has been prepared at the expense of the commission, a copy thereof shall, upon request, be available for use by the judge and his counsel in connection with the proceedings. The judge shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings transcribed at the expense of the commission.

(3) Except as herein otherwise provided, whenever these rules provide for giving notice or sending any matter to the judge, such notice or matter shall be sent to the judge at his residence unless he requests otherwise, and a copy thereof shall be mailed to his counsel of record.

(4) If the judge is adjudged insane or incompetent, or if it appears to the commission at any time during the proceedings that he is not competent to act for himself, it shall appoint a guardian ad litem unless the judge has a committee who will represent him. In the appointment of such guardian ad litem, preference shall be given, whenever possible, to members of the judge's immediate family. The committee or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the committee or guardian ad litem.

→ **SCR 4.220 Hearing**

(1) At the time and place set for hearing, the commission shall proceed with the hearing whether or not the judge has filed an answer or appears at the hearing. Counsel shall present the case in support of the charges.

(2) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute grounds for censure, suspension, retirement or removal. The failure of the judge to testify in his own behalf or to submit to a medical examination requested by the commission may be considered, unless it appears that such failure was occasioned by circumstances beyond his control.

(3) In a hearing before the commission not less than five members shall be present when the evidence is produced.

→ **SCR 4.230 Reporter; transcript**

The proceedings shall be reported by a qualified court reporter or by mechanical means, but shall not be transcribed unless so directed by the commission or requested by the judge as provided in Rule 4.210(2).

→ **SCR 4.240 Evidence**

At a hearing before the commission legal evidence only shall be received, and oral evidence shall be taken only on oath or affirmation.

→ **SCR 4.250 Hearing additional evidence**

The commission may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least 10 days prior to the date of hearing.

→ **SCR 4.260 Commission findings; order**

(1) The commission shall make written findings of fact and conclusions of law which shall be filed with the record in the case.

(2) A certified copy of the commission's findings of fact, conclusions of law and final order shall be served on the judge immediately after entry.

(3) The Commission shall make final disposition in formal proceedings as provided in this section within 180 days of notice of such proceedings, except that within such period or extension thereof the Commission may for good cause extend such period for a period or periods not exceeding an additional 180 days. The judge shall be informed of such extensions.

→SCR 4.270 Commission orders

Commission orders shall become effective ten days after service on the judge unless he appeals therefrom within that time. Upon its effective date, a certified copy of an order of public censure, suspension, removal or retirement shall be given to appropriate persons such as the Chief Justice, the executive department for finance and administration and the judicial retirement board. Notice of a private reprimand shall not be given to any person other than the judge.

A judge who is retired for a permanent disability shall thereupon become eligible for retirement benefits under [KRS 21.345](#) to [KRS 21.455](#).

A judge who is placed on temporary retirement shall continue to draw full compensation the same as if he were on active duty, and for retirement purposes shall be considered as continuing in active service.

→SCR 4.280 Certification of commission order

Upon making a determination ordering the censure, suspension, retirement or removal of a judge, the commission shall promptly file a copy of the order certified by the chairman or secretary of the commission, together with the findings and conclusions and the record of the proceedings, in a permanent file.

→SCR 4.290 Judicial review

(1) To the extent applicable and not inconsistent with SCR 4, the Rules of Civil Procedure (CR) applicable to other types of proceedings shall apply to the judicial review of commission orders by the Supreme Court.

(2) A notice of appeal of the commission's final order shall be filed with the clerk of the Supreme Court within ten days after service of notice of the order upon the judge. A copy of the notice of appeal shall be served on the commission.

(3) The commission shall thereupon promptly transmit to the court the entire original record upon which the order is based, unless by stipulation of the commission and the judge an abbreviated or substitute record is agreed upon. A transcript of testimony shall not be included in the record unless designated by the commission or the judge, but may be ordered by the Supreme Court at any time.

(4) The judge shall file his brief within 20 days after the record is filed and the commission shall file its brief within 20 days thereafter. The time for filing of briefs may be extended by the court upon motion of either party.

(5) The court shall have power to affirm, modify or set aside in whole or in part the order of the commission, or to remand the action to the commission for further proceedings.

SCR 4.300. Kentucky Code of Judicial Conduct**→ Preamble**

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American and Kentucky concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, An Application Section and Commentary. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules. When the text uses “shall” or “shall not,” it is intended to impose binding obligations the violation of which can result in disciplinary action. When “should” or “should not” is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When “may” is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons and Sections are rules of reason. They should be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances, including the varying degrees of responsibility and administrative functions of different levels of courts. The Code is to be construed so as not to impinge on the essential discretion of judges in making judicial decisions.

The Code is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

→ **Terminology**

“Appropriate authority” denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported.

“Candidate.” A candidate is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. The term “candidate” has the same meaning when applied to a judge seeking election or appointment to non-judicial office.

“Court personnel” does not include the lawyers in a proceeding before a judge.

“De minimis” denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality.

“Economic interest” denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities.

“Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.

“Knowingly,” “knowledge,” “known” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

“Law” denotes court rules as well as statutes, constitutional provisions and decisional law.

“Member of the candidate's family” denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge's family” denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship.

“Member of the judge's family residing in the judge's household” denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

“Nonpublic information” denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

“Political organization” denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

“Public election.” This term includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

“Require.” The rules prescribing that a judge “require” certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term “require” in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

“Third degree of relationship.” The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

☞ [SCR 4.300](#). Kentucky Code of Judicial Conduct

Canon 1. A judge shall uphold the integrity and independence of the judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should actively participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law. This Code is intended to apply to every aspect of judicial behavior except purely legal decisions made in good faith in the performance of judicial duties. Such decisions are subject to judicial review. Reference is made to [SCR 4.020\(2\)](#).

→ **Canon 2. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities**

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENTARY

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 2E.

B. A judge may properly lend the prestige of the judge's office to advance the public interest in the administration of justice.

C. A judge may actively support public agencies or interests or testify voluntarily on public matters concerning the law, the legal system, the provision of legal services, and the administration of justice.

D. A judge shall not allow family, social, political or other relationships to impair the judge's objectivity. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

COMMENTARY

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For

example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary. A judge should be careful in the use of the judge's letterhead.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

E. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Invidious discrimination includes any action by an organization that appears to regard some immutable individual trait, such as a person's race, gender, religion or national origin, as odious or inferior, which is used to justify arbitrary exclusion of persons possessing those traits from membership or participation in the organization. On the other hand, organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic, or cultural values, which do not stigmatize any excluded persons as inferior and therefore unworthy of membership, are not considered to discriminate invidiously.

COMMENTARY

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2E refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.

An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership. See *New York State Club Ass'n., Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 107 S. Ct. 1940, [(1987)] 95 L. Ed. 2d 474 (1987); *Roberts v. United*

States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).

Although Section 2E relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion or national origin in its membership or other policies, or for the judge to regularly use such a club. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Section 2A.

When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section 2E or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

→ **Canon 3. A judge shall perform the duties of judicial office impartially and diligently**

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

COMMENTARY

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and in proceedings before the judge, shall not permit staff, court officials and others subject to the judge's direction and control to do so.

COMMENTARY

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting by words or conduct bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic

status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. With regard to a pending or impending proceeding, a judge shall not initiate, permit, or consider ex parte communications with attorneys and shall not initiate, encourage or consider ex parte communications with parties, except that:

(a) Where circumstances require, ex parte communications for scheduling, initial fixing of bail, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) As a part of legal research, a judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

COMMENTARY

The proscription against communications concerning a proceeding includes communications from lawyers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Certain ex parte communication is approved by Section 3B(7) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.

If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

COMMENTARY

In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This Section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

COMMENTARY

The requirement that judges abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition. This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by [SCR 3.130\(3.6\)](#).

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

COMMENTARY

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require a judge's staff and those subject to the judge's direction and control and should encourage other court officials to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an

award of compensation does not relieve the judge of the obligation prescribed by Section 3C(4).

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office should inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Kentucky Rules of Professional Conduct should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Kentucky Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects should inform the appropriate authority.

(3) A judge acting in good faith in the discharge of disciplinary responsibilities required or permitted by Sections 3D(1) and 3D(2) shall be immune from any action, civil or criminal.

COMMENTARY

Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body. A judge should comply with [KRS 26A.080](#).

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

COMMENTARY

Under this rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless whether any of the specific rules in Section 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter

requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

COMMENTARY

Dislike of a party or a party's lawyer does not, by itself, constitute a personal bias or prejudice.

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

COMMENTARY

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or minor child residing in the judge's household, has any interest, more than a de minimis interest, in the subject matter in controversy or in a party to the proceeding that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “the judge's impartiality might reasonably be questioned” under Section 3E(1), or that the relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” under Section 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

COMMENTARY

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents.

→ **Canon 4. A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations**

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

COMMENTARY

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status. See Section 2E and accompanying Commentary.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of this Code.

COMMENTARY

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

In this and other Sections of Canon 4, the phrase "subject to the requirements of this Code" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Sections of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

COMMENTARY

See Section 2D regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may accept appointment to a governmental committee or commission where a judicial appointment is authorized or required by law. A judge may represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

COMMENTARY

Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by Section 4(C)(3). The appropriateness of accepting extra-judicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civic organizations not conducted for profit.

(3) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

COMMENTARY

Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see Section 4C(2).

See Commentary to Section 4B regarding use of the phrase "subject to the following limitations and the other requirements of this Code." As an example of the meaning of the phrase, a judge permitted by Section 4C(3) to serve on the board of a fraternal institution may be prohibited from such service by Sections 2C or 4A if the institution practices

invidious discrimination or if service on the board otherwise casts reasonable doubt on the judge's capacity to act impartially as a judge.

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to Section 4C. For example, a judge is prohibited by Section 4G from serving as a legal advisor to a civic or charitable organization.

- (a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization
 - (i) will be engaged in proceedings that would ordinarily come before the judge, or
 - (ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.
 - (iii) by reason of its purpose, will have a substantial interest in other proceedings in the Court in which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication. Some educational, religious, charitable, fraternal or civic organizations are so large, or have such an impact on the public, that they are either frequently before the courts or are substantially interested in other similar organizations who are frequently before the courts.

- (b) A judge as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
 - (i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;
 - (ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;
 - (iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or if the membership solicitation is essentially a fund-raising mechanism;
 - (iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for memberships other judges over whom the judge does not exercise supervisory or appellate authority, 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear before the court on which the judge serves and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

Use of an organization letterhead for fund-raising or membership solicitation does not violate Section 4C(3)(b) provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code.

D. Financial Activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position, or

(b) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

COMMENTARY

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

When a judge acquires in a judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Section 2B; see also Section 3B(11).

A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of judges with law firms appearing before the judge, see Commentary to Section 3E(1) relating to disqualification.

Participation by a judge in financial and business dealings is subject to the general prohibitions in Section 4A against activities that tend to reflect adversely on impartiality, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Section 4B regarding use of the phrase "subject to the requirements of this Code."

(2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family, including real estate, and engage in other remunerative activity.

COMMENTARY

This Section provides that, subject to the requirements of this Code, a judge may hold and manage investments owned solely by the judge, investments owned solely by a member or members of the judge's family, and investments owned jointly by the judge and members of the judge's family.

(3) A judge may serve as an officer, director, manager, general partner, advisor or employee of any business entity subject to the following limitations and the other requirements of this Code:

(a) A judge shall not be involved with any business entity

(i) generally held in disrepute in the community, or

(ii) likely to be engaged in proceedings that would ordinarily come before the judge, or

(iii) likely to be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge involved with any business entity may assist such a business entity in planning fund-raising and may participate in the management and investment of the entity's funds, but shall not personally participate in the solicitation of funds, the raising of capital or the selling of stock in such a manner as to use or permit the use of the

prestige of judicial office for promotion of the business entity.

COMMENTARY

Subject to the requirements of this Code, a judge may participate in a business. Although participation by a judge in a business might otherwise be permitted by Section 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a business if the judge's participation would involve misuse of the prestige of judicial office.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household, not to accept, a gift, bequest, favor or loan from anyone except for:

COMMENTARY

Section 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

Because a gift, bequest, favor or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

(a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

COMMENTARY

Acceptance of an invitation to a law-related function is governed by Section 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Section 4D(5)(h).

A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Sections 4A(1) and 2D.

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality or customary expressions of sympathy;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

COMMENTARY

A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Section 3E;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;
or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge.

COMMENTARY

Section 4D(5)(h) prohibits judges from accepting gifts, favors, bequests or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings

that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

COMMENTARY

The Time for Compliance provision of this Code (Application, Section F) postpones the time for compliance with certain provisions of this Section in some cases.

The restrictions imposed by this Canon may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

COMMENTARY

Section 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

COMMENTARY

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See Section 2D.

The Code allows a judge to give legal advice to and draft legal documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family in a legal matter.

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of in-

fluencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

(2) All candidates for judicial office and judges shall comply with [KRS 61.710, et seq.](#)

COMMENTARY

See Section 4D(5) regarding gifts, bequests and loans.

The Code does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Sections 3E and 3F, or as otherwise required by law.

COMMENTARY

Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest. See "economic interest" as explained in the Terminology Section. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

→ **Canon 5. A judge or judicial candidate shall refrain from inappropriate political activity**

A. Political Conduct in General.

(1) Except as permitted by law, a judge or a candidate for election to judicial office shall not:

(a) campaign as a member of a political organization;

(b) act as a leader or hold any office in a political organization;

(c) make speeches for or against a political organization or candidate or publicly endorse or oppose a candidate for public office;

(d) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, except as authorized in subsection A(2);

COMMENTARY

A judge or a candidate for election to judicial office retains the right to participate in the political process as a voter. A judge or a candidate for election to judicial office may publicly affiliate with a political organization but may not campaign as a member of a political organization.

Where false information concerning a judicial candidate is made public, a judge or candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1) does not prohibit a judge or candidate from privately expressing his or her views on judicial candidates or other candidates for public office.

(2) A judge or a candidate for election to judicial office may purchase tickets to political gatherings for the judge or candidate and one guest, may attend political gatherings and may speak to such gatherings on the judge's or candidate's own behalf.

COMMENTARY

A judge or candidate, in purchasing tickets to political gatherings, should be careful that he or she doesn't create the impression that the purchase is not for the advancement of the judge or candidate but is solely a contribution to another candidate or political organization, which is prohibited.

(3) A judge shall resign office when the judge becomes a candidate either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for

election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law.

(4) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice, as provided in Canon 2B and C.

COMMENTARY

A judge or candidate for judicial office shall encourage members of his or her family to adhere to the same standards of political conduct in support of the candidate that apply to the candidate. Family members are free to participate in other political activity.

B. Campaign Conduct.

(1) A judge or candidate for election to judicial office:

(a) shall maintain the dignity appropriate to judicial office, and shall encourage members of the candidate's family to adhere to the same standards of political conduct;

(b) shall prohibit public officials or employees subject to the candidate's direction and control from doing for the candidate what the candidate is prohibited from doing under this Canon; and except to the extent authorized under subsection B(2), the candidate should not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon;

(c) shall not, 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; and shall not misrepresent any candidate's identity, qualifications, present position, or other facts.

See S. Ct. Order 2014-04 below for changes

COMMENTARY

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.

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.

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. Section 5B(1)(c) 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 Section 5B(1)(c), 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 disqualifications.

(d) shall file the report referred to in Canon 4H(2).

(2) A judge or a candidate for judicial office shall not solicit campaign funds in person. A judge or a candidate for judicial office may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy. A candidate's committees may solicit funds for the campaign no earlier than 180 days before a primary election. A candidate's committees may not solicit funds after a general election (See [KRS 121.150](#)). A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or a member of the candidate's family.

COMMENTARY

Section 5B(2) permits a candidate to establish campaign committees to solicit and accept political support and reasonable financial contributions. At the start of the campaign, the candidate should instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. The candidate should instruct his or her campaign committees as to the requirements of Canon 5 of this Code. The candidate is responsible for the actions of his or her campaign committees.

→ **Application of the Code of Judicial Conduct**

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a court commissioner, is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-Time Judge or Special Judge. A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

(1) is not required to comply with Canon 4D(3), E, F, and G;

(2) should not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, or act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto. This provision shall not, however, prevent a trial commissioner of the District Court or a commissioner of the Circuit Court from practicing in the court of which that person is a commissioner so long as that person has not taken and does not take any action as such commissioner with respect to the matter or matters in which that person practices as an attorney.

B. Judge Pro Tempore. A judge pro tempore is a person who is appointed to act temporarily as a judge.

(1) While acting as such, a judge pro tempore is not required to comply with Canon 4D(3), (4), E, F, and G.

(2) A person who has been a judge pro tempore should not act as lawyer in a proceeding in which that person has served as a judge or in any other proceeding related thereto.

Supreme Court of Kentucky

IN RE:
EMERGENCY ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2014-04

Pursuant to CR 87(2), the Court hereby orders that the following rule amendment to SCR 4.300, Canon 5(B)(1)(c) shall become effective upon entry of this order.

SCR 4.300 Kentucky Code of Judicial Conduct

CANON 5: A judge or judicial candidate shall refrain from inappropriate political activity

B. Campaign Conduct.

(1) A judge or candidate for election to judicial office:

(c) shall not, 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; and shall not knowingly, or with reckless disregard for the truth, misrepresent any candidate's identity, qualifications, present position, or make any other false or misleading statements.

Commentary

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.

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.

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. Section 5B(1)(c) 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 Section 5B(1)(c), 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 disqualifications.

All sitting. All concur.

ENTERED: March 12, 2014.


CHIEF JUSTICE

Judicial Ethics Committee

JUDICIAL ETHICS COMMITTEE

About

The Judicial Ethics Committee is authorized to issue opinions as to the propriety of any act or conduct by a judge or judicial candidate under SCR 4.310. The Judicial Ethics Committee responds to inquiries by judges or judicial candidates regarding the ethical implications of their own prospective or on-going conduct. No response will be made to inquiries by any judge or judicial candidate about the ethical behavior of anyone other than himself or herself. The Committee does not respond to inquiries by any person who is not a judge or judicial candidate.

Questions for the Judicial Ethics Committee may be directed to the Executive Secretary, Jean Collier, at 859-246-2296. Judges and judicial candidates may also send inquiries to any of the following members of the Judicial Ethics Committee:

Arnold Taylor, Esq., JEC Chairman
25 Town Center Blvd., Suite 201
Covington, KY 41017
859-331-2000

Donald H. Combs, Esq.
Combs & Combs
P.O. Drawer 31
Pikeville, KY 41502-0031
606-437-6226

Judge Jeff S. Taylor, Kentucky Court of Appeals
401 Frederica Street, Suite A-102
Owensboro, KY 42303
270-687-7116

Chief Circuit Judge Jean Chenault Logue
101 W. Main Street
Richmond, KY 40475
859-624-4750 (Madison) or 859-737-7263 (Clark)

District Judge Jeffrey Scott Lawless
Pulaski County Judicial Center
50 Public Square
Somerset, KY 42501
606-677-4112

For more information regarding the Judicial Ethics Committee, please visit the Committee's [website](#).

JUDICIAL ETHICS COMMITTEE

Relevant opinions

Campaign Committees:	30 , 52 , 55 , 92 , 113 , 124
Campaign Conduct:	28 , 38 , 42 , 46 , 55 , 62 , 66 , 72 , 93 , 113 , 114 , 116
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55	May a candidate for District Judge be designated as his own campaign treasurer?
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66	May a judicial candidate use public officials either current or past as co-chairpersons...
71	May a judicial candidate who is unopposed in the primary begin soliciting money...
72	Is a sitting Judge ethically permitted to change his name to Judge John Doe on the ballot?
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93	Purchase of tickets to political dinner; program ads; endorsements by political leaders.
98	May a judge or judicial candidate attend a fundraiser for another candidate and make...
111	Beginning date to raise funds for newly created family court division.
112	Judicial fundraising by candidate, who "hands off" phone to committee member to solicit.
113	May a judicial candidate use either current or past nonpartisan public officials...
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119	May a judge or justice participate in an internet-based social networking site...
124	May a candidate for judicial office have, as the candidate's campaign chairperson,...
125	What is the definition of the phrase "in person" as used in Canon 5(B)(2)?

NOTE: In 2009-10, the Judicial Ethics Committee conducted a review of all previous formal opinions and determined that some should be withdrawn due to modifications in the rules, statutes and case law. A summary of the formal opinions can be found on the [JEC's website](#). Some opinions decided under the old 1978 Code are still valid. However, in those opinions, the new canon numbers are noted. Other opinions which are presently still valid should be followed with caution in view of recent federal court cases, specifically *Carey v. Wolnitzek*, cited in the "Cases" section of this Handbook. Both the list of the opinions and the opinions themselves contain the pertinent information.

For historical purposes, opinions considered invalid and withdrawn are still contained on the website. Users of the website are requested to take notice of their status and proceed accordingly.

→ **SCR 4.310 Judicial ethics committee and opinions**

(1) There shall be an ethics committee of the Kentucky judiciary consisting of one judge each of the Court of Appeals, the circuit court and the district court and two members of the Kentucky Bar Association appointed by the board of governors, none of whom shall be members of the judicial retirement and removal commission. The judicial members shall be selected by the members of their courts in the manner which each court selects. Each member shall serve for a term of four years from the date of his appointment. A chairman shall be elected by the ethics committee.

(2) Opinions as to the propriety of any act or conduct and the construction or application of any canon shall be provided by the committee upon request from any justice, judge, trial commissioner or by any judicial candidate. Communications between the questioner and the Judicial Ethics Committee and its members shall be confidential. If the committee finds the question of limited significance, it shall provide an informal opinion to the questioner. If, however, it finds the question of sufficient general interest and importance, it shall render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form, without specific identification of the questioner. Likewise, the committee may issue formal opinions on its own motion under such circumstances as it finds appropriate.

(3) Both formal and informal opinions shall be advisory only; however, the commission and the Supreme Court shall consider reliance by a justice, judge, trial commissioner or by any judicial candidate upon the ethics committee opinion.

(4) Any person affected by a formal opinion of the ethics committee may obtain a review thereof by the Supreme Court by filing with the clerk of that court within thirty (30) days after the end of the month in which it was published a motion for review stating the grounds upon which the movant is dissatisfied with the opinion. The motion shall be accompanied by a copy of the opinion or synopsis as published and shall be served upon the ethics committee and, if the movant is someone other than the party who initiated the request for the opinion, upon the initiating justice, judge or commissioner. The filing fee for docketing such motion shall be as provided by [Civil Rule 76.42\(1\)](#) for original actions in the Supreme Court. The ethics committee may file a response to the motion for review within thirty (30) days after its receipt of the motion. Notwithstanding the provisions of this subsection of the rule, the Supreme Court on its own initiative may review a judicial ethics opinion at any time.

Formal

RECEIVED

NOV 01 1979

JUDICIAL ETHICS OPINION JE-2

ADMINISTRATIVE OFFICE
OF THE COURTS

Question #1: Can a judge actively campaign for and support a judicial candidate in a judicial race?

Answer: No.

Question #2: Can a judge in a responsible manner publicly endorse a judicial candidate as being qualified to serve in a judicial capacity?

Answer: No.

Reference: SCR 4.300, Canon 7A(1).

Opinion: (October 1979)

Canon 7A(1) explicitly states: "A judge or a candidate for election to judicial office should not . . . (b) Make speeches for a political organization or candidate or publicly endorse a candidate for public office."

The Canon does not make any exception for judicial candidates nor for nonpartisan elections. Therefore, campaigning for or publicly endorsing a candidate for judicial office would be in direct conflict with this Canon.


Chairman, Judicial Ethics Committee

OFFICE OF THE CLERK
OF THE COURTS



COMMONWEALTH OF KENTUCKY
JUDICIAL ETHICS COMMITTEE
ADMINISTRATIVE OFFICE OF THE COURTS
403 WAPPING STREET
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JOHN P. HAYES
Court of Appeals

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

THOMAS J. KNOPF
District Court

UHEL O. BARRICKMAN
Attorney

JUDICIAL ETHICS OPINION JE-6

Formal

Question: May a group of judicial candidates run for election on the same ticket?

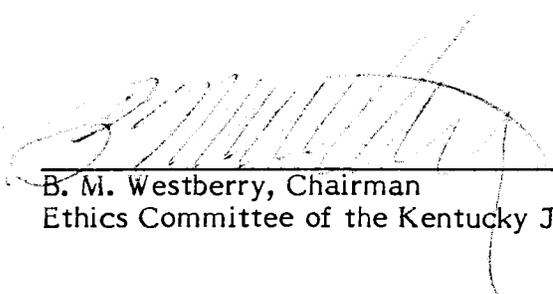
Answer: No.

Reference: SCR 4.300, Canon 7A(1).

OPINION: Canon 7A(1) states in part: "A judge or a candidate for election to judicial office should not . . . (b) Make speeches for a political organization **or publicly endorse a candidate for public office.**" (Emphasis added)

A judgeship is a public office, and the Canon by its terms applies to all public offices. It does not make any exception for judicial candidates nor for non-partisan elections. Endorsement of a judicial candidate by a judge or another judicial candidate is in direct conflict with this Canon. See Judicial Ethics Opinion JE-2.

The question thus becomes whether running with other candidates on a ticket constitutes endorsement of such candidates. A majority of this Committee thinks that it does. It may be assumed that a candidate would be unwilling to run with persons of whom he disapproves; therefore, running with another candidate necessarily implies endorsement of that candidate and is therefore forbidden by Canon 7A(1).



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary

May 29, 1980



COMMONWEALTH OF KENTUCKY

ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY

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District Court

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Attorney

JUDICIAL ETHICS OPINION JE-23

Formal

QUESTION: Must a commissioner of the Court of Justice resign when he becomes a candidate for a public office?

ANSWER: Yes, if the office which he is seeking is a non-judicial office. He need not resign if he is seeking a judgeship in the Court of Justice.

REFERENCES: SCR 4.300, Code of Judicial Conduct, Canon 7A(3) and Compliance Provisions.

OPINION: (February, 1981):

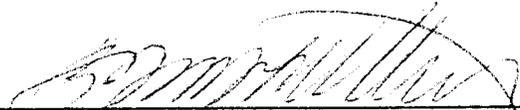
SCR 4.300, the Code of Judicial Conduct, provides in its compliance provisions that "a court commissioner ... is a judge for the purpose of this Code." A court commissioner is, therefore, bound by Canon 7A(3) which provides that "a judge should resign his office when he becomes a candidate either in a party primary or in a general election for a non-judicial office."

The terms "judicial" and "judicial office" refer to judges and judgeships and are so used throughout the Code of Judicial Conduct. See, for example, the blackletter statement of Canon 7: "A judge should refrain from political activity inappropriate to his judicial office." (Emphasis added.)

It is clear, then, that the only offices for which a commissioner or judge may become a candidate without resigning his office are judgeships within the Court of Justice. He must resign when he becomes a candidate for any other office, including that of Commonwealth's attorney and county attorney, as well as all offices in the executive and legislative branches of government. For a case holding that a Commonwealth's attorney is not a judicial officer, see Commonwealth ex rel. Breckinridge v. Wise, 351 S.W.2d 493 (1961).

As for the timing of the resignation, we think that Canon 7A(3) does not prohibit preliminary surveys of financial and voter support, for the prospective candidate needs to learn whether he has a realistic chance of election. Once having made his decision to run, however, he must resign whenever he announces his intentions to the public, whether by filing with the county clerk, making a press

release, or any other method by which he lets his candidacy become generally known. To hold otherwise would permit the very appearance of impropriety to which the strictures of Canon 7A(3) are directed.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-28

Informal

QUESTION #1: May a candidate for District Judge name his brother as Chairman of his campaign committee?

ANSWER: Yes.

QUESTION #2: When campaign material is mailed to voters, must the envelope identify the sender with the usual "disclaimer"?

ANSWER: No.

REFERENCES: SCR 4.300, Canon 7A(2); KRS 121.190.

OPINION: (June 1981)

The Code of Judicial Ethics provides in Canon 7A(2) that a judicial candidate "should not himself solicit campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy...." The Canon does not impose any restrictions or qualifications as to the personnel of such committees beyond the requirement that they be "responsible." Therefore we are of the opinion that the candidate's brother may serve on his campaign committee as long as he is "responsible."

In answer to the second question, we assume that the word "disclaimer" refers to the requirements of KRS 121.190 to the effect that campaign materials must "be identified by the words 'paid for by' followed by the name and address of the payer, or the committee, organization or association and its treasurer, on whose behalf the communication appears...." The office of the Kentucky Registry of Election Finance has informed us that the campaign material itself must carry the required information, but that the statute does not require the statement to be reproduced on the envelope.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary

SEP 22 1981

ADMINISTRATIVE OFFICE
OF THE COURTS



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JUDICIAL ETHICS OPINION JE-30

INFORMAL

QUESTION: May a candidate for a district judgeship appoint as his campaign chairman a person who is running for Commonwealth Attorney when the latter is unopposed for the election?

ANSWER: No.

REFERENCE: SCR 4.300, Canon 7.

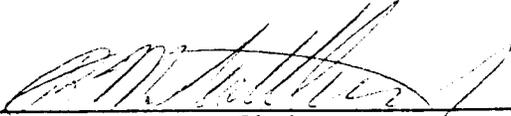
OPINION: (September, 1981):

Canon 7B(2) of the Code of Judicial Conduct requires candidates to establish campaign committees for the purpose of obtaining campaign funds and campaign endorsements. The only qualification for such committees found in Canon 7B(2) is that they consist of "responsible persons." However, Canon 7A(1)(b) states that a judge or a judicial candidate should not "publicly endorse a candidate for public office."

This Committee has already held, in its opinion JE-6, that judicial candidates may not slate themselves together as a ticket. The situation here proposed is analogous to slating, and a majority of the Committee finds that it is therefore impermissible. In addition, the office of Commonwealth Attorney is a public office and a candidate for that office runs for election under a party label. In the opinion of a majority of this Committee, the appointment here contemplated amounts to a public endorsement of the Commonwealth Attorney candidate by the judicial candidate.

Moreover, Commonwealth Attorneys sometimes appear in district court, and the appearance of impropriety might be great if the judge and the prosecutor were closely allied in the election process.

It should be mentioned that Canon 7B(2) expressly permits the campaign committee of a judicial candidate to solicit campaign contributions and public support from lawyers. Such endorsements are not limited to lawyers in private practice, but may include prosecutors and other lawyers in public service.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-38

Formal

Question #1: May a judicial candidate's campaign committee advertise the fact that his candidacy has been endorsed by labor unions, fraternal groups, etc?

Answer: Yes.

Question #2: May a judicial candidate express an opinion on the use of computers or other means of making the courts more efficient? May he comment on the pros and cons of court rules or proposed rules? May he comment on such things as the effects of plea bargaining on the court system?

Answer: He must avoid any statements which could be interpreted as a pledge of judicial conduct or which appeal to prejudices or special interests.

Question #3: May a judicial candidate advertise on television and radio?

Answer: Yes.

References: SCR 4.300, Code of Judicial Conduct, Canon 7; American Bar Association Committee on Ethics and Professional Responsibility Informal Opinion 1444; In re Baker, 218 Kan. 209, 542 P.2d 701 (1975); Thode, Reporter's Notes to Code of Judicial Conduct (Amer. Bar Assn. 1973).

Opinion: (May 1982):

Question #1:

Canon 7B(2) of the Code of Judicial Conduct states that the campaign committee of a judicial candidate may "obtain public statements of support for his candidacy." We think that the use of the word "public" in this context means that statements of support may be made public by the campaign committee through advertisements, for they could not otherwise be considered "public" statements of

support. Such advertisements should, of course, be couched in language which would "maintain the dignity appropriate to judicial office" required by Canon 7B(1)(a). Publicity should not be given to an endorsement by an incumbent judge, since such an endorsement is prohibited by Canon 7A(1)(b) as interpreted by our Judicial Ethics Opinion JE-2.

Question #2

The second question is governed by Canon 7B(1)(c) which reads as follows:

[A candidate] should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other facts.

The American Bar Association Committee on Ethics and Professional Responsibility, in its Informal Opinion 1444, addressed the question of whether a candidate could use as his slogan, "A strict sentencing philosophy." In condemning the proposed slogan, the Committee said:

It is our view that use of the proposed slogan relating to a strict sentencing philosophy is barred by Canon 7B(1)(c) of the Code of Judicial Conduct. It can be viewed by the voters as both a campaign pledge of judicial conduct and also an announcement of your position on sentencing which is a disputed legal and political issue.

A similar statement may be found in *In re Baker*, 218 Kan. 209, 542 P.2d 701 (1975), involving the legitimacy of attacks on the fitness of the respondent's opponent. In discussing the philosophy behind Canon 7, the court pointed out at p. 701 of 542 P.2d:

It is those pledges and promises which appeal to prejudices or special interest which are prohibited. On the other hand, a pledge of increased efficiency such as was made here is aimed at the legitimate interests of the entire electorate; it is one of those pledges permitted as being for the "faithful performance" of a judge's duties.

Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Association 1973) has this to say at 98:

What kind of campaign may the candidate for judicial office conduct? He cannot campaign on a platform of partiality

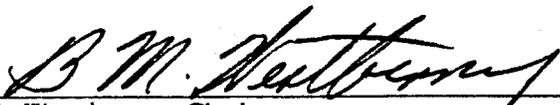
for specific persons or groups, nor can he commit himself in advance on disputed legal issues, nor should he misrepresent himself in any way The Committee was also of the opinion that a candidate should not base his campaign on his view of the solutions to disputed political issues. He can campaign on the basis of his ability, experience, and record.

The Canon and the decisions cited herein do not draw any distinction between substantive and procedural matters, nor do we think any such distinction should be drawn. Rather, the appropriate distinction is between statements on disputed legal or political issues on the one hand, and statements addressed to general improvement of the legal system on the other hand. For example, a statement that a particular rule of court should be changed could be interpreted as a pledge to take action on changing it, and would thus be prohibited by Canon 7B(1)(c). But a pledge to work for increased efficiency of the judicial system by the use of computers is not likely to be considered a "disputed legal or political issue," and would therefore be acceptable. Plea bargaining is, of course, a highly controversial issue which the judicial candidate would be wise to avoid. Any statement on this or other controversial issues would run the risk of being interpreted as a campaign pledge of future judicial conduct.

In short, the judicial candidate must always bear in mind that he should avoid any statements which could be interpreted as a pledge of future judicial conduct or which appeal to special interests or prejudices.

Question #3:

The third question on the use of radio and television in judicial campaigns does not present a question of judicial ethics. Judicial candidates are, of course, allowed to campaign and to advertise. If they could not use the accepted media of communication, they could not wage an effective campaign.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-42

Formal

- QUESTION #1: What is the definition of "solicit" as used in Canon 7 of the Code of Judicial Conduct?
- ANSWER: The word "solicit" has its ordinary dictionary meaning, to ask for something.
- QUESTION #2: May a publicly advertised campaign fundraiser, for which tickets are sold and a profit is made, be held prior to the 120 day period preceding the election?
- ANSWER: No.
- QUESTION #3: May a "Meet the Candidate" function, for which no tickets are sold and no solicitations made, be held prior to the 120 day period preceding the election?
- ANSWER: Yes.
- QUESTION #4: May a nonprofit function, for which tickets are sold to defray the cost of the event, be held prior to the 120 day period preceding the election?
- ANSWER: Qualified yes.
- QUESTION #5: May a candidate's campaign committee accept unsolicited contributions? If so, are there any time constraints?
- ANSWER: The committee may receive unsolicited contributions at any time.
- QUESTION #6: May the candidate himself accept either unsolicited or solicited contributions at any time?
- ANSWER: The candidate may accept any contributions which are proffered to him, but may not solicit any contributions.
- REFERENCE: SCR 4.300, Code of Judicial Conduct, Canon 7B(2).
- OPINION: (January 1983)

All the questions posed here are governed by SCR 4.300, The Code of Judicial Conduct, and specifically by Canon 7B(2) thereof. That Canon reads as follows:

A candidate, including an incumbent, for a judicial office that is filled by public election between competing candidates should not himself solicit campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign and to obtain public statements of support for his candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. A candidate's committees may solicit funds for his campaign no earlier than 120 days before a primary election and no later than 120 days after the last election in which he participates during the election year. A candidate should not use or permit the use of campaign contributions for the private benefit of himself or members of his family.

Under the above quoted language, there can be no question that all judicial candidates -- incumbents and challengers alike -- are required to comply with its requirements.

Question #1:

We think that the word "solicit" as used in the Code of Judicial Conduct has its ordinary dictionary meaning. It hardly seems necessary to set out such a definition here; suffice it to refer to the discussion of the word "ask" and its synonyms in Webster's Dictionary of Synonyms (Merriam 1951) at 79, where it is stated that the words "ask, request, solicit agree in meaning to seek to obtain by making one's wants or desires known."

We hold that any request for campaign funds is "soliciting," whether it be a personal appeal to an individual or a newspaper advertisement, or any other request for campaign contributions.

Question #2:

Under our interpretation of the word "solicit," it is clear that any fundraiser is by definition a solicitation for funds. It must, therefore, be held within the time period set out in Canon 7B(2).

Question #3:

While Canon 7B(2) contains explicit time limits on fund raising, there is no such time limit on campaigning. Indeed, Canon 7A(2) states that "for purposes of this Canon a judge...will be deemed to be a candidate for reelection during his

entire term of office." It seems clear, therefore, that a candidate may campaign at any time. A "Meet the Candidate" function, for which there is no admission fee nor any financial condition, may be held at any time. But because fund raising may not be carried on outside the permissible time frame, any campaigning outside that time must not be allowed to become a fundraiser.

Question #4:

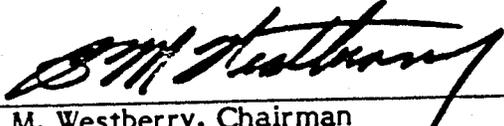
The nonprofit event for which tickets are sold to defray the cost of the event presents a more difficult problem. A function such as a luncheon at a restaurant, at which each person in attendance pays for his own meal, is in essence a "Meet the Candidate" affair and as such may be held outside the time limits of Canon 7B(2) in accordance with our answer to Question #3 above. But an event which has no fixed cost and which therefore may or may not reap a profit may not be held outside the time frame of Canon 7B(2).

Question #5:

We find no prohibition in the Code of Judicial Conduct against a campaign committee receiving funds at any time. The prohibition runs to soliciting, not to receiving. Therefore we hold that funds may be received at any time, whether they were solicited or not.

Question #6:

The American Bar Association Code of Judicial Conduct, on which Kentucky's Code is modeled, states explicitly in Canon 7B(2) that a judicial candidate "should not himself solicit or accept campaign funds" (emphasis added), but Kentucky's version of that Canon omits the words "or accept." For that reason, we hold that the candidate himself may accept campaign contributions. Like his campaign committee, he may accept both solicited and unsolicited gifts, and he may accept them at any time. But he may never solicit contributions. That function must be left to his campaign committee. When he accepts contributions, he should turn them over to his campaign committee forthwith.



B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary

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JUDICIAL ETHICS OPINION JE-46

Formal

QUESTION: May the campaign committee of a judicial candidate sponsor a raffle as a means of raising campaign funds?

ANSWER: No.

REFERENCE: Ky. Const. sec. 226; KRS 528.010(5); SCR 4.300, Canon 2A.

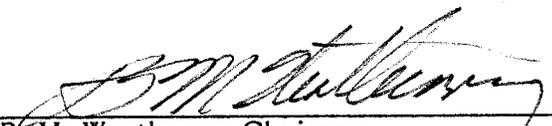
OPINION (July 1983):

Lotteries are expressly forbidden in the Kentucky Constitution, section 226, which states, "Lotteries and gift enterprises are forbidden. . . .The General Assembly shall enforce this section by proper penalties."

The General Assembly has implemented that section in KRS ch. 528, Gambling. KRS 528.010(5) defines "Lottery and gift enterprise" as a gambling scheme in which:

1. The players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other media, one or more of which are to be designated the winning ones; and
2. The winning chances are to be determined by a drawing or by some other method based upon the element of chance; and
3. The holders of the winning chances are to receive something of value.

The raffle contemplated here would seem to fall squarely within the above definition and would therefore be illegal. If a judge were to engage in an illegal activity, he would run afoul of SCR 4.300, Canon 2A, which states in part, "A judge should respect and comply with the law. . . ." A judicial candidate and his campaign committee must be held to equally high standards. For that reason, we think the campaign committee should refrain from sponsoring a raffle.


B. M. Westberry, Chairman
Ethics Committee of the Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-52

Formal

- Question:** A judge is getting ready to campaign for office. He wants to appoint as his campaign treasurer the same individual who is his trial commissioner. Is this permissible?
- Answer:** No.
- References:** Canon 7(A)(1)(b).

At the end of the Supreme Court rules covering the Judicial Code of Ethics there are some paragraphs which set out who must comply with the Judicial Code of Ethics.

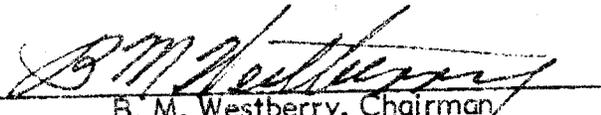
Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate is a judge for purposes of this Code. All judges should comply with this Code. . . .

Since trial commissioners are court commissioners, they come under the provisions of the Code.

Canon 7(A)(1)(b) states:

A judge or a candidate for judicial office should not make speeches for a political organization or candidate or publicly endorse a candidate for public office;

If a trial commissioner were to serve as campaign treasurer for a judicial candidate, this would constitute a public endorsement of a political candidate bringing him into violation of Canon 7(A)(1)(b). Therefore the judge cannot ethically appoint him to this position.


B. M. Westberry, Chairman
Judicial Ethics Committee



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JUDICIAL ETHICS OPINION JE-55

Formal

- QUESTION:**
- (1) May a candidate for District Judge be designated as his own campaign treasurer for purposes of registration with the Registry of Election Finance?
 - (2) May a candidate for District Judge serve as Treasurer of a political committee organized to support his candidacy?

ANSWER: No.

REFERENCES: Canon 7(B)(2), E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct (1973), Donald R. Fretz, Rodney A. Peeples, Thomas C. Wicker, Ethics for Judges (1982).

A majority of the Committee felt that both questions should be answered in the negative. While neither the Code nor the other commentaries specifically prohibit a judicial candidate from serving as his own treasurer, the whole thrust of the provisions touching on this subject was to insulate the candidate as much as possible from the financial aspects of his campaign. Canon 7(B)(2) requires a candidate to have committees to solicit funds for his campaign.

A candidate, including an incumbent, for a judicial office that is filled by public election between competing candidates should not himself solicit campaign funds, but he may establish committees of responsible persons to secure and manage the expenditure of funds for his campaign....

The commentaries to Canon 7(B)(2) provide for additional insulation. "Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate." Donald R. Fretz, Rodney A. Peeples, Thomas C. Wicker, Ethics for Judges, 72 (1982), and E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct, 30 (1973). Kentucky law requires the list of contributors to be furnished to the Kentucky Registry of Election Finance by the campaign treasurer. KRS 121.180. Therefore a candidate need not know his own contributors unless he is serving as his own treasurer.

Indeed the Special Committee on Standards of Judicial Conduct felt so strongly about insulating judicial officers from the financial aspects of their

campaigns that they would have liked to prohibit fund raising altogether, or at least fund raising from lawyers. But they recognized that such goals were unrealistic.

The Committee was informed of campaigns for judicial office in which the costs ran into the tens of thousands of dollars. Where should this money come from? If candidates must finance their own campaigns, only affluent lawyers and judges can be candidates for judicial office. If outside financing is permitted, then as a practical matter there are only a few sources available; most citizens are not interested in helping finance a campaign for judicial office. Those sources are the coffers of a political organization, lawyers, and those persons who are, or are likely to be, involved in litigation.

The Committee decided that a candidate for judicial office may seek and accept outside funding and that lawyers may contribute to the campaign fund of a candidate for judicial office, a practice not authorized by old Canon 32 but approved in ABA Opinion 226 (1941). In order to insulate the candidate to some extent and thereby reduce the danger of the appearance of a lack of impartiality toward those persons who financially support him, or refuse to support him, the Committee required that soliciting and accepting of funds be performed on the candidate's behalf by a committee or committees....

E. Wayne Thode, Reporter's Notes to Code of Judicial Conduct, 99 (1973).

For these reasons, a majority of the Committee felt that a candidate for district judge could not serve as his own treasurer.

Sincerely,


B. M. Westberry, Chairman
Judicial Ethics Committee



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Judicial Ethics Opinion
JE - 62

Formal

Question #1: If a judicial candidate's opponent claims that he is experienced, may the candidate question his opponent's experience or demand that his opponent's experience be set out in detail?

Answer #1: Yes. Canon 7B(1)(c); In re Baker, 542 P.2d 701 (Kan. 1975); Berger v. Supreme Court of Ohio, 598 F. Supp. 69 (S.D. Ohio 1984).

Question #2: What position must a candidate for judicial office take when asked to participate in a political forum with his opponents?

Answer #2: A candidate for judicial office may participate in a debate against his opponents but his comments must be limited by Canon 7B (1)(c). Canon 7A(2); Judicial Ethics Opinions JE-38 and JE-39; Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Association 1973); Morial v. Judiciary Commission of Louisiana, 565 F.2d 295 (5th Cir. 1977) cert. den. 435 U.S. 1013 (1978); ABA Formal Ethics Opinion 113.

Question #3: May a candidate for judicial office properly discuss qualifications, experience and facts which would tend to show good character and sense of responsibility?

Answer #3: Yes. Canon 7B(1)(c); In re Baker, 542 P.2d 701 (Kan. 1975); Berger v. Supreme Court of Ohio, 598 F. Supp. 69 (S.D. Ohio 1984).

I. A JUDICIAL CANDIDATE MAY QUESTION HIS OPPONENT'S CREDENTIALS AND ENDORSE HIS OWN SO LONG AS HIS COMMENTS ARE NOT UNTRUTHFUL OR MISLEADING

Canon 7B(1)(c) states as follows:

[A candidate]. . . should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; announce his views on disputed legal or political issues; or misrepresent his identity, qualifications, present position, or other facts.

Kentucky's Canon 7B(1)(c) is substantially the same as Canon 7B(1)(c) in the State of Kansas. While there are no Kentucky cases on point, the Supreme Court of Kansas has interpreted the above provision. In a campaign between an incumbent judge and a challenger, the challenger accused the incumbent of not being able to fulfill the duties of his office because of ill health. The Kansas Supreme Court found these comments accurate and therefore acceptable. "In our view the health, work habits, experience and ability of candidates are all matters of legitimate concern to the electorate who must make the choice." In re Baker, 542 P.2d 701, 705 (Kan. 1975).

The Baker case has been cited approvingly by a federal district court in the State of Ohio. In that case, the constitutionality of Canon 7B(1)(c) was questioned because the litigant claimed that Canon 7B(1)(c) prohibited criticism of judicial administrations and incumbents. The court found Canon 7B(1)(c) to be constitutional and in addition stated: "The court is not persuaded that this provision prohibits criticisms of judicial administrations and incumbents, assuming such criticisms are not untruthful or misleading." Berger v. Supreme Court of Ohio, 598 F. Supp. 69, 75 (S.D. Ohio 1984).

For these reasons, the Committee believes that a candidate for judicial office may safely question his opponents credentials and endorse his own so long as his comments are not untruthful or misleading.

II. A JUDICIAL CANDIDATE MAY PARTICIPATE
IN A DEBATE AGAINST HIS OPPONENTS
BUT HIS COMMENTS ARE LIMITED
BY CANON 7B(1)(c).

The second question was not entirely clear, but the Committee assumed that by a "political forum with his opponents," the candidate meant a debate. There is no prohibition in the Code against a judicial candidate participating in a debate. In fact, Canon 7A(2) specifically states that a judge campaigning for election or reelection may attend political gatherings and speak on his own behalf. But what a judicial candidate may say is controlled by Canon 7B(1)(c).

The Judicial Ethics Committee has previously interpreted Canon 7B(1)(c) in JE-38 with regard to what a candidate may say during a political campaign. In that opinion it was stated that a judicial candidate might express an opinion on the use of computers in hopes of making the judicial system more efficient. But he should not comment upon the effect of plea bargaining on the judicial system as this was disputed legal and political issue. Commenting about proposed civil rules was interpreted as risky as this could be construed as a pledge of future conduct.

In JE-38, the Committee quoted from Thode, Reporter's Notes to Code of Judicial Conduct (American Bar Association 1973) at p. 98:

What kind of campaign may the candidate for judicial office conduct? He cannot campaign on a platform of partiality for specific persons or groups, nor can he commit himself in advance on disputed legal issues, nor should he misrepresent himself in any way. . . . The Committee was also of the opinion that a candidate should not base his campaign on his view of the solutions to disputed political issues. He can campaign on the basis of his ability, experience, and record.

It is obvious that the above guidelines restrict a judicial candidate's freedom of speech. But restrictions on a judge's political freedom were held permissible in Morial v. Judiciary Commission of Louisiana, 565 F.2d 295 (5th Cir. 1977) cert. den. 435 U.S. 1013 (1978). Quoting from Judicial Ethics Opinion JE-39, "It is commonly said that a judge or judicial candidate voluntarily relinquishes certain rights when he becomes a judge or candidate." The following language was found in ABA Formal Ethics Opinion 113:

It is generally accepted in a rational philosophy of life that with every benefit there is a corresponding burden. Accordingly, one who accepts judicial office must sacrifice some of the freedom in political matters that otherwise he might enjoy. When he accepts a judicial position, ex necessitate rei, he thereby voluntarily places certain well recognized limitations upon his activities.


B.M. Westberry, Chairman
Ethics Committee of the
Kentucky Judiciary



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Judicial Ethics Opinion
JE-66

Formal

Question #1: May a judicial candidate use public officials (either current or past) as co-chairpersons for his campaign? Can the same be used as endorsers in newspapers or other advertisements concerning his candidacy?

Answer #1: Judges cannot endorse candidates for public office. Therefore judges cannot be used as co-chairpersons for a campaign. Endorsements by current public officials who run for office on a partisan ticket would violate the policy of nonpartisan elections in judicial campaigns. Former judges and past public officials are another matter. Canon 7A(1)(b); Judicial Ethics Opinions JE-6, JE-30 and JE-45.

Question #2: Is it all right for a judicial candidate to run campaign advertisements even before he files for office?

Answer #2: Nothing in the Code prohibits judicial candidates from running political advertisements before filing for office.

Question #3: May Judicial Candidates solicit endorsements from attorneys and then use them in advertising?

Answer #3: This is specifically permitted by Canon 7B(2). See also Judicial Ethics Opinion JE-45.

Question #4: May a judicial candidate advertise that he has been endorsed by private individuals using their work affiliation.

Answer #4: A majority of the Committee believed that this practice was permissible as long as advertising was specific that only the individual was endorsing the candidate and not the entire organization.

Question #5: May a judicial candidate send a memorandum to his associates advising them of his campaign plans? Included would be a biographical sketch and a questionnaire for them to complete. Are there any problems with sending any of these materials?

Answer #5: The Committee has a policy against endorsing campaign literature. Specific questions about campaign literature will be answered, but the Committee believes it should avoid reviewing a candidate's campaign literature as a whole.

Question #6: Once a candidate decides to run is he prohibited from contributing to organizations such as the "County Attorney's Support Fund" or does the prohibition begin when he files for office?

Answer #6: Once a person begins advertising and has a treasurer he is a judicial candidate. From that point on he should no longer contribute to the County Attorney's Support Fund.

Question #7: May a Judicial candidate accept contributions whenever they are offered, even if outside the time frame for soliciting?

Answer #7: Yes. This is a proper interpretation of Judicial Ethics Opinion JE-42.

I. A JUDICIAL CANDIDATE MAY NOT USE
CURRENT PUBLIC OFFICIALS AS ENDORSERS
OR AS CO-CHAIRPERSONS OF HIS CAMPAIGN.
PAST PUBLIC OFFICIALS ARE ANOTHER MATTER.

Judges cannot endorse candidates for public office, therefore judges cannot be co-chairpersons of a judicial campaign. See Canon 7A(1)(b) and Judicial Ethics Opinion JE-45.

In Judicial Ethics Opinion JE-6, the Committee held that judicial candidates may not slate themselves together as a ticket. The reason is that such slating amounts to an endorsement of the other candidates. In Judicial Ethics Opinion JE-30, the Committee ruled that a judicial candidate may not appoint the local Commonwealth Attorney as chairman of his campaign for the same reason. In addition, the Commonwealth Attorney runs for office under a party label. Therefore, a majority of the Committee felt that judicial candidate may not appoint current public officials as co-chairperson of his campaign.

Past public officials are another matter. Once a person is no longer a judge he is free to involve himself in partisan politics. Once a person is no longer holding or running for any public office, the judicial candidate cannot be accused of endorsing him. Therefore, the use of past public officials as chairpersons of his campaign is permitted.

II. A JUDICIAL CANDIDATE MAY RUN
CAMPAIGN ADVERTISEMENTS BEFORE HE
FILES FOR OFFICE.

Nothing in the Code specifically covers this issue. Running a campaign advertisement is certainly campaigning. In Norris v. United States, 86 F.2d 379, 382 (1936), "Campaign" was given this definition:

The word means, when applied to a personal political candidacy, all of the things and necessary legal and factual acts done by the candidate and his adherents, in an effort to obtain a majority, or plurality of the votes to be cast in any election for a public office.

It must be remembered that judicial candidates are not permitted to have their Committees raise funds for any purpose prior to 120 days before the primary election. Canon 7B(2). Judges, however, are considered to be candidates for reelection during their entire term of office. Canon 7A(2). If a judge may campaign for reelection during his entire term of office, his opponent should have the same right.

III. JUDICIAL CANDIDATES MAY SOLICIT
ENDORSEMENTS FROM ATTORNEYS AND
THEN USE THEM IN CAMPAIGN ADVERTISING.

By Canon 7B(2), judges are specifically permitted to solicit public statements of support from lawyers. See also Judicial Ethics Opinion JE-45. In Judicial Ethics Opinion JE-38 the Committee held that judges may advertise the fact that their candidacy has been endorsed by labor Unions, fraternal groups, etc. Therefore, a judge may advertise that certain lawyers have endorsed his campaign.

IV. A JUDICIAL CANDIDATE MAY
ADVERTISE THAT HE HAS BEEN ENDORSED
BY PRIVATE INDIVIDUALS USING THEIR
WORK AFFILIATION.

A majority of the Ethics Committee members believed that permitting judicial candidates to advertise their endorsements by private individuals using their work affiliation was permissible so long as the advertisement clearly indicated that the endorsement came from the individual only and not from his or her entire organization.

V. THE JUDICIAL ETHICS COMMITTEE
HAS A POLICY AGAINST ENDORSING
A CANDIDATE'S CAMPAIGN LITERATURE.

In his letter, the judicial candidate asked if he could send a memorandum to his associates advertising them of his campaign plans. Included would be a biographical sketch and a questionnaire for them to complete. He then enclosed these materials for our review.

The Judicial Ethics Committee has a policy against endorsing campaign literature. Specific questions about a campaign will be answered, but the Committee believes it should avoid reviewing a candidate's campaign literature as a whole.

VI. ONCE A JUDICIAL CANDIDATE
DECIDES TO RUN FOR OFFICE HE IS
PROHIBITED FROM CONTRIBUTING TO
ORGANIZATIONS SUCH AS THE "COUNTY
ATTORNEY'S SUPPORT FUND."

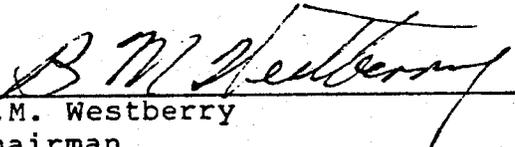
Judges and judicial candidates are prohibited by Canon 7A(1)(c) from making contributions to political organizations. This question, rephrased is actually, when does a person become a candidate so as to be bound by Canon 7? This question is important because the judicial candidate has indicated to us that he may well begin his campaign prior to filing for office.

A majority of the Committee members believed that when a person hires a treasurer and distributes campaign literature, he has become a candidate and is covered by Canon 7. In other words, a person is covered by Canon 7 from the time he begins his judicial campaign. For definition of "campaign" see our answer to question II.

II. A JUDICIAL CANDIDATE MAY
ACCEPT CONTRIBUTIONS WHENEVER THEY
ARE OFFERED, EVEN IF OUTSIDE THE
TIME FRAME FOR SOLICITING.

A judicial candidate may accept contributions whenever they are offered, even if outside the time frame for soliciting. This is a proper interpretation of Judicial Ethics Opinion JE-42. But he may not solicit contributions prior to the 120 day period.

Other questions asked by the candidate were legal and not ethical questions.


B.M. Westberry
Chairman
Judicial Ethics Committee



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THOMAS J. KNOPF
District Court

JOSEPH H. ECKERT
Circuit Court

B. M. WESTBERRY, CHAIRMAN
Attorney

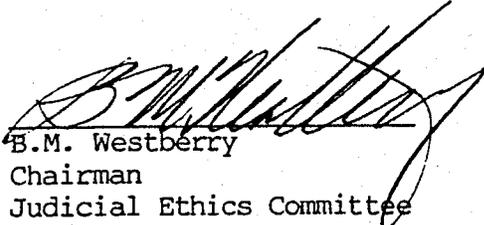
UHEL O. BARRICKMAN
Attorney

Judicial Ethics Opinion
JE - 71

Question: May a judicial candidate who is unopposed in the primary begin soliciting money 120 days before the primary election.

Answer: Yes. Canon 7B(2).

The question presented to the Committee was whether a judicial candidate who is unopposed in the primary may begin soliciting money for his campaign 120 days prior to the primary election? We believe the answer is yes because of the literal wording of the rule, Canon 7B(2). Additionally, a case from Arkansas In re Code of Judicial Conduct, 627 S.W.2d 1 (Ark. 1982) seems to favor such a reading.


B.M. Westberry
Chairman
Judicial Ethics Committee



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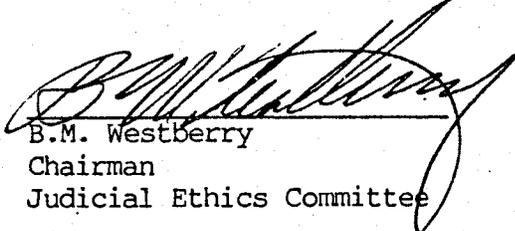
Judicial Ethics Opinion
JE - 72

Formal

Question: Is a sitting Judge ethically permitted to change his name to Judge John Doe so that it may be printed that way on the ballot? Would his opponent be permitted to do the same?

Answer: A sitting Judge may ethically change his name to Judge John Doe. His opponent would not be permitted to do so unless he presently or previously held the office of judge.

A majority of the Judicial Ethics Committee does not believe that the Canons of Judicial Ethics address this particular question. Rather the question is governed by Judicial Ethics Opinion JE - 45: a judicial candidate's campaign must be truthful. Candidates who presently or previously held the office of judge would be permitted to change their names to Judge John Doe. Other name changes would have to be considered on a case by case basis.


B.M. Westberry
Chairman
Judicial Ethics Committee



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Daniel Schneider
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UHEL O. BARRICKMAN
ATTORNEY

Judicial Ethics Opinion

JE-83
November 9, 1992

Question: Whether a judge is required to recuse himself when his campaign opponent is an attorney in a case before him?

Answer: There is no mandatory disqualification in this case. Disqualification is discretionary with the judge. However, where there is evidence that the judge cannot be impartial he will be required to disqualify.

The Judicial Ethics Committee was asked to decide whether a judge would have to disqualify himself when his campaign opponent is an attorney in a case before him. The Code does not provide for mandatory disqualification in this case. Judicial Ethics Opinions from other jurisdictions are split on this issue. D. Solomon, The Digest of Judicial Ethics Advisory Opinions (1991) (AL opinion 84-219: Judge need not disqualify where attorney is prior political opponent; FL opinion 84-12: Where attorney is opposing judge for re-election, judge should automatically disqualify; MI opinion JI-23: Judge must disqualify where one of the attorneys is an announced candidate for the judge's office; OH opinion 87-23: Judge does not have to disqualify where his opponent represents one of the parties; WA opinion 88-16: A judge need not disqualify where one of the attorneys ran against him.) Case law indicates that the matter is discretionary with the judge. State v. Grant Superior Court No. 1, 471 N.E.2d 302 (Ind. 1984).

However, should the campaign become bitter, and if there is evidence that the judge cannot be impartial because of the degree of animosity which exists between him and his opponent, the judge should disqualify. Turner v. Commonwealth, 59 Ky. Reports 619 (1859); Hayslip v. Douglas, 400 So.2d 553 (Fla. App. 1981).

A handwritten signature in black ink, appearing to read "B. M. Westberry".

B. M. Westberry
Chairman
Judicial Ethics Committee



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JUDICIAL ETHICS OPINION JE-92

April 1, 1998

Issue: If a judicial candidate does not intend to solicit money, is it necessary to appoint a Committee? May the Treasurer and the Committee be the same person?

Answer: A Committee is only required by the Code if the judicial candidate intends to solicit money. Nothing in the Code prohibits the judicial candidate from appointing one person to serve as both Treasurer and Campaign Committee.

The Judicial Ethics Code only requires a Committee to be appointed by a judicial candidate if he or she intends to solicit money. If a candidate intends to use only his own money, no Committee need be appointed. This conclusion is mandated by the literal wording of the Code. Canon 7B.

The Code itself does not mention a Treasurer. And, nothing in the Code states that these two different functions cannot be performed by the same person. The statutes, however, may require otherwise. The Judicial Ethics Committee is not authorized to interpret the requirements of the election statutes.

A handwritten signature in black ink, appearing to read "B.M. Westberry", written over a horizontal line.

B.M. Westberry
Chairman
The Ethics Committee of the
Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-93

April 1, 1998

Issue: May a judicial candidate purchase a ticket to a political dinner? May he or she run an ad in the brochure printed as a program for the dinner?

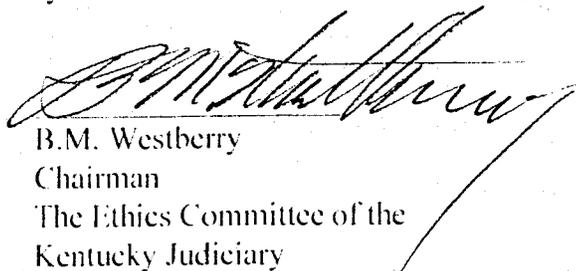
Answer: While the language of the Code could be clearer, the Committee believes the proper interpretation is that a judicial candidate may purchase a ticket if he or she intends to attend the dinner to campaign on his or her own behalf. Running a campaign ad in the brochure, however, is prohibited.

Issue 2: May a judicial candidate state that he or she is endorsed by the Legislative Chairperson of a particular district?

Answer: No.

While the language of the Code could be clearer, the Committee believes that a judicial candidate may purchase a ticket to a political dinner if he or she intends to attend the dinner to campaign on his or her own behalf. Canon 7. Running a campaign ad in the dinner's brochure, however, is specifically prohibited by the Code as it constitutes a contribution to a political party. In addition, the campaign ad in the party's brochure serves to identify the candidate with the party and this is prohibited. Prior opinions to the contrary by this Committee are overruled.

The Judicial Ethics Code does not apply to Legislative Chairpersons. They may do what they want. A judicial candidate, however, may not advertise the endorsement of a particular Legislative Chair.


B.M. Westberry
Chairman
The Ethics Committee of the
Kentucky Judiciary



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JUDICIAL ETHICS OPINION JE-98

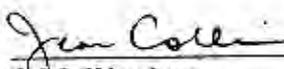
February 12, 2002

Question: May a judge or judicial candidate attend a fundraiser for another candidate and make the contribution suggested by the candidate?

Answer: A judge or judicial candidate may attend any political gathering to campaign in his or her own behalf, but the judge or judicial candidate may not make a contribution to another campaign.

The question presented was whether a judge or judicial candidate may attend a fundraiser for another candidate and make the contribution suggested by the candidate. Any judge or judicial candidate may attend any political gathering to campaign in his or her own behalf. Canon 5A(2). If necessary, he or she may purchase tickets to attend the event. Canon 5A(2). However, political contributions are prohibited. Canon 5A(1)(c).

It was suggested to the Committee that where a contribution was required to attend the event, the contribution was the same as a ticket. Traditionally, the Committee has interpreted a "ticket" to be some nominal fee such as the price of two drinks or the cost of the meal. The candidate may attend the fundraiser and pay for the cost of the food and drink he or she consumes, but any amount above this cost is, under the Judicial Ethics Code, a contribution to the candidate and therefore prohibited. This interpretation of the Code is supported by the invitations in question for this opinion which requested "contributions" of \$25, \$50, or \$100 or \$250 - \$500, by the definition of "contribution" contained in KRS 121.015(6), and by KRS 121.180(3)(a) which requires contributions at fundraisers which collect in excess of \$3000 to be reported. Contributions in excess of \$100 must be reported individually.


for B.M. Westberry

Chairman
The Ethics Committee of the
Kentucky Judiciary

This formal ethics opinion was affirmed by the Kentucky Supreme Court in Shake v. The Ethics Committee of the Kentucky Judiciary, 122 S.W.3d 577 (Ky. 2003).



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JUDICIAL ETHICS OPINION JE-111

July 6, 2006

QUESTION: Where a family court judicial office will not come into existence until July the 15th of 2006, and where there will be no primary and the general election will be held in November, when may the candidates who intend to run for such offices begin fund-raising?

ANSWER: While the general rules of campaigning in Canon 5 of the Code of Judicial Conduct govern these campaigns, the question of fund-raising, which is linked to the time of "a primary," is not covered for the simple reason that there is no primary. As the Code does not cover this issue, or in other words does not apply, these family court judicial candidates are governed by the same rules and regulations that apply to fund-raising for non-judicial candidates in general as dictated by the Registry of Election Finance.

This question presented to the Ethics Committee proved to be difficult as it was clear from the outset that the Code did not cover this issue, but the Committee was reluctant to leave candidates without some sort of guidance. Canon 5B(2) clearly states that "[a] candidate's committees may solicit funds for the campaign no earlier than 180 days before a **primary election**. [Emphasis added.] While the Committee previously ruled in several private, informal opinions that a judicial candidate did not need to personally be on the ballot for "a primary," in all of these cases "a primary" was held but there were only one or at most two judicial candidates running for a particular office. As the literal wording of the Code was satisfied, the Committee believed that the Code's fund-raising provision still applied.

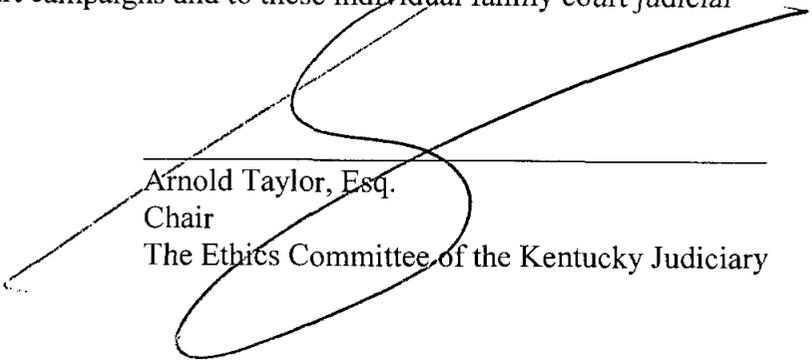
Where the fund-raising dates of the Code are so clearly tied to the date of the primary election, and these particular candidates intend to run for an office that will not exist until July 15th of 2006, it is difficult, in fact impossible, to force fit the Code to an election contest where there is no primary whatsoever. The only possible conclusion, therefore, is that the fund-raising provision of the Code does not apply to these particular races. Instead, these family court candidates are governed by the fund-raising rules and regulations applicable to non-judicial candidates in general as dictated by the Registry of Election Finance.

JUDICIAL ETHICS OPINION JE-111

July 6, 2006

Page 2

Nothing in this opinion, however, should be read to imply that other provisions of Canon 5 do not apply to these family court campaigns and to these individual family court judicial candidates.



Arnold Taylor, Esq.
Chair
The Ethics Committee of the Kentucky Judiciary

AT:psw

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Ann O'Malley Shake, Judge
The Honorable Michael Harrod, Judge
Jean Collier, Esq.



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JUDICIAL ETHICS OPINION JE-112

September 1, 2006

QUESTION: Is it proper for a judicial candidate to personally telephone a potential donor, request his support, and then hand the phone to a committee fundraiser who then solicits a donation?

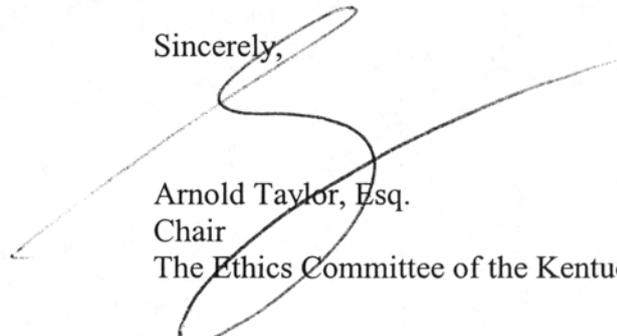
ANSWER: No. One of the main reasons for Canon 5B(2) is to prevent donors from feeling pressured by individual judges to contribute to their campaigns. Preventing this "political pressure" is one of the main ways the integrity and impartiality of the judiciary as a whole is preserved.

This question was raised by a judicial candidate regarding a fund-raising method being recommended by professional fund-raisers. The process is simple: The candidate calls a potential donor and talks to him seeking support. Then the candidate says: "Would you mind speaking with one of my campaign people?" The phone is then handed to a committee fund-raiser who solicits a campaign contribution.

Unanimously, the Judicial Ethics Committee agrees that this fund-raising method violates the main reason for the language of Canon 5B(2). Separating the judicial candidate from the fund-raising process preserves, to the greatest extent possible, the integrity and impartiality of the judiciary in a system where judges are elected.

Delegating the fund-raising function to the campaign committee serves to erect a wall between the candidate and the donor.

Sincerely,


Arnold Taylor, Esq.
Chair
The Ethics Committee of the Kentucky Judiciary

JUDICIAL ETHICS OPINION JE-112

September 1, 2006

Page 2

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Ann O'Malley Shake, Judge
The Honorable Michael Harrod, Judge
Jean Collier, Esq.



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JUDICIAL ETHICS OPINION JE-113

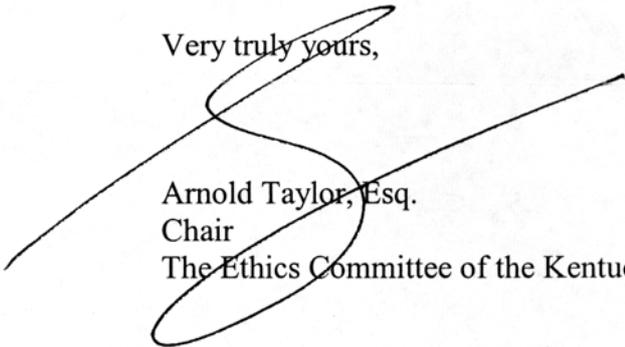
September 8, 2006

QUESTION: May a judicial candidate use either current or past nonpartisan public officials as chairpersons or campaign committee members for his or her campaign?

ANSWER: No, as to current nonpartisan public officials; Yes, as to past nonpartisan public officials.

Judicial Ethics Opinion JE-66 addressed the same questions in the context of current and past partisan officials. Unanimously, the Judicial Ethics Committee agrees that the rationale of JE-66 applies to the above questions as well, and this opinion incorporates the applicable reasoning of JE-66. The rationale would apply to named or unnamed officials.

Very truly yours,


Arnold Taylor, Esq.
Chair
The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Ann O'Malley Shake, Judge
The Honorable Michael Harrod, Judge
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JUDICIAL ETHICS OPINION JE-114

October 2, 2006

QUESTION 1: May a judicial candidate's campaign committee accept unsolicited contributions from political parties?

ANSWER 1: Yes. While a judicial candidate should be careful to avoid giving the appearance that he or she is affiliated with one political party or the other, nothing in Canon 5 prohibits a candidate's committee from accepting unsolicited contributions from a political party.

QUESTION 2: May a judicial candidate distribute yard signs and other campaign literature to political parties and public officials who request them?

ANSWER 2: Yes. While a judicial candidate should be careful to avoid giving the appearance of soliciting a public endorsement, nothing in Canon 5 prohibits a candidate's campaign committee from distributing campaign literature to various political parties and public officials who request them in the hope the materials will be distributed.

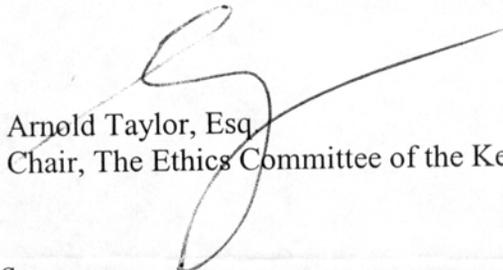
Kentucky Constitution Section 117 mandates that all judicial elections shall be nonpartisan. The Judicial Code of Ethics, however, does not apply to persons who are not judges and judicial candidates. While a judicial candidate is charged with the duty of maintaining his or her campaign's nonpartisan character, both by the Kentucky Constitution and by the specific details of Canon 5, neither the Code nor the Constitution is violated when political parties make unsolicited donations to a candidate's race or when public officials request a judicial candidate's campaign literature, and a candidate may distribute same in the hopes that the materials will be made available to the public.

JUDICIAL ETHICS OPINION JE-114

October 2, 2006

Page 2

Very truly yours,



Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

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The Honorable Ann O'Malley Shake, Judge
The Honorable Jeffrey Scott Lawless, Judge
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DISTRICT COURT

FORMAL
JUDICIAL ETHICS OPINION JE-116

August 5, 2008

The Committee has received an inquiry from a judicial candidate, requesting a formal opinion in response to questions posed by an attorney on behalf of the candidate. The fact that the original request was made by an attorney on behalf of the candidate is mentioned only for the purpose of advising the Bar, members of the judiciary and candidates for judicial office that the Committee has adopted a policy of responding to inquiries from judges or judicial candidates only, and even then only in regard to a question posed regarding the inquirer's own proposed action. Without the inquiry being made by the judge or candidate personally, the Committee cannot learn if it is fully informed as to the facts on which the opinion is solicited; even more important, a question by one person, regarding the propriety of another's actions, might be based on a biased presentation of the facts. In this instance, the candidate subsequently ratified the request in writing.

The questions posed to the Committee (with modifications to preserve the anonymity of the candidate) were:

1. May a Judicial Candidate publicize the endorsement of a parent, who holds a partisan-elected public office, through any means, if the parent is identified as such an official?
2. If the answer to Question 1 is no, may a Judicial Candidate publicize the endorsement of the office-holding parent, through any means, if the parent is not identified as holding his office?
3. May a Judicial Candidate campaign alongside the office-holding parent at church picnics and other public functions if the parent's office is identified (such as by name tag)?
4. If the answer to Question 3 is no, may a Judicial Candidate campaign alongside the office-holding parent at church picnics and other public functions, if the parent's office is not identified?

5. May a Judicial Candidate use the name and image of the office-holding parent in campaign literature and on campaign advertisements if the parent's office is identified?

6. If the answer to Question 5 is no, may a Judicial Candidate use the name and image of the office-holding parent in campaign literature and on campaign advertisements if the parent's office is not identified?

7. May a Judicial Candidate authorize the office-holding parent to host a fundraiser for the Judicial Candidate's campaign committee if the parent is identified in invitations or during the fundraiser as holding that office?

8. If the answer to Question 7 is no, may a Judicial Candidate authorize the office-holding parent to host a fundraiser for the Judicial Candidate's campaign committee if the parent is **not** identified in invitations or during the fundraiser as holding that office?

9. May a Judicial Candidate knowingly permit the office-holding parent to send letters, postcards and emails to his friends and acquaintances urging a vote for the Judicial Candidate if the parent is identified in the letters, postcards and emails as holding that office?

10. If the answer to question 9 is no, may a Judicial Candidate knowingly permit the office-holding parent to send letters, postcards and emails to friends and acquaintances urging a vote for the Judicial Candidate if the parent is **not** identified in the letters, postcards and emails as holding that office?

With regard to questions 1, 2, 3 (one member dissenting), 5, 6, 7 and 8, the Committee responds: "a qualified No".

With regard to questions 4, 9 and 10, the Committee responds: "Yes".

JE 93 and 66 advise that the candidate should not advertise the office-holding parent's support as the support of a public official, and the Committee sees no reason why those opinions do not apply to questions 1, 2, 3 (one member dissenting), 5, 6, 7 and 8. Canon 5B(1)(b) prohibits candidates from allowing "public officials...subject to the candidate's direction and control from doing for the candidate what the candidate is prohibited from doing...." Thus, a candidate may not explicitly or implicitly advertise the office holder's support, and a listing of the name of the official in campaign literature, even though the office is not stated, is a violation of the Canons.

The Committee is not unaware of *Carey vs Wolnitzek*, 2006 WL 2916814. Even so, the Committee reaches the foregoing opinions for two reasons. First, this Committee is not empowered to alter the substance of the Canons of Judicial Ethics, and is bound by their provisions, which can only be changed by the Kentucky Supreme Court. Second, the Committee believes that the reference to *Carey* in the letter ratified by the candidate contains an overstatement. While we would be bound by a clear decision by a court of competent jurisdiction that a particular part of the Canons is unconstitutional, Judge Caldwell actually said, at page 15 of her opinion:

Carey cannot establish an intent to engage in a course of conduct proscribed by the Endorsement Clause because he has failed to show that the clause proscribes the activity in which Carey proposes to engage, i.e., soliciting the endorsement of public officials. While that issue is unresolved, Carey cannot establish an objectively real, immediate or credible threat of sanctions for soliciting the support of public officials. Accordingly...Carey has failed to establish the requisite injury to satisfy the standing or ripeness doctrines.

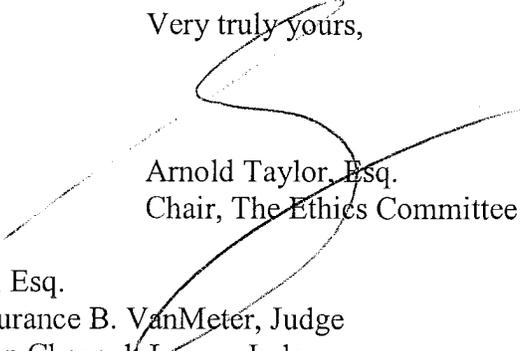
Judge Caldwell went on to point out that it is unknown whether the Kentucky Supreme Court would interpret the Canons to prohibit the use of public officials for support. The Committee is in the same position, especially since *Carey* is not final, and is therefore compelled to follow the conclusions reached in JE 66 and 93 and, with the following exception, the candidate may not publicize the support of a person holding political office, whether or not the office is mentioned.

The exception is based on the fact that the official in question is a parent of the candidate. In JE 93 this Committee noted that the Canons of Judicial Ethics do not apply to non-judicial elected public officials; thus, such an official is generally entitled to do as he or she wishes in regard to supporting a judicial candidate, and cannot be prohibited from announcing support for the candidate while identifying himself as an elected public official. While the office-holding parent might accede to the candidate's wishes if asked by the candidate to refrain from identifying himself/herself as a public official during any supportive activities, the Committee does not believe that an office-holding parent is so under the candidate's "control" that such support would taint the campaign. Also, common sense dictates that no candidate should be deprived of the opportunity to demonstrate that he or she is a family person and to appear in person or in campaign materials with a spouse or parent should not be prohibited, so long as the office is not itself mentioned. *Caveat*, this is to be clearly distinguished from activities of the official which are directed by the candidate.

Formal Judicial Ethics Opinion JE-116
August 5, 2008
Page 4

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

Very truly yours,



Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.



COMMONWEALTH OF KENTUCKY
ETHICS COMMITTEE OF THE KENTUCKY JUDICIARY
ADMINISTRATIVE OFFICE OF THE COURTS
100 MILLCREEK PARK
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JEAN CHENAULT LOGUE
CIRCUIT COURT

JEFFREY SCOTT LAWLESS
DISTRICT COURT

**FORMAL
JUDICIAL ETHICS OPINION JE-119**

January 20, 2010

JUDGES' MEMBERSHIP ON INTERNET-BASED SOCIAL NETWORKING SITES

The Ethics Committee of the Kentucky Judiciary has received an inquiry from a judge as to the propriety of his being a member of Facebook, an internet-based social networking site, and being "friends" with various persons who might appear before him in court.

MAY A KENTUCKY JUDGE OR JUSTICE, CONSISTENT WITH THE CODE OF JUDICIAL CONDUCT, PARTICIPATE IN AN INTERNET-BASED SOCIAL NETWORKING SITE, SUCH AS FACEBOOK, LINKEDIN, MYSPACE, OR TWITTER, AND BE "FRIENDS" WITH VARIOUS PERSONS WHO APPEAR BEFORE THE JUDGE IN COURT, SUCH AS ATTORNEYS, SOCIAL WORKERS, AND/OR LAW ENFORCEMENT OFFICIALS?

The Committee concludes that the current answer to the question is a "Qualified Yes".

Kentucky's Code of Judicial Conduct was adopted in 1999, and is based on the ABA's 1990 Model Code. Certainly, the Model Code was promulgated in the early days of the internet, and long before social-networking sites were developed.

Canon 2 of the Code of Judicial Conduct requires "[a] judge [to] avoid impropriety and the appearance of impropriety in all of the judge's activities." In addition, a judge shall not "convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 2D.

Also pertinent to this analysis is Canon 4A:

A. Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or

- (3) interfere with the proper performance of judicial duties.

As noted by the Commentary to Canon 4A, “[c]omplete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.” In this Commonwealth, this commentary is particularly apropos since Kentucky judges stand for election on a periodic basis. Ky. Const. §§ 117, 119.

While the nomenclature of a social networking site may designate certain participants as “friends,” the view of the Committee is that such a listing, by itself, does not reasonably convey to others an impression that such persons are in a special position to influence the judge. Certainly, judges have many extra-judicial relationships, connections and interactions with any number of persons, lawyers or otherwise, who may have business before the judge and the court over which he or she presides. These relationships may range from mere familiarity, to acquaintance, to close, intimate friendship, to marriage. Not every one of these relationships necessitates a judge’s recusal from a case. Recusal is generally required by Canon 3E(1) “in a proceeding in which the judge’s impartiality might reasonably be questioned....” Thus, the intensity of a judge’s relationships might be viewed on a continuum. On the one side is the judge’s complete unfamiliarity with a lawyer, a witness or a litigant, except in a judicial setting. No recusal is required. On the other extreme is a judge’s close personal relationship with a lawyer, a party or a witness, such as a family member or a spouse. Recusal is required under Canon 3E(1).¹ At some point between these two extremes, a judge and a participant in a case may have such a close social relationship that a judge should disclose the relationship to attorneys and parties in a case and, if need be, recuse. See Cynthia Gray, *Disqualification and Friendships with Attorneys*, JUDICIAL CONDUCT REPORTER, Fall 2009, at 1. See also *In re Adams*, 932 So.2d 1025 (Fla. 2006) (publicly reprimanding judge who presided over cases involving attorney with whom he had an ongoing romantic relationship); *In re Bamberger*, Ky. Judicial Conduct Comm’n, (Feb. 24, 2006) KY. BENCH & BAR, May 2006, at 55 (publicly reprimanding judge for presiding over a number of cases in which a close, personal friend served as trial consultant in the cases, including a class action case settled for over \$200,000,000; the consultant ultimately received compensation of over \$2,000,000 from that case).

While social networking sites may create a more public means of indicating a connection, the Committee’s view is that the designation of a “friend” on a social networking site does not, in and of itself, indicate the degree or intensity of a judge’s relationship with the person who is the “friend”. The Committee conceives such terms as “friend,” “fan” and “follower” to be terms of art used by the site, not the ordinary sense of those words. Recent judicial ethics opinions in other states have reached conflicting results. See Fla. Jud. Ethics

¹ A judge’s participation in cases involving a spouse or family member is prohibited under Canon 3E(1)(d). The Commentary to Canon 3E(1), however, emphasizes that the specific rules in section 3E(1) are not exhaustive.

JUDICIAL ETHICS OPINION JE-119

January 20, 2010

Page 3

Advisory Opinion 2009-20² (concluding that judges may not add lawyers who may appear before the judge as “friends” on a social networking site); *contra* N.Y. Judicial Ethics Advisory Opinion 08-176³ (concluding that judges may belong to internet-based social network, but should exercise discretion and otherwise comply with Rules Governing Judicial Conduct); S.C. Advisory Committee Opinion 17-2009⁴ (concluding that a judge may be a member of Facebook and be “friends” with law enforcement officers, so long as they do not discuss matters relating to the judge’s position). The Florida committee found it significant that in order for a judge to list someone as a “friend,” or for another person to list the judge as a “friend,” the judge was required to consent to the listing. The New York committee, while not prohibiting participation, cautioned:

The judge also should be mindful of the appearance created when he/she establishes a connection with an attorney or anyone else appearing in the judge’s court through a social network. In some ways, this is no different from adding the person’s contact information into the judge’s Rolodex or address book or speaking to them in a public setting. But, the public nature of such a link (*i.e.*, other users can normally see the judge’s friends or connections) and the increased access that the person would have to any personal information the judge chooses to post on his/her own profile page establish, at least, the appearance of a stronger bond. A judge must, therefore, consider whether any such online connections, alone or in combination with other facts, rise to the level of a “close social relationship” requiring disclosure and/or recusal.

N.Y. Judicial Ethics Advisory Opinion 08-176.

The consensus of this Committee is that participation and listing alone do not violate the Kentucky Code of Judicial Conduct, and specifically do not “convey or permit others to convey the impression that they are in a special position to influence the judge.” Canon 2D. However, and like the New York committee, this Committee believes that judges should be mindful of “whether on-line connections alone or in combination with other facts rise to the level of ‘a close social relationship’” which should be disclosed and/or require recusal. Canon 3E(1).

² <http://www.jud6.org/LegalCommunity/LegalPractice/opinions/jecopinions/2009/2009-20.html>.

³ <http://www.nycourts.gov/ip/judicialethics/opinions/08-176.htm>.

⁴ <http://www.judicial.state.sc.us/advisoryOpinions/displayadvopin.cfm?advOpinNo=17-2009>.

In addition to the foregoing, the Committee is compelled to note that, as with any public media, social networking sites are fraught with peril for judges, and that this opinion should not be construed as an explicit or implicit statement that judges may participate in such sites in the same manner as members of the general public. Personal information, commentary and pictures are frequently part of such sites. Judges are required to establish, maintain and enforce high standards of conduct, and to personally observe those standards. Canon 1. In addition, judges “shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Canon 2A. The Commentary to Canon 2A states:

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

Thus, pictures and commentary posted on sites which might be of questionable taste, but otherwise acceptable for members of the general public, may be inappropriate for judges. *See In re: Complaint of Judicial Misconduct*, 575 F.3d 279 (3rd Cir. 2009) (interpreting federal Judicial Conduct and Disability Act) (publically reprimanding judge who had maintained website containing sexually explicit and offensive materials). In its decision, the Third Circuit Court of Appeals noted “[a] judge’s conduct may be judicially imprudent, even if it is legally defensible.” 575 F.3d at 291.

Additional issues may arise in relation to Canon 3B. Judges are generally prohibited from engaging in any ex parte communications with attorneys and their clients. Canon 3B(7). The Commentary to this section explicitly states that “[a] judge must not independently investigate facts in a case and must consider only the evidence presented.” In addition, a judge is disqualified from hearing a case in which the judge has “personal knowledge of disputed evidentiary facts[.]” Canon 3E(1)(a). A North Carolina judge was publically reprimanded for conducting independent research on a party appearing before him and for engaging in ex parte communications, through Facebook, with the other party’s attorney. *Public Reprimand of B. Carlton Terry, Jr.*, N.C. Judicial Standards Comm’n Inquiry No. 08-234.⁵ *See also* Richard Acello, *WEB 2.UH-OH; Judged by Facebook*, 95 A.B.A.J. 27 (Dec. 2009) (noting the commentary aspect of MySpace, Twitter and Facebook, and a judge’s statement that he uses “sites to keep track of adjudicated offenders under his jurisdiction”). With respect to the judge quoted in the Acello article, this Committee questions whether his active monitoring of offenders under his jurisdiction would be appropriate under the Kentucky Code of Judicial Conduct, and

⁵ <http://www.aoc.state.nc.us/www/public/coa/jsc/publicreprimands/jsc08-234.pdf>.

whether such conduct raises separation of powers concerns. As an example, the Oregon Supreme Court, interpreting its Code of Judicial Conduct, censured a judge who witnessed alleged probation violation, ordered offender into court the following week, and then presided over a probation violation hearing. *In re Baker*, 74 P.3d 1077 (Or. 2003).

While a proceeding is pending or impending in any court, judges are prohibited from making “any public comment that might reasonably be expected to affect its outcome or impair its fairness....” Canon 3B(9). Furthermore, full-time judges are prohibited from practicing law or giving legal advice. Canon 4G. Judges, therefore, must be careful that any comments they may make on a social networking site do not violate these prohibitions. While social networking sites may have an aura of private, one-on-one conversation, they are much more public than off-line conversations, and statements once made in that medium may never go away. *See, e.g., Judicial Misconduct*, 575 F.3d at 293 (noting that “possession of controversial private material such as that at issue here carried with it the peril of unwanted disclosure”); *see also* Helen A.S. Popkin, *Twitter Gets You Fired in 140 Characters Or Less*, MSNBC.com (March 23, 2009)⁶ (discussing dangers of postings on social networking sites).

The foregoing examples are meant to be illustrative only, and this Opinion should not be read as allowing other conduct on a social networking site by implication.

In conclusion, even a cursory reading of this opinion should make clear that the Committee struggled with this issue, and whether the answer should be a “Qualified Yes” or “Qualified No”. In speaking with various judges around the state, the Committee became aware that several judges who had joined internet-based social networks subsequently either limited their participation or ended it altogether. In the final analysis, the reality that Kentucky judges are elected and should not be isolated from the community in which they serve tipped the Committee’s decision. Thus, the Committee believes that a Kentucky judge or justice’s participation in social networking sites is permissible, but that the judge or justice should be **extremely cautious** that such participation does not otherwise result in violations of the Code of Judicial Conduct.

Please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons, and the fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee or some of its members.

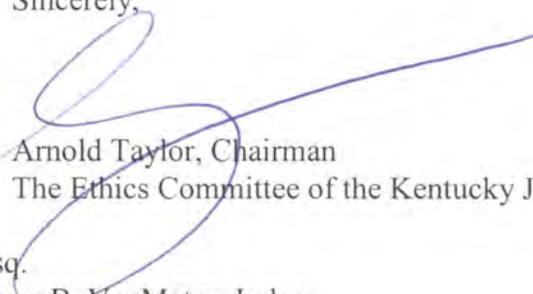
⁶ <http://www.msnbc.msn.com/id/29796962/>. Ms. Popkin hypothesizes “the cardinal rule of the Internet: Never post anything you wouldn’t say to your mom, boss and significant other.”

JUDICIAL ETHICS OPINION JE-119

January 20, 2010

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Sincerely,



Arnold Taylor, Chairman
The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Laurance B. VanMeter, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.



JUDGE JEFF S. TAYLOR
COURT OF APPEALS

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859-246-2296

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ATTORNEY CHAIR

JUDGE JEAN CHENAULT LOGUE
CIRCUIT COURT

JUDGE JEFFREY SCOTT LAWLESS
DISTRICT COURT

FORMAL
JUDICIAL ETHICS OPINION JE-124

October 21, 2013

This opinion addresses the following question:

MAY A CANDIDATE FOR JUDICIAL OFFICE HAVE, AS THE CANDIDATE'S CAMPAIGN CHAIRPERSON, A PERSON WHO CURRENTLY SERVES AS A PUBLIC OFFICIAL AND WHICH OFFICIAL WAS ELECTED IN A PARTISAN ELECTION?

Answer: Qualified "yes."

The Committee notes that the Code of Judicial Conduct makes no mention of a judicial candidate having a campaign chairperson, referencing only the establishment of "committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy." Canon 5B (2) However, the question can properly be construed as asking whether any partisan-elected public official can serve on the candidate's campaign committee.

In 1981, JE 30 was issued in response to a similar inquiry. The Committee was asked whether a judicial candidate could appoint as campaign chairman an unopposed candidate for election as Commonwealth's Attorney. The Committee answered in the negative, on the grounds: (1) that judicial elections are to be non partisan, whereas elections for Commonwealth's Attorney were distinctly partisan, so the situation was analogous to slating; and (2) that the appointment by the judicial candidate amounted to an endorsement by him of the candidate for Commonwealth's Attorney, and that amounted to a violation of the prohibition against judges or judicial candidates endorsing other office-seekers.

In JE 66, the Committee reiterated the substance of JE 30 by saying "Endorsements by current public officials who run for office on a partisan ticket would violate the policy of nonpartisan elections in judicial campaigns." And in JE 93, the Committee was of the view that a judicial candidate could not state that he or she was endorsed by a certain legislator.

FORMAL JUDICIAL ETHICS OPINION JE-124

October 21, 2013

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The case of *Carey vs Wolnitzek* wound its way through the federal court system since the issuance of JE 30, 66 and 93, with the result that those opinions carry with them either a note of caution or disavowal. The Committee recognizes that *Carey* holds that a judicial candidate may disclose his or her party affiliation. Therefore, to the extent that any of our previous opinions touching on the subject at hand are based on content of previous versions of the Kentucky Code of Judicial Conduct declared invalid in *Carey*, those opinions cannot be considered to bar the appointment of a current public official as a member of the campaign committee of the candidate.

Likewise, as noted by the inquiring candidate, JE 30 can be distinguished from a situation where the person he wants to appoint as Campaign Chair will not himself stand for reelection for several years. Thus, the reasoning in the cited opinions, that the appointment would constitute slating, does not prohibit the appointment. Also, the concern expressed in JE 30, that the possible appearance by the Chairman in the inquiring judge's court might promote an appearance of impropriety, does not seem pertinent. Even if the Chairman were to be involved in litigation before the judge he helped elect, the judge could simply recuse.

JE 105 dealt with restrictions on a judge's right to identify himself as a member of a specific political party and is invalid as far as its conclusion is concerned. However, the Committee finds pertinent the following statement In JE 105:

When presented with such a situation [ambiguity in a statute], courts are authorized to look to the intent of the legislature and the purpose of the statute. * * * The Committee believes that it is appropriate to do likewise in construing this canon. As we have already stated, the purpose of Canon 5 and the Code of Judicial Conduct as a whole is to preserve nonpartisan elections and the independence of the judiciary. Therefore, the only possible interpretation of Canon 5(A) (2) which satisfies these goals is to construe the last sentence of the paragraph to apply only to one-on-one situations or very small private informal groups. Any other construction would permit partisanship into Kentucky's judicial elections....

This Committee pays due respect to decisions by the federal courts, but we have a limited remit. We are not empowered to render opinions that go beyond the mandates and verbiage of the Kentucky Code of Judicial Conduct, applicable statutes and the Kentucky Constitution, except as we are required to apply a rule of reason to unclear conditions. In considering the request for advice, we first look to the Canons and we are struck by the February 13, 2013 Order (2013-04) of the Kentucky Supreme Court, amending Canon 5A (1) (a), which now reads:

FORMAL JUDICIAL ETHICS OPINION JE-124

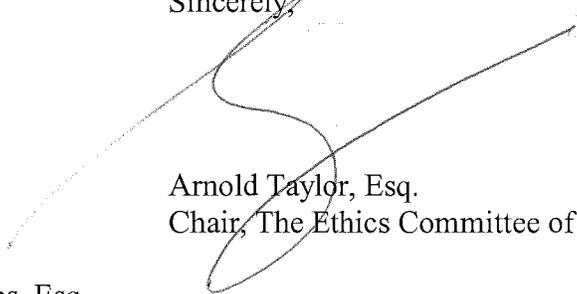
October 21, 2013

Page 3

- (A) Political Conduct in General:
 - (1) Except as permitted by law, a judge or a candidate for election to judicial office shall not:
 - (a) Campaign as a member of a political organization....

The Committee concludes that the Code of Judicial Conduct contains no absolute prohibition against the appointment of a current public official, elected in a partisan election, to the candidate's campaign committee, or otherwise be named as campaign "Chairperson". However, it must be recognized that by selecting that person, the candidate might be deemed to have adopted the political affiliation of the official and thus be campaigning as such. Consequently, the Committee is of the opinion that neither the candidate nor the campaign committee may make any reference to the official's public office or political affiliation in any official campaign materials, filings, press releases or similar information disseminated to the public. To the extent that news media or other third parties make such disclosures, this would be outside of the candidate's control or responsibility.

Sincerely,



Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Jeff Taylor, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.



COMMONWEALTH OF KENTUCKY
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JUDGE JEFFREY SCOTT LAWLESS
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ARNOLD S. TAYLOR
ATTORNEY CHAIR

FORMAL
JUDICIAL ETHICS OPINION JE-125

February 18, 2014

This opinion addresses the following question:

WHAT IS THE DEFINITION OF THE PHRASE, "IN PERSON," AS USED IN
CANON 5B(2)?

Answer: A majority of the Committee believes that a solicitation "in person" occurs when any judge or judicial candidate himself or herself solicits a contribution from a specific individual, in any form of communication that is limited to that specific individual.

Canon 5B(2) contains the following prohibition:

A judge or a candidate for judicial office shall not solicit
campaign funds in person.

The Committee has received several inquiries about the definition of "in person" and publishes this opinion so all judges and candidates are aware of its opinion. The Committee understands the Canon to intend that no judge or judicial candidate be able to exercise undue influence on prospective contributors by reason of his or her judicial position or prospective office.

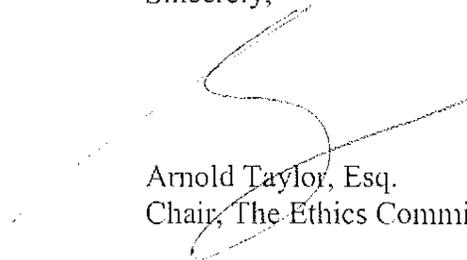
Thus, a majority of the Committee understand the quoted sentence to mean that for the purpose of soliciting a campaign contribution, a judge or candidate may not speak directly to an individual potential donor, may not sign a letter directed to an individual potential donor, may not talk on the telephone to an individual prospective donor, and may not send an email or text message to an individual prospective donor. This interpretation does not preclude such actions directed toward groups of persons.

FORMAL JUDICIAL ETHICS OPINION JE-125
February 18, 2014

One member of the Committee is of the opinion that the foregoing interpretation is overbroad, and that "in person" should be construed as prohibiting only "face to face" solicitations.

Finally, please be aware that opinions issued by or on behalf of the Committee are restricted to the content and scope of the Canons of Judicial Ethics and legal authority interpreting those Canons. The fact situation on which an opinion is based may be affected by other laws or regulations. Persons contacting the Judicial Ethics Committee are strongly encouraged to seek counsel of their own choosing to determine any unintended legal consequences of any opinion given by the Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Taylor", written over a faint, circular stamp or watermark.

Arnold Taylor, Esq.
Chair, The Ethics Committee of the Kentucky Judiciary

cc: Donald H. Combs, Esq.
The Honorable Jeff Taylor, Judge
The Honorable Jean Chenault Logue, Judge
The Honorable Jeffrey Scott Lawless, Judge
Jean Collier, Esq.

Judicial Conduct Commission

JUDICIAL CONDUCT COMMISSION

About

The mission of the Kentucky Judicial Conduct Commission is to protect the public, to encourage judges, commissioners and candidates for judicial office to maintain high standards of conduct, and to promote public confidence in the integrity, independence, competence, and impartiality of the judiciary.

The Commission accomplishes this mission through its investigation of complaints of judicial misconduct, wrongdoing or disability. In cases where judges, commissioners and candidates for judicial office are found to have engaged in misconduct or to be incapacitated, the Kentucky Constitution authorizes the Commission to take appropriate disciplinary action, including issuing admonitions, reprimands, censures, suspensions, or removal from office.

The Commission is composed of six voting members who serve four-year terms. The members include one representative and one alternate from District Court, Circuit Court, the Kentucky Court of Appeals and the Kentucky Bar Association, and two citizen representatives appointed by the Governor who are neither judges nor attorneys.

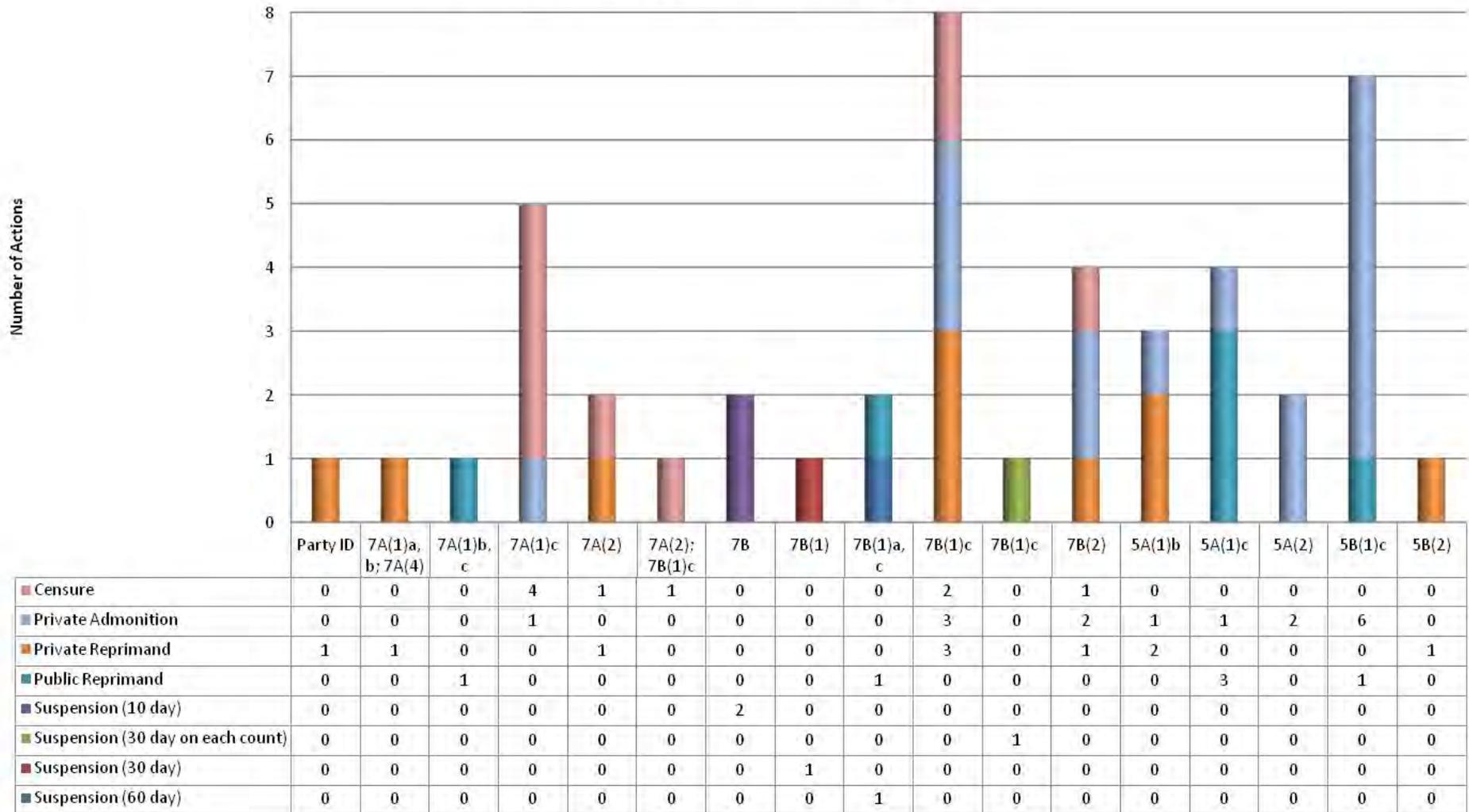
The Commission functions under rules established by the Supreme Court of Kentucky and has authority over judges, trial commissioners, domestic relations commissioners, master commissioners and attorneys who are candidates for judicial office.

Complaints regarding judges, commissioners and judicial candidates may be directed to:

P.O. Box 4266
Frankfort, KY 40604
Phone: 502-564-1231
Fax: 502-564-1233

Further information regarding the Commission, including information on the complaint process, may be found on the Commission's [website](#).

Political Activity Action History 1976-2013



The first action, taken by the Commission in 1977, was a Party ID campaign violation.

The Canons were adopted effective 1/1/1978; Canon 7 - Political Activity, (A) - Political Conduct in General, (B) - Campaign Conduct.

The Canons were amended by SC Order 98-2; Canon 7 is now Canon 5.

Of 177 actions taken since 1976, 46 were political activity violations, making up approximately 25% of the Commission's actions.

Political Activity Action History 1976-2013

Action Specifics				
Date Issued	Judicial Position at the time of the action	Judge Name	Action	Canon
February 14, 1977	Court of Appeals Judge		Private Reprimand	Party ID
March 15, 1979	District Judge		Private Reprimand	7A(2)
October 13, 1979	Circuit Judge	J. Douglas Graham	Censure	7A(1)c
April 9, 1982	District Judge	Charles R. Ehlschide	Suspension (10 day)	7B
August 3, 1982	District Judge	Jack D. Wood	Suspension (10 day)	7B
May 13, 1983	Circuit Judge	James Carter, Jr.	Censure	7A(1)c
July 30, 1984	District Judge	Timothy Nolan	Censure	7B(1)c
January 25, 1985	Judicial Candidate		Private Reprimand	7B(1)c
May 31, 1985	District Judge	James Noble	Suspension (30 day)	7B(1)
October 8, 1985	District Judge	Jack D. Wood	Suspension (60 day)	7B(1)a,c
April 11, 1986	Judicial Candidate	Ronald E. Butler, Sr.	Public Reprimand	7B(1)a,c
November 13, 1987	Circuit Judge	F. Byrd Hogg	Public Reprimand	7A(1)b,c
September 7, 1990	District Judge	Thomas McDonald	Censure	7B(2)
September 18, 1991	Court of Appeals Judge	J. William Howerton	Censure	7A(1)c
September 18, 1991	District Judge	C. Donald Wells	Censure	7A(1)c
October 25, 1991	Judicial Candidate	Jed Deteres	Censure	7A(2); 7B(1)c
December 6, 1991	Judicial Candidate		Private Admonition	7B(1)c
December 6, 1991	Judicial Candidate		Private Admonition	7A(1)c
January 24, 1992	Judicial Candidate	Michael Triplett	Censure	7A(2)
June 1, 1992	Master Commissioner		Private Reprimand	7A(1)a,b; 7A(4)
August 20, 1992	Judicial Candidate		Private Reprimand	7B(1)c
September 12, 1993	District Judge		Private Admonition	7B(1)c
March 11, 1994	Circuit Judge		Private Admonition	7B(1)c
May 12, 1994	District Judge		Private Reprimand	7B(1)c
June 10, 1994	Supreme Court Justice		Private Admonition	7B(2)
September 1, 1994	District Judge	Kay Doyle	Censure	7B(1)c
June 19, 1997	Circuit Judge	Patricia Summe	Suspension (30 day on each count)	7B(1)c
July 2, 1998	Judicial Candidate		Private Reprimand	7B(2)
December 19, 1998	Circuit Judge		Private Admonition	7B(2)
January 15, 2000	Judicial Candidate		Private Admonition	5B(1)c
March 27, 2000	Judicial Candidate		Private Admonition	5A(2)

Political Activity Action History 1976-2013

June 16, 2000	Judicial Candidate		Private Admonition	5B(1)c
September 6, 2000	Judicial Candidate		Private Admonition	5B(1)c
September 14, 2000	District Judge		Private Admonition	5B(1)c
December 27, 2000	District Judge		Private Admonition	5B(1)c
December 28, 2000	Circuit Judge		Private Reprimand	5A(1)b
November 3, 2001	District Judge		Private Admonition	5A(2)
September 19, 2002	Circuit Judge		Private Admonition	5A(1)b
October 24, 2003	Judicial Candidate		Private Reprimand	5B(2)
March 23, 2004	Trial Commissioner		Private Admonition	5A(1)c
April 14, 2004	District Judge	Darrel Mullins	Public Reprimand	5B(1)c
June 9, 2006	Circuit Judge		Private Reprimand	5A(1)b
January 26, 2007	Former Circuit Judge	Daniel J. Zalla	Public Reprimand	5A(1)c
May 23, 2008	District Judge	John P. Chappell	Public Reprimand	5A(1)c
June 23, 2008	District Judge	Fred F. White	Public Reprimand	5A(1)c
February 2, 2009	District Judge		Private Admonition	5B(1)c

The Commission privately admonished a judge for distribution of campaign materials promising the judge would work with police if elected, in violation of Canon 5B(1)(c).

The Commission publicly reprimanded two judges for making campaign contributions to candidates for public office, in violation of Canon 5.

The Commission privately admonished a master commissioner for agreeing to allow the master commissioner's name to be used in the campaign of another judge, in violation of Canon 5A.

The Commission privately admonished a judge for permitting the judge's name to be listed as a host for a fundraiser for a candidate running for public office, in violation of Canon 5.

The Commission publicly reprimanded a judge for publicly endorsing a candidate for public office in violation of Canon 5A(4) and by engaging in political activity in violation of Canon 5A(4).

Kentucky Court of Justice
Personnel Policies

SECTION 2.06 Political Activities

- (1) Political Contributions and Campaigns
 - (a) No employee in the KCOJ may be coerced, forced, or required to make any contribution for political purposes.
 - (b) No employee in the KCOJ may be coerced, forced, or required to solicit or take part in soliciting for political purposes.
 - (c) Employees are prohibited from using KCOJ time or resources for the purpose of political solicitation. Employees shall not display campaign literature or other election material in any facility owned, leased, or otherwise occupied by the KCOJ.

- (2) Political Office
 - (a) All employees of the KCOJ shall terminate their employment prior to filing for election to any partisan political office. This provision does not apply to employees who are candidates for office on the date these Policies become effective.
 - (b) Employees who seek to hold a nonpartisan office are not required to terminate their employment prior to filing for election to the nonpartisan office as long as campaigning does not interfere with the performance of their duties. Any employee who intends to seek a nonpartisan office shall notify his or her appointing authority prior to filing for election.
 - (c) Pursuant to Kentucky Constitution §165 and KRS 61.080, there are certain offices considered incompatible by law. When considering any elected or appointed political office, these sources must be consulted. Acceptance of an incompatible office voids the first office as a matter of law.

- (3) Political Activities
 - (a) The KCOJ encourages employees to register and vote. Employees are allowed four hours of paid leave to vote during work hours. For more information regarding voting leave, refer to Section 7.05 of these Policies.
 - (b) The following political activities are permitted for employees, except while the employee is on duty:
 - (i) Expressing opinions on all political subjects and candidates.
 - (ii) Making voluntary cash contributions to political parties, candidates, or organizations.
 - (iii) Joining a political club and attending its meetings.
 - (iv) Attending political rallies, conventions, etc., and participating in the selection of committee members.

- (v) Displaying political pictures or signs on their property.
- (vi) Wearing political badges, buttons, or other designations. Nothing in these Policies prohibit voluntarily displaying political stickers on their private automobiles.
- (vii) Serving as precinct election officers at the polls.
- (viii) Actively working for or against constitutional amendments, referendums, or municipal ordinances in which they are interested, provided that state time and resources are not used for this purpose.
- (ix) Transporting friends or relatives to the polls.
- (x) Soliciting or handling political contributions.
- (xi) Soliciting the sale of or selling political party, faction, or candidate items or tickets. Employees may voluntarily purchase such items or tickets.
- (xii) Preparing, organizing, or conducting a political meeting or rally, or addressing such a meeting on any partisan political matter.
- (xiii) Participating in a partisan activity at the polls (at primary or regular elections) in the position of checker, challenger, or watcher, or in soliciting votes and assisting voters to mark ballots.
- (xiv) Distributing campaign literature or material.
- (xv) Initiating or circulating partisan political nominating petitions.
- (xvi) Canvassing a district or soliciting political support from a party, faction, or candidate, either in person or in writing.

Case Law

CAREY V. WOLNITZEK

See also: Carey v. Wolnitzek, 2006 WL 2916814 (E.D.Ky., Oct. 10, 2006)

Carey v. Wolnitzek, 2007 WL 2726121 (E.D.Ky., Sep. 17, 2007)

Carey v. Wolnitzek, 2008 WL 4602786 (E.D.Ky., Oct. 15, 2008),

Judgment affirmed in part, vacated in part: Carey v. Wolnitzek, 614 F.3d 189 (6th Cir. 2010)

On remand: Carey v. Wolnitzek, 2012 WL 4597236 (E.D.Ky., Sep. 29, 2012)

614 F.3d 189

(Cite as: 614 F.3d 189)



United States Court of Appeals,
Sixth Circuit.

Marcus CAREY, Plaintiff–Appellant/Cross–Appellee,
v.

Stephen D. WOLNITZEK, in his official capacity as Chairperson of the Kentucky Judicial Conduct Commission; Michele M. Keller, in her official capacity as a member of the Kentucky Judicial Conduct Commission; Eddy Coleman, in his official capacity as a member of the Kentucky Judicial Conduct Commission; Susan M. Johnson, in her official capacity as a member of the Kentucky Judicial Conduct Commission; Diane E. Logsdon, in her official capacity as a member of the Kentucky Judicial Conduct Commission; Joyce King Jennings, in her official capacity as a member of the Kentucky Judicial Conduct Commission; Lee E. Sitlinger, Jr., in his official capacity as chairperson of Panel A of the Kentucky Inquiry Commission; Reed N. Moore, Jr., in his official capacity as chairperson of Panel B of the Kentucky Inquiry Commission; Stephen L. Barker, in his official capacity as chairperson of Panel C of the Kentucky Inquiry Commission; Linda A. Gosnell, in her official capacity as Bar Counsel in Kentucky, Defendants–Appellees/Cross–Appellants.

Nos. 08–6468, 08–6538.

Argued: Jan. 13, 2010.

Decided and Filed: July 13, 2010.

Background: Kentucky Supreme Court candidate brought action against members of Kentucky Judicial Conduct Commission, Kentucky Inquiry Commission, and Bar Counsel, alleging that party affiliation, solicitation, and commits clauses of Code of Judicial Conduct violated free speech and associational rights. The United States District Court for the Eastern District of Kentucky, [Karen K. Caldwell, J., 2008 WL 4602786](#), invalidated party affiliation and solicitation clauses on their face but rejected facial challenge to the commits clause. Parties cross-appealed.

Holdings: The Court of Appeals, [Sutton](#), Circuit Judge, held that:

- (1) candidate's challenge was ripe and not moot;
- (2) provisions were subject to strict scrutiny;
- (3) party affiliation clause violated free speech; and
- (4) solicitation clause violated free speech.

Affirmed in part and vacated in part.

Wiseman, District Judge, sitting by designation, filed an opinion concurring in part and dissenting in part.

West Headnotes

[1] Federal Courts 170B 2121

170B Federal Courts

170BIII Case or Controversy Requirement

170BIII(A) In General

170Bk2118 Ripeness; Prematurity

170Bk2121 k. Nature of dispute; concreteness. [Most Cited Cases](#)

(Formerly 170Bk12.1)

Designed to ensure that the federal courts resolve existing, substantial controversies, not disputes anchored in future events that may not occur as anticipated or may not occur at all, the “ripeness doctrine” ensures that a dispute is concrete and real before the judicial branch resolves it.

[2] Federal Courts 170B 2120

170B Federal Courts

170BIII Case or Controversy Requirement

170BIII(A) In General

170Bk2118 Ripeness; Prematurity

170Bk2120 k. Fitness and hardship. [Most Cited Cases](#)

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(Formerly 170Bk12.1)

Federal Courts 170B 2121

170B Federal Courts

170BIII Case or Controversy Requirement

170BIII(A) In General

170Bk2118 Ripeness; Prematurity

170Bk2121 k. Nature of dispute; concreteness. **Most Cited Cases**

(Formerly 170Bk12.1)

Three considerations inform ripeness doctrine; whether the alleged injury is likely to occur, whether the factual record is sufficiently developed to resolve the question, and what kinds of hardships, if any, will the parties face if the court delays resolution of the question.

[3] Constitutional Law 92 978

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)2 Necessity of Determination

92k978 k. Ripeness; prematurity. **Most Cited Cases**

On a free-speech overbreadth challenge, a relaxed ripeness standard applies to steer clear of the risk that the law may cause others not before the court to refrain from constitutionally protected speech or expression. **U.S.C.A. Const.Amend. 1.**

[4] Constitutional Law 92 978

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)2 Necessity of Determination

92k978 k. Ripeness; prematurity. **Most Cited Cases**

Kentucky Supreme Court candidate's free speech and associational challenge to affiliation, solicitation, and commits clauses of Code of Judicial Conduct was ripe for review, even though Supreme Court and its ethics branch had yet to apply the clauses to candidate; candidate, who wanted to let voters know his party affiliation, wanted to solicit campaign funds directly, and wanted to answer judicial questionnaires propounded by a local right to life organization, claimed an interest in engaging in protected speech that implicated, if not violated each clause, thereby establishing a credible fear of enforcement. **U.S.C.A. Const.Amend. 1; Ky.Sup.Ct.Rules, Rule 4.300**, Code of Jud.Conduct, Canon 5.

[5] Constitutional Law 92 977

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)2 Necessity of Determination

92k977 k. Mootness. **Most Cited Cases**

Kentucky Supreme Court candidate's free speech and associational challenge to affiliation, solicitation, and commits clauses of Code of Judicial Conduct were not moot, even though election had come and gone, since the alleged wrongs were capable of repetition, yet evading review; candidate still retained the right to run for judicial office again, and all candidates for judicial office in Kentucky, whether sitting judges or not, were subject to the provision. **U.S.C.A. Const.Amend. 1; Ky.Sup.Ct.Rules, Rule 4.300**, Code of Jud.Conduct, Canon 5.

[6] Constitutional Law 92 1477

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1477 k. Judges. **Most Cited Cases**

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Constitutional Law 92 2054

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(T) Judges, Regulation of

92k2053 Elections

92k2054 k. In general. [Most Cited Cases](#)

Kentucky Supreme Court candidate's free speech and associational challenge to affiliation, solicitation, and commits clauses of Code of Judicial Conduct was subject to strict scrutiny, rather than intermediate scrutiny; three clauses censored speech based on its content, and clauses, in regulating speech during elections, implicated a core area of free-speech protection. [U.S.C.A. Const.Amend. 1](#); [Ky.Sup.Ct.Rules, Rule 4.300](#), Code of Jud.Conduct, Canon 5.

[7] Constitutional Law 92 1517

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1516 Content-Based Regulations or Restrictions

92k1517 k. In general. [Most Cited Cases](#)

Constitutional Law 92 1518

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1516 Content-Based Regulations or Restrictions

92k1518 k. Strict or exacting scrutiny; compelling interest test. [Most Cited Cases](#)

Content-based restrictions on speech generally face

strict scrutiny, and thus are presumptively invalid unless the restriction discriminates on the basis of categorically proscribable speech. [U.S.C.A. Const.Amend. 1](#).

[8] Constitutional Law 92 1053

92 Constitutional Law

92VII Constitutional Rights in General

92VII(A) In General

92k1053 k. Strict or heightened scrutiny; compelling interest. [Most Cited Cases](#)

To survive strict scrutiny, a law must be narrowly tailored to advance a compelling state interest.

[9] Constitutional Law 92 656

92 Constitutional Law

92V Construction and Operation of Constitutional Provisions

92V(F) Constitutionality of Statutory Provisions

92k656 k. Facial invalidity. [Most Cited Cases](#)

Exceptional remedy of facial invalidity requires claimant to show one of two things; (1) that there truly are no or at least few circumstances in which the law would be valid, or (2) that a court cannot sever the unconstitutional textual provisions of the law or enjoin its unconstitutional applications.

[10] Constitutional Law 92 1496

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1496 k. Facial challenges; facial invalidity. [Most Cited Cases](#)

Constitutional Law 92 1521

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92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(A) In General

92XVIII(A)1 In General

92k1519 Overbreadth

92k1521 k. Prohibition of substantial amount of speech. [Most Cited Cases](#)

In view of the risk that enforcement of an overbroad law may deter people from engaging in constitutionally protected speech and may inhibit the free exchange of ideas, the overbreadth doctrine permits courts to invalidate a law on its face if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep. [U.S.C.A. Const.Amend. 1.](#)

[11] Constitutional Law 92  **1477**

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1477 k. Judges. [Most Cited Cases](#)

Constitutional Law 92  **2054**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(T) Judges, Regulation of

92k2053 Elections

92k2054 k. In general. [Most Cited Cases](#)

Judges 227  **3**

227 Judges

227I Appointment, Qualification, and Tenure

227k3 k. Appointment or election. [Most Cited Cases](#)

Judges 227  **11(2)**

227 Judges

227I Appointment, Qualification, and Tenure

227k11 Removal or Discipline

227k11(2) k. Standards, canons, or codes of conduct, in general. [Most Cited Cases](#)

Party affiliation clause within Kentucky Code of Judicial Conduct, which prohibited judges and judicial candidates from disclosing their party affiliation in any form of advertising, or when speaking to a gathering, save in answer to a question by a voter in one-on-one or very small private informal settings, advanced state's compelling interest in having a judiciary that was neither biased in fact nor in appearance and in diminishing reliance on political parties in judicial selection, as required to survive free speech and associational challenge. [U.S.C.A. Const.Amend. 1; Ky.Sup.Ct.Rules, Rule 4.300](#), Code of Jud.Conduct, Canon 5.

[12] Constitutional Law 92  **1477**

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1477 k. Judges. [Most Cited Cases](#)

Constitutional Law 92  **2054**

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(T) Judges, Regulation of

92k2053 Elections

92k2054 k. In general. [Most Cited Cases](#)

Judges 227  **3**

227 Judges

227I Appointment, Qualification, and Tenure

227k3 k. Appointment or election. [Most Cited Cases](#)

Judges 227  **11(2)**

227 Judges

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[227I](#) Appointment, Qualification, and Tenure

[227k11](#) Removal or Discipline

[227k11\(2\)](#) k. Standards, canons, or codes of conduct, in general. [Most Cited Cases](#)

Party affiliation clause within Kentucky Code of Judicial Conduct, which prohibited judges and judicial candidates from disclosing their party affiliation in any form of advertising, or when speaking to a gathering, save in answer to a question by a voter in one-on-one or very small private informal settings, was not narrowly tailored to advance state's interest in preventing biased judiciary or diminishing reliance on political parties in judicial selection, and thus clause facially violated free speech and associational rights; by prohibiting candidates from disclosing party affiliation the clause prevented candidates from announcing their views on many issues at once, party affiliation was forbidden only when candidate raised the point, candidates remained able to discuss their membership or affiliation in any other type of organization, including those that took positions on judges and judicial philosophy, and clause only prohibited only disclosure of a candidates party membership, not party membership itself. [U.S.C.A. Const.Amend. 1](#); [Ky.Sup.Ct.Rules, Rule 4.300](#), Code of Jud.Conduct, Canon 5(A)(2).

[13] Constitutional Law 92  **1053**

92 Constitutional Law

[92VII](#) Constitutional Rights in General

[92VII\(A\)](#) In General

[92k1053](#) k. Strict or heightened scrutiny; compelling interest. [Most Cited Cases](#)

If a law does too much, or does too little, to advance the government's objectives, it will fail narrow tailoring requirement of strict scrutiny.

[14] Constitutional Law 92  **1506**

92 Constitutional Law

[92XVIII](#) Freedom of Speech, Expression, and Press

[92XVIII\(A\)](#) In General

[92XVIII\(A\)1](#) In General

[92k1506](#) k. Strict or exacting scrutiny; compelling interest test. [Most Cited Cases](#)

A law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction upon truthful speech under a strict scrutiny analysis, when it leaves appreciable damage to that supposedly vital interest unprohibited. [U.S.C.A. Const.Amend. 1](#).

[15] Constitutional Law 92  **1681**

92 Constitutional Law

[92XVIII](#) Freedom of Speech, Expression, and Press

[92XVIII\(F\)](#) Politics and Elections

[92k1681](#) k. Political speech, beliefs, or activity in general. [Most Cited Cases](#)

It is not the function of government to select which issues are worth discussing or debating in the course of a political campaign. [U.S.C.A. Const.Amend. 1](#).

[16] Constitutional Law 92  **1477**

92 Constitutional Law

[92XVII](#) Political Rights and Discrimination

[92k1477](#) k. Judges. [Most Cited Cases](#)

Constitutional Law 92  **2055**

92 Constitutional Law

[92XVIII](#) Freedom of Speech, Expression, and Press

[92XVIII\(T\)](#) Judges, Regulation of

[92k2053](#) Elections

[92k2055](#) k. Contributions. [Most Cited Cases](#)

Judges 227  **3**

227 Judges

[227I](#) Appointment, Qualification, and Tenure

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227k3 k. Appointment or election. [Most Cited Cases](#)

Judges 227 11(2)

227 Judges

227I Appointment, Qualification, and Tenure

227k11 Removal or Discipline

227k11(2) k. Standards, canons, or codes of conduct, in general. [Most Cited Cases](#)

Solicitation clause within Kentucky Code of Judicial Conduct, which prohibited judges and judicial candidates from soliciting campaign funds, advanced state's compelling interest in an impartial judiciary and preserving appearance and reality of a non-corrupt judiciary, as required to survive free speech and associational challenge. [U.S.C.A. Const.Amend. 1](#); [Ky.Sup.Ct.Rules, Rule 4.300](#), Code of Jud.Conduct, Canon 5(A)(2).

[17] Constitutional Law 92 3992

92 Constitutional Law

92XXVII Due Process

92XXVII(E) Civil Actions and Proceedings

92k3991 Trial

92k3992 k. In general. [Most Cited Cases](#)

Judges 227 42

227 Judges

227IV Disqualification to Act

227k41 Pecuniary Interest

227k42 k. In general. [Most Cited Cases](#)

Litigants have a due process right to a trial before a judge with no direct, personal, substantial pecuniary interest in the outcome, and the legitimacy of the judiciary rests on delivering on that promise and in furthering the public's trust in the integrity of its judges. [U.S.C.A. Const.Amend. 14](#).

[18] Constitutional Law 92 1477

92 Constitutional Law

92XVII Political Rights and Discrimination

92k1477 k. Judges. [Most Cited Cases](#)

Constitutional Law 92 2055

92 Constitutional Law

92XVIII Freedom of Speech, Expression, and Press

92XVIII(T) Judges, Regulation of

92k2053 Elections

92k2055 k. Contributions. [Most Cited Cases](#)

Judges 227 3

227 Judges

227I Appointment, Qualification, and Tenure

227k3 k. Appointment or election. [Most Cited Cases](#)

Judges 227 11(2)

227 Judges

227I Appointment, Qualification, and Tenure

227k11 Removal or Discipline

227k11(2) k. Standards, canons, or codes of conduct, in general. [Most Cited Cases](#)

Solicitation clause within Kentucky Code of Judicial Conduct, which prohibited judges and judicial candidates from soliciting campaign funds, was not narrowly tailored to advance state's interest in an impartial judiciary and preserving appearance and reality of a non-corrupt judiciary, and thus clause was facially overbroad and violated free speech and associational rights; clause prohibited a range of solicitations, including speeches to large groups and signed mass mailings, that presented little or no risk of undue pressure or the appearance of a quid pro quo, while clause prohibited a candidate himself from soliciting do-

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nations, it did not prohibit such solicitation by his campaign committee, and clause did not address how candidates responded to committee's solicitations. *U.S.C.A. Const.Amend. 1*; *Ky.Sup.Ct.Rules, Rule 4.300*, Code of Jud.Conduct, Canon 5(B)(2).

***192 ARGUED:** James Bopp, Jr., Bopp, Coleson & Bostrom, Terre Haute, Indiana, for Appellant. Mark R. Overstreet, Stites & Harbison, PLLC, Frankfort, Kentucky, for Appellees. **ON BRIEF:** James Bopp, Jr., Anita Y. Woudenberg, Bopp, Coleson & Bostrom, Terre Haute, Indiana, for Appellant. Mark R. Overstreet, Stites & Harbison, PLLC, Frankfort, Kentucky, Bethany A. Breetz, Stites & Harbison, PLLC, Louisville, Kentucky, R. Gregg Hovious, Fultz Maddox Hovious & Dickens PLC, Louisville, Kentucky, for Appellees. Benjamin C. Mizer, David M. Lieberman, Emily S. Schlesinger, Office of the Ohio Attorney General, Columbus, Ohio, B. Eric Restuccia, Office of the Michigan Attorney General, Lansing, Michigan, for Amici Curiae.

Before **BATCHELDER**, Chief Judge, **SUTTON**, Circuit Judge, **WISEMAN**, District Judge.^{FN*}

FN* The Honorable Thomas A. Wiseman, Jr., Senior United States District Judge for the Middle District of Tennessee, sitting by designation.

***193 SUTTON**, J., delivered the opinion of the court, in which **BATCHELDER**, C.J., joined. **WISEMAN**, D.J. (p. 219), delivered a separate opinion concurring in part and dissenting in part.

OPINION

SUTTON, Circuit Judge.

Imagine if a State imposed these restrictions on candidates for election to the legislature: (1) They “shall not identify” themselves “as a member of a political party in any form of advertising or when speaking to a gathering”; (2) they “shall not solicit campaign funds”; and (3) they “shall not ... make a statement that a reasonable person would perceive as committing” the candidate to vote “a

certain way on a[n] ... issue” likely to come before the legislature. A court faced with a First (and Fourteenth) Amendment challenge to the law would make short work of it. Legislative candidates have a First Amendment right to associate publicly with a political party, *see Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986), to solicit campaign funds, *see Riley v. Nat'l Fed. of the Blind of N.C.*, 487 U.S. 781, 796, 108 S.Ct. 2667, 101 L.Ed.2d 669 (1988), and to communicate to their constituents how they will vote on the issues of the day, *see Brown v. Hartlage*, 456 U.S. 45, 55–59, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982). It is doubtful that a single federal or state court judge in the country would see it differently.

Yet what happens if the same restrictions apply to judicial elections, not legislative elections? Some say the answer is the same. Elections are elections, and the same First Amendment applies to all of them. When the government suppresses election speech based on its content—prohibiting candidates from mentioning a political party with whom they affiliate, barring them from putting their name on a fund-raising letter or telling them what they can and cannot say about their judicial philosophy—the most rigorous form of constitutional second-guessing applies, and no categorical exemption from the First Amendment spares the government from this burden. In modern America, judicial elections are no less relevant to the public policy concerns of the citizenry than legislative elections, and the First Amendment protects electioneering speech in the one context as vigorously as it does in the other. Concerns about impartiality and open-mindedness that might result from unfettered judicial campaigning can be handled after the elections, not before, through the application of case-by-case judicial recusal rules that all States require their judges to follow before they agree to hear a case. Any remaining concerns flow not from the absence of speech restrictions on judicial candidates but from the State's insistence on holding elections for judicial office in the first place. A State cannot simultaneously insist that judges be held accountable to the electorate at regular intervals but deny to sitting judges and candidates alike the communicative tools for explaining

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how they will be held to account.

Others say it is not that easy. Judges do not represent constituents. They apply the law to the facts one case at a time, and, if they represent anyone or anything, it is the rule of law, which is why they sometimes must rule *against* the policy preferences of a majority of the voters. The judicial process works only when it is done in a disinterested manner, which is inconsistent with campaigns in which judges commit to rule, or appear to commit to rule, in a certain way in certain cases. It *194 is one thing when a legislator solicits money during a campaign; it is quite another when a judicial candidate, a sitting judge above all, does the same. With a few modest exceptions, *see, e.g., Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009); Mich. Court Rule 2.003, judicial-recusal rules are self-enforced and therefore may not provide adequate safeguards against the risks that flow from treating judicial elections like legislative ones. Unlike the other branches of government, the authority of the judiciary turns almost exclusively on its credibility and the respect warranted by its rulings, both of which are likely to be diminished by free-flowing electoral speech that permits the malignant inference that there is such a thing as caucus-bound blue-robed judges and caucus-bound red-robed judges. In some settings, there can be too much of a good thing, and unfettered free speech in judicial elections is one of them.

This is a complicated debate, and today's case requires us to take a side on some of these issues. Most recently in 2005, the Kentucky Supreme Court promulgated a judicial canon along the lines of the hypothetical legislative campaign rules mentioned above. As sitting judges ourselves, we have considerable sympathy for the concerns that prompted the canon, so much so that we embrace a central premise of it: Judicial elections differ from legislative elections, and the Kentucky Supreme Court has a compelling interest in regulating judicial campaign speech to ensure the reality and appearance of an impartial judiciary. Yet because two clauses of the canon overlooked narrower ways of advancing this interest and because, as written, they remain incompatible with the United States Supreme

Court's decision in *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), we must invalidate them. The third clause is constitutional in the main but contains a material ambiguity, which requires further consideration by the district court. The district court's decision is affirmed in part and vacated in part.

I.

A.

In 1792, Kentucky became the fifteenth State (and the fourth Commonwealth). The original Kentucky Constitution permitted the Governor to appoint judges, *see* Ky. Const. art. 2, § 8 (1792), but the Commonwealth, in the aftermath of the Age of Jackson, amended its Constitution in 1850 to require its judges to stand for popular election to eight-year terms. *See* Ky. Const. § 117; Ky. Const. art. 4, §§ 4, 6 (1850). Since 1975, judicial elections in Kentucky have been “nonpartisan,” *compare* Ky. Const. § 116 (1891) with Ky. Const. § 117 (1976), meaning that political parties have no formal role in any stage of the judicial selection process. Prospective candidates submit petitions for nomination to the Secretary of State. Ky. Rev. Stat. Ann. § 118A.060. The Commonwealth holds a single primary election for each judicial seat with no party identifiers and random ballot positioning. *Id.* The top two vote-getters in the primary election receive a spot on the general election ballot, which also is held without any party identifier. *Id.*

In competing for judicial seats, all candidates must abide by the Kentucky Code of Judicial Conduct. Promulgated by the Kentucky Supreme Court, it generally prohibits “a judge or judicial candidate” from “inappropriate political activity.” Rules of Supreme Court of Kentucky 3.130(8.2); 4.300, Canon 5. Sitting judges or judicial candidates violate this admonition, the Code says, if they fail to follow these clauses of Canon 5, among others:

*195 *The party affiliation clause.* “A judge or candidate shall not identify himself or herself as a member of a political party in any form of advertising, or when speaking to a gathering. If not initiated by the judge or candidate for such office, and only in answer to a direct

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question, the judge or candidate may identify himself or herself as a member of a particular political party.” Canon 5(A)(2).

The solicitation clause. “A judge or a candidate for judicial office shall not solicit campaign funds, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.” Canon 5(B)(2).

The commits clause. “A judge or candidate for election to judicial office ... shall not intentionally or recklessly make a statement that a reasonable person would perceive as committing the judge or candidate to rule a certain way in a case, controversy, or issue that is likely to come before the court....” Canon 5(B)(1)(c).

The Kentucky Judicial Conduct Commission, a constitutionally mandated state body subject to judicial review by the Kentucky Supreme Court, *see* [Ky. Const. § 121](#), enforces the Code of Judicial Conduct. It may impose sanctions on violators of the Code, which run the gamut from a private reprimand to a public censure to removal from office to a referral to the Kentucky Bar Association for disbarment from the practice of law. Rules of Supreme Court of Kentucky 4.020. The Kentucky Inquiry Commission and the Office of Bar Counsel also police ethical violations by Kentucky attorneys, including violations of the rule that “[a] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.” Rules of Supreme Court of Kentucky 3.130(8.2); 3.160(1).

B.

In June 2006, Marcus Carey, then a candidate for a seat on the Kentucky Supreme Court, filed a complaint in federal district court claiming that the party affiliation, solicitation and commits clauses violated his speech and associational rights under the First and Fourteenth Amendments of the U.S. Constitution. The named defendants sit on the Kentucky Judicial Conduct Commission,

sit on the Kentucky Inquiry Commission or serve as Bar Counsel.

Carey complained that he wanted to disclose his party status, yet he feared the party affiliation clause barred him from doing so. He wanted to ask for campaign contributions by signing fund-raising letters, yet he feared the solicitation clause barred him from doing so. And he wished to respond to a judicial questionnaire distributed by Kentucky Right to Life, raising questions for the candidates about their judicial philosophy and about their positions on specific issues, yet he feared the commits clause barred him from doing so. He asked the court to declare the clauses unconstitutional on their face and to enjoin their enforcement.

In October 2006, roughly one month before the election, the district court preliminarily enjoined enforcement of the party affiliation and the solicitation clauses but dismissed Carey's challenge to the commits clause on ripeness and standing grounds. On November 2, Carey moved to amend his complaint, re-challenging the commits clause, this time detailing the statements he proposed to make in possible violation of the clause. About a week later, Carey lost the election.

In September 2007, the court ruled that Carey's amended challenge to the commits ***196** clause was ripe for review and allowed it to proceed along with Carey's challenges to the party affiliation and solicitation clauses. The parties all moved for summary judgment. In ruling on the motions, the district court determined that strict scrutiny applied to all of the challenges. It then invalidated the party affiliation and solicitation clauses on their face but rejected Carey's facial challenge to the commits clause. The state defendants appeal the court's ruling on the party affiliation and solicitation clauses, and Carey appeals the court's ruling on the commits clause.

II.

Before turning to the merits, we must consider two jurisdictional questions implicated by these challenges:

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Did Carey file his claims too early, making them unripe for judicial review, or too late, making them moot? See *Warshak v. United States*, 532 F.3d 521, 525 (6th Cir.2008) (en banc).

[1][2][3] *Ripeness*. Designed to ensure that the federal courts resolve “existing, substantial controversies,” *Norton v. Ashcroft*, 298 F.3d 547, 554 (6th Cir.2002), not disputes “anchored in future events that may not occur as anticipated” or may not occur “at all,” *Nat’l Rifle Ass’n of Am. v. Magaw*, 132 F.3d 272, 284 (6th Cir.1997), the ripeness doctrine ensures that a dispute is concrete and real before the judicial branch resolves it. Three considerations inform the doctrine: Is the alleged injury likely to occur? Is the factual record sufficiently developed to resolve the question? And what kinds of hardships, if any, will the parties face if the court delays resolution of the question? *Warshak*, 532 F.3d at 525. In the context of a free-speech overbreadth challenge like this one, a relaxed ripeness standard applies to steer clear of the risk that the law “may cause others not before the court to refrain from constitutionally protected speech or expression.” *Broadrick v. Oklahoma*, 413 U.S. 601, 612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

[4] Carey meets these requirements. In future judicial elections, as in prior ones, he claims an interest in engaging in protected speech that implicates, if not violates, each clause. He wants to let voters know his party affiliation. He wants to solicit campaign funds directly, as opposed to indirectly via an election committee. And he wants to answer judicial questionnaires propounded by a local right-to-life organization. These aspects of the canon at least chill, and in some instances prohibit, these forms of communication, and in the course of the November 2006 election, at least until the entry of the October 2006 injunction, Carey censored himself on each topic. All of this establishes a “credible fear of enforcement,” *Norton*, 298 F.3d at 554, sufficient to overcome any ripeness concerns.

The Kentucky Judicial Conduct Commission persists that the Kentucky Supreme Court and its ethics branch, the Kentucky Judicial Ethics Committee, have yet to apply

these clauses to Carey, noting that “an authoritative construction of the canons may significantly alter the constitutional questions.” Commission’s Opening Br. at 22. That is all true, but it is a peculiar ground for staying our hand now with respect to *all* of these challenges, some of which involve clauses with little ambiguity. See *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 770 n. 11, 108 S.Ct. 2138, 100 L.Ed.2d 771 (1988). This challenge dates from July 2006, and a related challenge, supported by the same counsel, dates from September 2004, see *Family Trust Found. of Ky., Inc. v. Wolnizek*, 345 F.Supp.2d 672 (E.D.Ky.2004). The Commission has had ample time to request interpretations or modifications of *197 Canon 5 by the Committee or the Court, yet apparently has not done so. Nor has the Commission, or anyone else in this case, asked the federal courts to certify any questions to the Kentucky Supreme Court. These claims are ripe for review.

[5] *Mootness*. In one sense, Carey’s original challenge seems moot because the November 2006 election has come and gone. Carey filed his original complaint months ahead of the election, and moved to amend it a week before the election, yet here we are more than three years after the election, still considering his claims. Carey, however, retains the right to run for judicial office again, and all candidates for judicial office in Kentucky, whether sitting judges or not, are subject to Canon 5. Under these circumstances, the claims may proceed: The alleged wrongs are “capable of repetition, yet evading review,” saving them from mootness, as the district court correctly held and as the parties do not dispute. See *Fed. Election Comm’n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007); *Briggs v. Ohio Elections Comm’n*, 61 F.3d 487, 492–93 (6th Cir.1995).

III.

A.

Two recent decisions of the Supreme Court— *White* and *Caperton*—set the stage for resolving the merits of this dispute. At issue in *White* was a judicial canon, first promulgated by Minnesota in 1974, providing that “a candidate for a judicial office, including an incumbent

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judge,” shall not “announce his or her views on disputed legal or political issues.” [Minn.Code of Judicial Conduct, Canon 5\(A\)\(3\)\(d\)\(i\)](#); [White](#), 536 U.S. at 768, 122 S.Ct. 2528. Applying strict scrutiny, the Court rejected Minnesota’s contention that the canon preserved judicial “impartiality” in a permissible way.

To the extent the Minnesota announce clause sought to preserve judicial “impartiality” in one sense—a “lack of bias for or against either party to the proceeding,” [id.](#) at 775, 122 S.Ct. 2528—the Court accepted the State’s interest as a compelling one. [Id.](#) at 777 n. 7, 122 S.Ct. 2528. But the clause suffered from a means-end problem because it did “not restrict speech for or against particular parties, but rather speech for or against particular issues.” [Id.](#) at 776, 122 S.Ct. 2528. It may be, the Court acknowledged, that, “when a case arises that turns on a legal issue on which the judge (as a candidate) had taken a particular stand, the party taking the opposite stand is likely to lose,” but that is not due to “any bias against that party” for “[a]ny party taking that position is just as likely to lose.” [Id.](#) at 776–77, 122 S.Ct. 2528.

To the extent the State meant to advance “impartiality” in another sense—an absence of judicial “preconception in favor of or against a particular legal view”—that was not a compelling interest. [Id.](#) at 777, 122 S.Ct. 2528. “[S]ince avoiding judicial preconceptions on legal issues is neither possible nor desirable, pretending otherwise by attempting to preserve the ‘appearance’ of that type of impartiality can hardly be a compelling state interest either.” [Id.](#) at 778, 122 S.Ct. 2528.

And to the extent the State meant to promote “impartiality” in the sense of judicial “open-mindedness”—the “willing[ness] to consider views that oppose [one’s] preconceptions”—the Court found it unnecessary to decide whether this “desirable” quality amounted to a compelling interest. [Id.](#) at 778, 122 S.Ct. 2528. It held that the clause was so poorly tailored to any interest in open-mindedness that the Minnesota Supreme Court could not have “adopted *198 the announce clause for that purpose.” [Id.](#) Judges, both incumbent and prospective, it reasoned, retained so

many ways to communicate their views on legal issues other than through election statements that the clause gratuitously limited speech while “leav[ing] appreciable damage to that supposedly vital interest unprohibited.” [Id.](#) at 780, 122 S.Ct. 2528.

[Caperton](#) dealt with a sitting state supreme court justice whose top campaign donor in the previous election, the head of a mining company, had spent \$3 million on his behalf—more than all of his other supporters combined. [See Caperton](#), 129 S.Ct. at 2257. When a high-stakes dispute involving the mining company came before the court, the justice refused to recuse himself from hearing it and ultimately joined the 3–2 majority in ruling for the company. [See id.](#) at 2258. The losing party claimed that the justice’s participation in the case violated its due process rights. The Supreme Court agreed, holding that, by refusing to disqualify himself, the justice had unconstitutionally deprived the parties of a fair hearing. [See id.](#) at 2265. When “there is a serious risk of actual bias,” the Court reasoned, the Constitution requires judges to disqualify themselves, though the Court cautioned that this was “an extraordinary situation,” emphasizing the size of the mining company’s support relative to other donors’ support, the apparently decisive effect of this support on the justice’s election and the close temporal connection between the justice’s election and the company’s case. [Id.](#) at 2263, 2265.

B.

[6] Strict scrutiny applies to all three aspects of this First Amendment challenge. [White](#), for one, suggests as much, even if the decision does not compel that conclusion. In striking down Minnesota’s announce clause, the Court said the following about the standard of review:

As the Court of Appeals recognized, the announce clause both prohibits speech on the basis of its content and burdens a category of speech that is “at the core of our First Amendment freedoms”—speech about the qualifications of candidates for public office. [[Republican Party of Minn. v. Kelly](#)], 247 F.3d [854] at 861, 863 [(2001)]. The Court of Appeals concluded that the proper test to be applied to determine the constitutionality of

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such a restriction is what our cases have called strict scrutiny, *id.*, at 864; the parties do not dispute that this is correct.

536 U.S. at 774, 122 S.Ct. 2528.

The state defendants seize on the modest length of the Court's analysis and Minnesota's concession, arguing that we need not apply strict scrutiny here. But *White's* brevity on this score and Minnesota's concession may suggest something else: that the counter-argument has little to support it. The multi-State amicus brief filed in support of Minnesota did not question the applicability of strict scrutiny in *White*. See Brief Amicus Curiae of California, *et al.* in Support of Respondents, *Republican Party of Minn. v. Kelly*, 536 U.S. 765 (2002). Not one of the Justices, not even one of the four dissenters, objected to the application of strict scrutiny. And if strict scrutiny does not apply to judicial canons like this one and the one at issue in *White*, it is difficult to understand why the Court exercised its discretion in reviewing *White*, given that virtually the entire analysis is premised on the applicability of strict scrutiny and given that the outcome of the case under a lower level of scrutiny is far from clear.

Free-speech first principles also suggest that strict scrutiny *should* apply. The three canons censor speech based on its *199 content in the most basic of ways: They prevent candidates from speaking about some subjects (judicial philosophy, the legal issues of the day, party affiliation) but not others (experience); and they prevent candidates from asking for support in some ways (campaign funds) but not others (a vote, yard signs). The canons refer directly to, and are “justified with[] reference to,” the content of candidates' speech, meaning they are not eligible for the relaxed review that content-neutral restrictions receive. *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

[7] Content-based restrictions on speech generally face strict scrutiny, see *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813, 120 S.Ct. 1878, 146

L.Ed.2d 865 (2000), and thus are “presumptively invalid” unless the restriction discriminates on the basis of categorically “proscribable” speech, see *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382–83, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992). See also *United States v. Stevens*, 559 U.S. 460, 130 S.Ct. 1577, 1584, 176 L.Ed.2d 435 (2010). None of the categorical carve-outs apply. The canons do not address “fighting words” or incitement, see *Chaplinsky v. New Hampshire*, 315 U.S. 568, 572, 62 S.Ct. 766, 86 L.Ed. 1031 (1942), defamation, see *Beauharnais v. Illinois*, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919 (1952), obscenity, see *Roth v. United States*, 354 U.S. 476, 77 S.Ct. 1304, 1 L.Ed.2d 1498 (1957), or child pornography, see *New York v. Ferber*, 458 U.S. 747, 764, 102 S.Ct. 3348, 73 L.Ed.2d 1113 (1982). Far from implicating these exceptions, today's regulations implicate a core area of free-speech protection: elections. See *Brown*, 456 U.S. at 53–54, 102 S.Ct. 1523; see also *Stevens*, 130 S.Ct. at 1586 (declining to declare “depictions of animal cruelty” as a “new categor[y] of speech outside the scope of the First Amendment”).

Nor does the nature of the restrictions implicate any of the other areas or types of regulation—time, place and manner restrictions, commercial speech, expressive conduct—in which the Court has applied less-than-rigorous review. The canons instead are of a piece with the kinds of speech regulation—telling candidates what they can and cannot say before an election—that the courts have scrutinized most rigorously. See, e.g., *Brown*, 456 U.S. at 53–54, 102 S.Ct. 1523; see also Erwin Chemerinsky, *Restrictions on the Speech of Judicial Candidates are Unconstitutional*, 35 Ind. L. Rev. 735, 740–742 (2002) (explaining that strict scrutiny should apply to First Amendment challenges to judicial canons like these); Mark Spottswood, Comment, *Free Speech and Due Process Problems in the Regulation and Financing of Judicial Election Campaigns*, 101 NW. U. L. REV. 331, 347 (2007) (same).

The Commission does not cite a single case, and we have not found one on our own, applying anything less than strict scrutiny to comparable free-speech challenges to judicial election canons. After *White*, the Eighth Circuit

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applied strict scrutiny to Minnesota's party affiliation and solicitation clauses. See *Republican Party of Minn. v. White*, 416 F.3d 738, 749 (8th Cir.2005) (en banc) (“*White II*”). After *White*, the Eleventh Circuit did the same in invalidating Georgia's rules prohibiting judicial candidates from soliciting campaign funds. See *Weaver v. Bonner*, 309 F.3d 1312, 1319 (11th Cir.2002). After *White*, the Seventh Circuit applied strict scrutiny to Wisconsin's party affiliation clause and held that Wisconsin's solicitation clause survived both intermediate and strict scrutiny. See *Siefert v. Alexander*, 608 F.3d 974, 978, 981 (7th Cir.2010). And, before *White*, the Third Circuit applied strict scrutiny in upholding some judicial speech restrictions. See *Stretton v. Disciplinary Bd. of Supreme Court of Pa.*, 944 F.2d 137, 141–42 (3d Cir.1991).

The Commission urges us to apply a form of intermediate scrutiny, which balances the “competing fundamental rights” of some judicial candidates (who have a right to engage in campaign speech) and some litigants (who have a right to an impartial judiciary). Commission's Opening Br. at 10. But the reality that judicial impartiality is a “vital state interest,” protected by the Due Process Clause, *Caperton*, 129 S.Ct. at 2266–67, does not require us to dilute the First Amendment. It establishes instead that Kentucky has a compelling interest in preserving the canon, proving that the State can satisfy the first requirement of strict scrutiny, not that, having satisfied this requirement, it may water down the remaining requirements.

The Commission's analogy to *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 111 S.Ct. 2720, 115 L.Ed.2d 888 (1991), does not hold up. *Gentile* “balance [d]” litigants' fair trial rights with attorneys' free speech rights in upholding a rule prohibiting attorneys involved in a pending trial from making statements likely to prejudice the proceedings. *Id.* at 1075, 111 S.Ct. 2720. As these features of the decision suggest, *Gentile* applies only to speech restrictions imposed on attorneys during a pending case, see *id.* at 1073 n. 5, 111 S.Ct. 2720, which is one reason—there are others—why a comparable law restricting judges from telling the press about the outcome of a pending case would not be an unconstitutional prior

restraint on speech. Today, however, we have a speech restriction aimed not at judges performing court functions but at judges and judicial candidates making campaign statements or solicitations outside of court and outside of the process of deciding cases in their official capacity—all for the purpose of communicating information to voters about whom they should elect. That *Gentile* upholds a law restricting a lawyer's speech during a trial does not mean that it allows restrictions on lawyers in all settings. Otherwise, a lawyer running to be the Attorney General or Governor of a State could be censored simply because she is an “officer of the court.” That is not the case.

The Commission insists that the solicitation clause is an especially poor candidate for strict scrutiny review, because the Supreme Court applies a “lesser” standard of review to restrictions on political donations. See *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 136, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003). But this argument gives analogy a bad name. The solicitation clause does not set a contribution limit, as in *McConnell* and similar cases. See, e.g., *Fed. Election Comm'n v. Nat'l Right to Work Comm.*, 459 U.S. 197, 208, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982). It flatly prohibits *speech*, not donations, based on the topic (solicitation of a contribution) and speaker (a judge or judicial candidate)—precisely the kind of content-based regulations that traditionally warrant strict scrutiny.

C.

[8] Because strict scrutiny applies, the Commission faces a daunting gauntlet, as “it is the rare” law that “survives” this kind of review. *Burson v. Freeman*, 504 U.S. 191, 211, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992). To survive, the three canons must be “narrowly tailored” to advance a “compelling state interest.” *Eu v. San Francisco County Democratic Cent. Comm.*, 489 U.S. 214, 222, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989).

[9][10] At the same time, Carey seeks to invalidate these clauses not just as applied*201 to him but in all of their applications, which is to say on their face. In most constitutional cases, that exceptional remedy requires the claimant to “show one of two things: (1) that there truly are

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'no' or at least few 'circumstances' in 'which the Act would be valid,' *United States v. Salerno*, 481 U.S. 739, 745, 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987); see also *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449–50, 128 S.Ct. 1184, 170 L.Ed.2d 151 (2008); or (2) that a court cannot sever the unconstitutional textual provisions of the law or enjoin its unconstitutional applications." *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir.2009) (en banc). The courts, however, "rightly lighten this load in the context of free-speech challenges to the facial validity of a law." *Id.* In view of the risk that "enforcement of an overbroad law" may "deter[] people from engaging in constitutionally protected speech" and may "inhibit[] the free exchange of ideas," the overbreadth doctrine permits courts to invalidate a law on its face "if 'a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" *Stevens*, 130 S.Ct. at 1587 (quoting *Wash. State Grange*, 552 U.S. at 449 n. 6, 128 S.Ct. 1184).

IV.

A.

[11] *Party affiliation clause.* This clause prohibits judges and candidates from disclosing their party affiliation "in any form of advertising, or when speaking to a gathering," save in answer to a question by a voter in one-on-one or "very small private informal" settings. Rules of Supreme Court of Kentucky 4.300, *Canon 5(A)(2)*; Kentucky Judicial Ethics Opinion JE–105 (2004). The clause advances at least two interests, both sufficiently compelling to satisfy the First Amendment. It furthers the Commonwealth's goal of having a judiciary that is biased neither in fact nor in appearance. See *White*, 536 U.S. at 775–79, 122 S.Ct. 2528. And it furthers the Commonwealth's interest in diminishing reliance on political parties in judicial selection, a policy grounded in the Kentucky Constitution's requirement that judicial elections be non-partisan in nature.

[12][13] The problem, however, is not the Commonwealth's laudable interests in promulgating this canon; it is the Commonwealth's methods in furthering them. The Court frequently says that censoring speech must be a

government's measure of "last—not first—resort" in advancing its policy interests, e.g., *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373, 122 S.Ct. 1497, 152 L.Ed.2d 563 (2002), and the narrow-tailoring requirement is proof that the Court means it. If a law does too much, or does too little, to advance the government's objectives, it will fail. See *Eu*, 489 U.S. at 222, 109 S.Ct. 1013. This canon does both.

The canon's first problem is a *White* problem—that it suppresses too much speech to advance the government's interest. In invalidating Minnesota's announce clause, *White* established that a State may not prohibit a judicial candidate from disclosing, say, that "I am for limited government," "I support a woman's right to choose," "I prefer tough-on-crime laws," or, to use an example from *White*, "I think it is constitutional for the legislature to prohibit same-sex marriage." 536 U.S. at 779, 122 S.Ct. 2528. The party affiliation clause prohibits all of this, only more so. It prohibits candidates from announcing their position on one issue of potential importance to voters: the party they support. And it prohibits them from announcing their position on many issues of *202 potential importance to voters: the party platform with which they affiliate. A party platform after all is nothing more than an aggregation of political and legal positions, a shorthand way of announcing one's views on *many* topics of the day. If the single-issue announce canon at play in *White* prevented candidates from "communicating relevant information to voters" on "matters of current public importance," and did not narrowly advance the State's interest in a non-partisan judiciary, *id.* at 781–82, 122 S.Ct. 2528, the same is true of Kentucky's canon, which potentially prevents candidates from announcing their views on *many* issues at once. See *id.* at 782, 122 S.Ct. 2528 ("We have never allowed the government to prohibit candidates from communicating relevant information to voters during an election.").

[14] At the same time, the canon does too little to advance the State's interest in impartiality and the avoidance of partisan influence. Party affiliation, as it turns out, is not a forbidden topic. It is forbidden only when the candidate raises the point. If, by contrast, a voter asks the

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question in a one-on-one setting or in a small gathering, the candidate is free to say what she wants. That reality undermines the suggestion that a candidate deals a fatal blow to judicial impartiality by revealing her party affiliations. And of course, once that information is disclosed, whether in answer to a question or based on prior publicly known affiliations (including holding other elected offices), nothing in the canon prohibits *others*, whether newspapers or political parties or interest groups, from disclosing to the world the candidate's party affiliation. “A law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction upon truthful speech, when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Id.* at 780, 122 S.Ct. 2528.

The clause undershoots its target in another respect. Although candidates may not reveal their party affiliation, they may discuss their membership in, affiliation with or support of any other type of organization, including organizations that take positions on judges and judicial philosophy. Although the two major political parties take positions on a wide array of issues, many interest groups advance a narrower set of positions and often do so more vocally, particularly with respect to judges. By identifying themselves with such groups, candidates can communicate more about their political and judicial convictions than they ever could by carrying a party membership card—and, in the process, may do as much to call judicial open-mindedness into question as any party affiliation ever would.

The canon also prohibits only *disclosure* of a candidate's party membership, not party membership itself. Yet the appearance of judicial closed-mindedness is part and parcel of its reality, not a device designed to disguise reality. If concern over judicial partisanship and the influence of political parties on judging truly underlies the clause, the authorization to belong (secretly) to a political party amounts to a gaping omission. A party's undisclosed potential influence on candidates is far worse than its disclosed influence, as the one allows a full airing of the issue before the voters while the other helps to shield it from public view.

Kentucky responds that the restriction supports the Kentucky Constitution's requirement that judicial elections be nonpartisan—that they operate with no partisan primaries and with no partisan identifiers at the ballot booth. *See Ky. Const. § 117; Ky.Rev.Stat. § 118A.060.* The point, however, cuts both ways. In one sense, it establishes the bona fides of the Commonwealth's policy. But in another*203 sense, it undermines the Commonwealth's professed need to suppress speech in the process. Carey does not challenge the validity of prohibiting party identifiers on the ballot or the validity of holding non-partisan primaries. He just wishes to communicate about a matter of potential interest to the voters and one that is often already a point of public knowledge—party affiliation—on his own terms.

Most States have not made the choice Kentucky did. Fifteen States choose their Supreme Court justices in contested, “nonpartisan” elections, and only five, including Kentucky, prohibit candidates in those elections from revealing their partisan affiliations. *See App'x A.* (Three more prohibit candidates from claiming to be “a candidate of a political organization” but do not prohibit revealing membership or affiliation. *Id.*) And two of these five canons—this one and Wisconsin's—have been invalidated. *See Siefert, 608 F.3d at 983.* That a majority of the States with nonpartisan Supreme Court elections have opted not to censor their candidates in this way of course does not establish the invalidity of the clause, but it does call into question the necessity of implementing Kentucky's nonpartisan judicial election system in this way and whether it amounts to the “least restrictive means” of protecting the Commonwealth's interests. *Playboy Entm't Group, 529 U.S. at 813, 120 S.Ct. 1878.*

The Commission says that the clause restricts as little speech as possible while preventing Kentucky's elections from turning into ultra-partisan affairs. It allows judges, the Commission adds, to join political parties, to participate in them and to disclose party affiliation if asked in the proper setting—allowing voters who care about a candidate's partisan affiliation to discover it while preventing widespread advertisement of a candidate's party member-

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ship and preventing “judicial races [from] turning into partisan political campaigns.” Commission’s Opening Br. at 66. Yet this argument looks at the problem through the wrong end of the telescope: It merely demonstrates that the clause does not restrict as much speech as it might, not that the clause restricts no more speech than is necessary.

[15] We do not doubt one of the premises of the canon—that party affiliation may not be a reliable indicator of the qualities that make a good judge. Yet “[i]t is simply not the function of government to select which issues are worth discussing or debating in the course of a political campaign,” *White*, 536 U.S. at 782, 122 S.Ct. 2528 (quotation omitted), and it is difficult to see how Kentucky’s speech restriction does not do just that. Informational bans premised on the fear that voters cannot handle the disclosure have a long history of being legislatively tried and judicially struck, whether in the election setting or elsewhere. See, e.g., *Brown*, 456 U.S. at 60, 102 S.Ct. 1523 (“The State’s fear that voters might make an ill-advised choice does not provide the State with a compelling justification for limiting speech.”); *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 773, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). Voters often resort to a variety of proxies in selecting judges and other office holders, some good, some bad. And while political identification may be an unhelpful way to pick judges, it assuredly beats other grounds, such as the all-too-familiar formula of running candidates with familiar or popular last names. In that respect, this informational ban increases the likelihood that one of the least relevant grounds for judicial selection—the fortuity of one’s surname—is all that the voters will have to go on. As the district court correctly concluded,*204 this clause violates the First Amendment on its face.

B.

Solicitation clause. Kentucky prohibits judicial candidates from “solicit[ing] campaign funds,” a restriction that extends to all fundraising by the candidate, including in-person solicitations, group solicitations, telephone calls and letters. Rules of Supreme Court of Kentucky 4.300, Canon 5(B)(2). The clause permits the candidate to estab-

lish a committee that may solicit campaign donations, and it permits the committee to disclose to the candidate the names of people who donated to the campaign and those who declined. See *id.* Kentucky says that the clause satisfies the First Amendment, but we, like the district court, conclude that it does not.

[16][17] As with the party affiliation clause, we do not doubt the bona fides of the solicitation clause: that it serves Kentucky’s compelling interest in an impartial judiciary. The same goes for its interest in preserving the appearance and reality of a non-corrupt judiciary, an objective often served by fundraising limitations. See *Fed. Election Comm’n v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 496–97, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985). Litigants have a due process right to a trial before a judge with no “direct, personal, substantial pecuniary interest” in the outcome, *Tumey v. Ohio*, 273 U.S. 510, 523, 47 S.Ct. 437, 71 L.Ed. 749 (1927), and the legitimacy of the judiciary rests on delivering on that promise and in furthering the public’s trust in the integrity of its judges, see *Mistretta v. United States*, 488 U.S. 361, 407, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989). See generally *Caperton*, 129 S.Ct. 2252.

Preserving these interests, we also acknowledge, grows more complicated when a State exercises its sovereign right to select judges through popular elections. Judicial elections, like most elections, require money—often a lot of it. Kentucky’s 2006 Supreme Court election, which featured four contested races and one uncontested race, saw ten candidates raise a total of \$2,119,871, of which the candidates spent \$772,563 on 2,357 television commercials. Brennan Center for Justice at NYU School of Law, *The New Politics of Judicial Elections 2006* at 3, 16. “Unless the pool of judicial candidates is limited to those wealthy enough to independently fund their campaigns, a limitation unrelated to judicial skill, the cost of campaigning requires judicial candidates to engage in fundraising.” *White*, 536 U.S. at 789–90, 122 S.Ct. 2528 (O’Connor, J., concurring). Complicating matters further, the general public often, though not invariably, pays less attention to judicial elections than other elections,

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forcing judicial candidates to focus their fundraising efforts on the segment of the population most likely to have an interest in judicial races: the bar. “This leads to the unseemly situation in which judges preside over cases in which the parties are represented by counsel who have contributed in varying amounts to the judicial campaigns.” *Stretton*, 944 F.2d at 145.

[18] That the clause advances important government interests, however, does not establish that it does so narrowly. Prohibiting candidates from asking for money suppresses speech in the most conspicuous of ways and, in the process, favors some candidates over others—incumbent judges (who benefit from their current status) over non-judicial candidates, the well-to-do (who may not need to raise any money at all) over lower-income candidates, and the well-connected (who have an army of potential fundraisers) over outsiders. For these reasons, it is tempting to say that *any* limitation on a candidate's right to ask for a campaign contribution is one limitation too many. But there are at least two areas covered by the clause that test such an interpretation—face-to-face solicitations, particularly by sitting judges, and solicitations of individuals with cases pending in front of the court. Yet we need not decide the validity of such restrictions today because Kentucky goes well beyond them.

Besides covering in-person solicitations and those directed at individuals with pending cases, the canon prohibits a range of other solicitations, including speeches to large groups and signed mass mailings. Such indirect methods of solicitation present little or no risk of undue pressure or the appearance of a quid pro quo. No one could reasonably believe that a failure to respond to a signed mass mailing asking for donations would result in unfair treatment in future dealings with the judge. Nor would a speech requesting donations from a large gathering have a “coercive effect” on reasonable attendees. Commission's Opening Br. at 55; compare *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 465–66, 98 S.Ct. 1912, 56 L.Ed.2d 444 (1978) (State may regulate lawyers' in-person for-profit solicitation of clients because of “intrusive[ness]” of “persuasion under circumstances conducive

to uninformed acquiescence”) with *In re Primus*, 436 U.S. 412, 435–36, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) (regulation of lawyer's written, not-for-profit solicitation merited heightened scrutiny because it did not “afford any significant opportunity for overreaching or coercion”) and *Shapero v. Ky. Bar Ass'n*, 486 U.S. 466, 475, 108 S.Ct. 1916, 100 L.Ed.2d 475 (1988) (“Targeted, direct-mail solicitation is distinguishable from the in-person solicitation” because there is no “badgering advocate breathing down [a potential client's] neck,” asking for “an immediate yes-or-no answer.”).

At the same time, the clause does too little to protect the Commonwealth's interests. Although the candidate himself may not solicit donations, his campaign committee may. And nothing prevents a committee member from soliciting donations in person. That leaves a rule preventing a candidate from sending a signed mass mailing to every voter in the district but permitting the candidate's best friend to ask for a donation directly from an attorney who frequently practices before the court. Are not the risks of coercion and undue appearance far less with the first (prohibited) solicitation than the second (permitted) one?

Although the clause prevents judicial candidates from saying “please, give me a donation,” it does not prevent them from saying “thank you” for a donation given. The clause bars any solicitation, whether in a large group or small one, whether by letter or one on one, but it does not bar the candidate from learning how individuals responded to the committee's solicitations. That omission suggests that the only interest at play is the impolitic interpersonal dynamics of a candidate's request for money, not the more corrosive reality of who gives and how much. If the purported risk addressed by the clause is that the judge or candidate will treat donors and non-donors differently, it is knowing who contributed and who balked that makes the difference, not who asked for the contribution. If Kentucky fears that judges will allow campaign donations to affect their rulings, it must believe that “[s]uccessful candidates will feel beholden to the people who helped them get elected regardless of who did the soliciting of support.” *Weaver*, 309 F.3d at 1323.

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Two other circuits have considered the validity of similar canons and have come to similar conclusions. In *Weaver*, the Eleventh Circuit considered a Georgia rule providing*206 that judicial candidates “shall not themselves solicit campaign funds.” 309 F.3d at 1315. Relying on many of the same means-end problems identified here, the court concluded that the canon was “not narrowly tailored to serve Georgia’s compelling interest in judicial impartiality.” *Id.* at 1322. In *White II*, on remand after the Supreme Court invalidated Minnesota’s “announce” clause, the Eighth Circuit invalidated a canon that prohibited judicial candidates from “personally solicit[ing] or accept[ing] campaign contributions.” 416 F.3d at 745. In *Siefert*, 608 F.3d 974, the Seventh Circuit upheld Wisconsin’s prohibition on judges’ “personal[] solicit[ation]” of campaign contributions. *See* 608 F.3d at 990. But, in doing so, it focused on the problems associated with “direct” solicitation and did not consider the validity of applying the canon to mass mailings and group solicitations—the most troubling scenarios here. *See id.* at 989–90.

The state defendants push back, arguing that, even though a candidate may discover her donors’ identities from the campaign committee, the solicitation clause makes “favoritism” toward contributors “more difficult.” Commission’s Opening Br. at 57. After all, they reason, when a candidate asks for a donation in person, she immediately will find out whether the donor gives and how much. *Id.* That may or may not be true. But even if we grant the Commonwealth’s premise—that in-person solicitations always lead to more immediate information about donations or rejections—that suggests only that the solicitation clause may be constitutional in some settings. It does not resolve the clause’s considerable overbreadth: its application to mass-mailing solicitations or speeches to a large audience.

But the solicitation clause must be constitutional, the state defendants add, because most other States with judicial elections also prevent candidates from soliciting funds. *See* Commission’s Opening Br. at 53. The argument is not as helpful as they suggest. By our count, twenty-two States

currently elect judges to their highest courts in contested elections. (States with retention elections are less relevant because by definition they do not involve two candidates competing for the same seat.) Of these twenty-two States, thirteen, including Kentucky, prohibit candidates from soliciting campaign contributions. *See App’x B.* (Two more have hortatory canons telling candidates they “should not” or are “strongly discouraged” from personally soliciting. *Id.*) Yet this bare majority is no more dispositive here than it was in *White*, where twenty-six States had some form of announce clause. *See White*, 536 U.S. at 786, 122 S.Ct. 2528. No less importantly, we do not decide today whether a State *could* enact a narrowly tailored solicitation clause—say, one focused on one-on-one solicitations or solicitations from individuals with cases pending before the court—only that this clause does not do so narrowly.

The Commonwealth to its credit wishes to avoid cases like *Simes v. Ark. Judicial Discipline & Disability Comm’n*, 368 Ark. 577, 247 S.W.3d 876 (2007), where a judge “made direct, personal solicitations” to attorneys who “had cases currently pending in the judge’s court.” *Id.* at 880. But Kentucky’s clause goes well beyond these sorts of solicitations. Kentucky has chosen to elect its judges in competitive elections and must abide by some of the risks that go with that decision. *See White*, 536 U.S. at 792, 122 S.Ct. 2528 (O’Connor, J., concurring). While we do not question Kentucky’s right to select judges through popular elections, the Commonwealth cannot exempt itself from the demands of the First Amendment in the process. *See* *207 *id.* at 788, 122 S.Ct. 2528 (majority); *Geary v. Renne*, 911 F.2d 280, 294 (9th Cir.1990) (en banc) (Reinhardt, J., concurring) (“The State ... cannot have it both ways. If it wants to elect its judges, it cannot deprive its citizens of a full and robust election debate.”), *vacated on other grounds by Renne v. Geary*, 501 U.S. 312, 111 S.Ct. 2331, 115 L.Ed.2d 288 (1991). The solicitation clause is overbroad and thus invalid on its face.

C.

The commits clause. In prohibiting judicial candidates from “intentionally or recklessly mak[ing] a statement that a reasonable person would perceive as committing a judge

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or candidate to rule a certain way in a case, controversy, or issue that is likely to come before the court,” [Canon 5\(B\)\(1\)\(c\)](#), the commits clause covers a range of campaign statements. Some of those restrictions are legitimate. Others may not be. And there is a “vast middle ground of uncertainty” between the two. [Outlaw v. Airtech Air Conditioning & Heating, Inc.](#), 412 F.3d 156, 161 (D.C.Cir.2005) (Roberts, J.).

In what seems to be its core sense, the clause, found in one form or another in 39 States, *see App’x C*, runs the gauntlet of strict scrutiny. By preventing candidates from making “statement[s]” that “commit[]” them “to rule a certain way in a case [or] controversy,” the clause secures a basic objective of the judiciary, one so basic that due process requires it: that litigants have a right to air their disputes before judges who have not committed to rule against them before the opening brief is read. *See Caperton*, 129 S.Ct. at 2266–67; *Bracy v. Gramley*, 520 U.S. 899, 904–05, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). Whatever else a fair adjudication requires, it demands that judges decide cases based on the law and facts before them, not based on “express ... commitments that they may have made to their campaign supporters.” *Buckley v. Ill. Judicial Inquiry Bd.*, 997 F.2d 224, 227 (7th Cir.1993). No one, Carey included, disputes that the Commonwealth has a compelling interest in “prohibit[ing] candidates from promising to rule a certain way on cases.” Carey’s Opening Br. at 14–15.

Nor does Carey dispute that the clause narrowly advances this interest—if, that is, the clause is confined to campaign “commitments” with respect to “cases” or “controversies.” So limited, the clause targets the kinds of interests *White* suggests the States may protect, as judicial commitments with respect to cases and controversies implicate not just a lack of open mindedness about the law but a lack of impartiality in its most essential sense—a commitment to rule for one *party* over another. *See White*, 536 U.S. at 775–76, 122 S.Ct. 2528 (“[I]mpartiality” in “the traditional sense” means “apply[ing] the law to [one party] in the same way [one] applies it to any other party.”). The First Amendment permits a State to limit speech when the

Due Process Clause demands nothing less.

But the canon does not stop there. It also prevents candidates from making commitments about “issues.” A commitment to rule a certain way on “issues likely to come before the court” covers a raft of electioneering stands, and it unmoors the prohibition from “cases” or “controversies” and the party-specific connotations that come with those terms. As *White* reminds us, “there is almost no legal or political *issue* that is unlikely to come before a judge of an American court, state or federal, of general jurisdiction.” *White*, 536 U.S. at 772, 122 S.Ct. 2528 (emphasis added and quotation omitted). To make matters worse, the commentary to the clause says that it covers the “appearance” of *208 making “issue”-related commitments. [Canon 5\(B\)\(1\)\(c\)](#), Cmt.

Think back to *White*. How is a judicial candidate’s “announcement” of a position on a legal “issue” during an election campaign not likely to create the “appearance” that the candidate has “committed” to “rule a certain way” on the “issue”? And, if that is so, how can this aspect of the canon survive *White*, given that it seems to ban what *White* permits? These are good questions, but they prompt an even more basic one: what exactly does the “issues” prohibition cover?

The clause contains a serious level-of-generality problem. At the broadest level of meaning, it would seem to cover issue-related promises like these: “I commit to follow *stare decisis*”; “I commit to follow an originalist theory of constitutional interpretation” or for that matter “a living constitutionalist theory”; “I commit to a purposive method of statutory interpretation” or for that matter a “textual” one; “I commit to use (or not to use) legislative history”; or “I commit to be a rule-of-law judge.” One might reasonably say that the clause covers all of these statements, as they all relate to “issues” likely to come before a court and they all create an “appearance” of commitment. Yet if that is what the clause means, it is hard to square with the Constitution. A restriction on such promises does nothing to prevent the kind of “impartiality” that the States have an interest in securing—defined as bias

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(or the appearance of bias) toward particular parties or cases. See *White*, 536 U.S. at 776–77, 122 S.Ct. 2528.

In a narrower sense, however, the “issues” prohibition may serve that interest. In *White* itself, the Court contemplated that a State could prevent a candidate from highlighting an “unbroken record of affirming convictions for rape” because such statements would “exhibit a bias against parties,” namely against these types of criminal defendants and in favor of the prosecutor in these types of appeals. 536 U.S. at 777 n. 7, 122 S.Ct. 2528; *id.* at 800–01, 122 S.Ct. 2528 (Stevens, J., dissenting). An interpretation of the clause confined to these kinds of statements thus might advance a compelling state interest and do so narrowly.

In a facial challenge like this one, the ultimate question is one of overbreadth: Does the law “prohibit[] a substantial amount of protected speech both in an absolute sense and relative to [the canons] plainly legitimate sweep”? *Connection Distrib. Co.*, 557 F.3d at 336 (internal quotations omitted). To determine the extent of a law’s illegitimate reach, one needs to know what it means, as “it is impossible to determine whether a statute reaches too far without first knowing what the statute covers.” *United States v. Williams*, 553 U.S. 285, 293, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008).

That inquiry has not happened here—at least with respect to the “issues” prohibition. In upholding this clause, the district court focused on its application to “cases” and “controversies” and, to that extent, we agree with its analysis for the reasons noted. But the district court did not explore the clause’s applicability to “issues,” the array of settings in which that part of the clause and commentary may apply and the tension of several of them with *White*. At oral argument, we asked the parties about the point. Carey agreed that the commits clause would satisfy the First Amendment if the clause did not contain an “issues” component to it, and saw the addition of the “issues” language (together with the commentary) as having two impermissible effects: chilling candidates’ free-speech rights to discuss their legal philosophies freely, and effec-

tively sidestepping *White* by prohibiting candidates *209 from announcing their positions on legal issues. The state defendants suggested that a narrowing construction of the “issues” clause could save it.

Under these circumstances, discretion, to say nothing of respect for a co-equal sovereign, is the better part of valor. At this point it is not clear what the Commonwealth’s position on the term is, and the district court has not yet explored these issues. If we remand this aspect of the case to the district court, the court will have that chance. So too will the parties—particularly the state defendants, who retain considerable authority over shaping the clause and the commentary that goes with it. The state defendants may be able to obtain authority to remove the “issues” language; they may be able to identify an acceptable narrowing construction of the “issues” language along with a modification to the commentary; or they may suggest certification to the Kentucky Supreme Court. Any of these options may spare the federal courts the task of resolving a difficult constitutional question, and at a minimum they will give the Commonwealth a first shot at addressing the question.

* * *

There is room for debate about whether the election of state court judges is a good idea or a bad one. Yet there is no room for debate that, if a State opts to select its judges through popular elections, it must comply with the First Amendment in doing so. In this case, we have upheld some components of Kentucky’s Code of Judicial Conduct, invalidated others and sought clarification of still one other provision. Through it all, no one should lose sight of the reality that a judicial candidate’s right to engage in certain types of speech says nothing about the desirability of that speech. The First Amendment protects the meek and brazen, the “offensive” and agreeable. *Texas v. Johnson*, 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989). Today’s case is about the meaning of the First Amendment, not about the virtues of some types of judicial campaign speech relative to others.

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the case for further consideration of the meaning and validity of that clause.

V.

For these reasons, we affirm the district court's judgment as to the party affiliation and solicitation clauses and vacate its judgment as to the commits clause and remand

*211 APPENDIX A

State	Party Affiliation Clause
Kentucky	“A judge or candidate shall not identify himself or herself as a member of a political party in any form of advertising, or when speaking to a gathering.” Ky.Code of Jud. Conduct, Canon 5(A)(2).
<i>Partisan Election</i>	
Alabama	Judges should refrain from inappropriate political activities, but “it is realized that a judge or a candidate for election to a judicial office cannot divorce himself or herself completely from political organizations and campaign activities....” Ala. Canons of Jud. Ethics, Canon 7A(1).
Illinois	“A judge or candidate may ... at any time ... identify himself or herself as a member of a political party.” Ill.Code of Jud. Conduct, Canon 7(B)(1).
Louisiana	“A judge or a judicial candidate may at any time ... identify himself or herself as a member of a political party.” La.Code of Jud. Conduct, Canon 7(C)(1).
New Mexico	“A judge may ... identify the political party of the judge....” N.M.Code of Jud. Conduct, Rule 21–700A(2)(b).
Pennsylvania	Judges and candidates may “identify themselves as a member of a political party....” Pa.Code of Jud. Conduct, Canon 7A(2).
Texas	“A judge or judicial candidate ... may indicate support for a political party.” Tex.Code of Jud. Conduct, Canon 5(2).
West Virginia	“A judge or a candidate subject to public election may ... at any time ... identify himself or herself as a member of a political party....” W. Va.Code of Jud. Conduct, Canon 5C(1).
<i>Partisan Nomination and Nonpartisan Election</i>	
Michigan	No comparable rule.
Ohio	“A judicial candidate shall not ... [,] [a]fter the day of the primary election, identify himself or herself in advertising as a member of or affiliated with a political party.” Ohio Code of Jud. Conduct, Rule 4.2(B)(4).
<i>Nonpartisan Election</i>	
Arkansas	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a candidate of a political organization....” Ark.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
Georgia	No comparable rule.
Idaho	No comparable rule.
Minnesota	No comparable rule.
Mississippi	“Judges ... or candidates for such office, may ... identify themselves as members of political parties....” Miss.Code of Jud. Conduct, Canon 5C(1).

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Montana	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a candidate of a political organization....” Mont.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
Nevada	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a candidate of a political organization....” Nev.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
North Carolina	“A judge or a candidate may ... identify himself/herself as a member of a political party....” N.C.Code of Jud. Conduct, Canon 7B(3).
North Dakota	No comparable rule.
Oregon	“[A] judicial candidate shall not knowingly ... [p]ublicly identify the judicial candidate, for the purpose of election, as a member of a political party other than by registering to vote....” Or.Code of Jud. Conduct, JR 4–102(C).
Washington	“Judges or candidates for election to judicial office shall not ... identify themselves as members of a political party....” Wash.Code of Jud. Conduct, Canon 7A(1)(e).
Wisconsin	“No judge or candidate for judicial office or judge-elect may ... [b]e a member of any political party.” Wis.Code of Jud. Conduct, Rule 60.06(2)(b)(1). <i>But see Siefert v. Alexander</i> , 608 F.3d 974 (7th Cir.2010).
<i>Retention Election</i>	
Alaska	No comparable rule.
Arizona	No comparable rule.
California	No comparable rule.
Colorado	No comparable rule.
Florida	“A judicial candidate involved in an election or re-election ... should refrain from commenting on the candidate's affiliation with any political party or other candidate, and should avoid expressing a position on any political issue. A judicial candidate attending a political party function must avoid conduct that suggests or appears to suggest support of or opposition to a political party, a political issue, or another candidate.” Fla.Code of Jud. Conduct, Canon 7C(3).
Indiana	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a member or candidate of a political organization” Ind.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
Iowa	No comparable rule.
Kansas	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a candidate of a political organization....” Kan.Code of Jud. Conduct, Canon 4, Rule 4.1(B)(5); <i>cf.</i> Kan.Code of Jud. Conduct, Canon 4, Rule 4.2(D)(1)(b) (Trial court judges subject to partisan election may “identify” themselves “as a member of a political party” “at any time”).
Maryland	No comparable rule.
Missouri	No comparable rule.
Nebraska	No comparable rule.
Oklahoma	No comparable rule.
South Dakota	“A judge or candidate subject to public election may ... at any time ... identify himself or herself as a member of a political party....” S.D.Code of Jud. Conduct, Canon 5C(1)(a)(ii).
Tennessee	“A judge or a candidate subject to election may ... at any time ... identify himself or herself as a

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	member of a political party....” Tenn.Code of Jud. Conduct, Canon 5C(1)(a)(ii).
Utah	“[A] judge or a judicial candidate shall not ... publicly identify himself or herself as a member of a political organization....” Utah Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
Wyoming	No comparable rule.
<i>Legislative Election</i>	
South Carolina	No comparable rule. See S.C.Code of Jud. Conduct, Canon 5A(1). Judges subject to “public election,” e.g., S.C.Code Ann. § 14–23–30 (probate judges), may reveal political party membership “at any time.” S.C.Code of Jud. Conduct, Canon 5C(1)(a)(ii).
Virginia	No comparable rule.
<i>Appointment</i>	
Connecticut	No comparable rule.
Delaware	No comparable rule.
Hawaii	No comparable rule.
Maine	No comparable rule.
Massachusetts	No comparable rule.
New Hampshire	No comparable rule.
New Jersey	No comparable rule.
New York	“A sitting judge ... [may] ... identify himself or herself as a member of a political party....” N.Y.Code of Jud. Conduct, Canon 5A(1)(ii).
Rhode Island	No comparable rule.
Vermont	No comparable rule.

***214 APPENDIX B**

State	Solicitation Clause
Kentucky	“A judge or candidate for judicial office shall not solicit campaign funds....” Rules of the Supreme Court of Kentucky 4.300, Canon 5(B)(2).
<i>Partisan Election</i>	
Alabama	“A candidate is strongly discouraged from personally soliciting campaign contributions.” Ala. Canons of Jud. Ethics, Canon 7B(4)(a).
Illinois	“A candidate shall not personally solicit or accept campaign contributions.” Ill.Code of Jud. Conduct, Canon 7B(2).
Louisiana	“A judge or judicial candidate shall not personally solicit or accept campaign contributions.” La.Code of Jud. Conduct, Canon 7D(1).
New Mexico	“[C]andidates ... may solicit contributions for their own campaigns” but they “shall not accept any contribution that creates an appearance of impropriety” and “shall not personally solicit or personally accept campaign contributions from any attorney, or from any litigant in a case pending before the candidate.... Campaign committees shall not disclose to the judge or candidate the identity or source of any funds raised by the committee.” N.M.Code of Jud. Conduct, Rules 21–800A–F.

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Pennsylvania	“Candidates ... should not themselves solicit or accept campaign funds, or solicit publicly stated support....” Pa.Code of Jud. Conduct, Canon 7B(2).
Texas	Judges and judicial candidates may accept “political contribution[s]” during a specified period of time around the election. Tex. Elec.Code Ann. § 253.153.
West Virginia	“A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support.” W. Va.Code of Jud. Conduct, Canon 5C(2).
<i>Partisan Nomination and Nonpartisan Election</i>	
Michigan	“A judge should not personally solicit or accept campaign funds....” Mich.Code of Jud. Conduct, Canon 7B(2)(a).
Ohio	“A judicial candidate shall not personally solicit or receive campaign contributions.” Ohio Code of Jud. Conduct, Rule 4.4(A).
<i>Nonpartisan Election</i>	
Arkansas	“[A] judge or a judicial candidate shall not ... personally solicit or accept campaign contributions other than through a campaign committee....” Ark.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(8).
Georgia	“Candidates ... may personally solicit campaign contributions and publicly stated support.” Ga.Code of Jud. Conduct, Canon 7B(2).
Idaho	“A candidate shall not solicit campaign contributions in person.... Except as required by law, a candidate's judicial election committee should not disclose the names of contributors to judicial campaigns and judicial candidates and judges should avoid obtaining the names of contributors to the judicial campaign.” Idaho Code of Jud. Conduct, Canon 5C(2).
Minnesota	“[A] judge or judicial candidate shall not ... personally solicit or accept campaign contributions,” except that he or she may “make a general request for campaign contributions when speaking to an audience of 20 or more people; sign letters ... soliciting campaign contributions ... [and] personally solicit campaign contributions from members of the judge's family, from a person with whom the judge has an intimate relationship, or from judges over whom the judge does not exercise supervisory or appellate authority.” Minn.Code of Jud. Conduct, Canon 4, Rules 4. 1(A)(6), 4.2(B)(3).
Mississippi	“A candidate shall not personally solicit or accept campaign contributions or personally solicit publicly stated support.” Miss.Code of Jud. Conduct, Canon 5C(2).
Montana	Candidates may solicit. See Mont.Code of Jud. Conduct, Canon 4, Rule 4.4, Cmt. 1 (permitting candidates “to solicit financial or in-kind campaign contributions personally or to establish campaign committees to solicit and accept such contributions”).
Nevada	Candidates may solicit. See Nev.Code of Jud. Conduct, Canon 4, Rule 4.4, Cmt. 1 (“A candidate may personally solicit or accept campaign contributions....”).
North Carolina	“A judge or a candidate may ... personally solicit campaign funds and request public support from anyone for his/her own campaign....” N.C.Code of Jud. Conduct, Canon 7B(4).
North Dakota	“A candidate shall not directly and personally solicit or accept campaign contributions,” but “the candidate may orally solicit contributions ... in front of large groups or organizations” and “[t]he candidate's actual signature or a reproduction of the signature may appear on letters or other printed or electronic materials distributed by the committee which solicit contributions ... from individuals or large groups.” N.D.Code of Jud. Conduct, Canon 5C(2). Additionally, “[t]he candidate must take

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reasonable measures to ensure the names and responses, or lack thereof, of the recipients of solicitations for contributions will not be disclosed to the candidate.” *Id.*

Oregon	“[A] judicial candidate shall not knowingly ... [p]ersonally solicit campaign contributions in money or in kind....” Or.Code of Jud. Conduct, JR 4–102(D).
Washington	“Candidates, including incumbent judges, for a judicial office that is filled by public election between competing candidates shall not personally solicit or accept campaign contributions.” Wash.Code of Jud. Conduct, Canon 7B(2).
Wisconsin	“A judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions.” Wis.Code of Jud. Conduct, Rule 60.06(4).
<i>Retention Election</i>	
Alaska	“A judge who is a candidate for retention in judicial office shall not personally solicit or accept any funds to support his or her candidacy “ Alaska Code of Jud. Conduct, Canon 5C(3).
Arizona	“A judge or a judicial candidate shall not ... personally solicit or accept campaign contributions other than through a campaign committee....” Ariz.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
California	Candidates may solicit. See Cal.Code of Jud. Ethics, Canon 5A, Cmt. (“[J]udges are neither required to shield themselves from campaign contributions nor are they prohibited from soliciting contributions from anyone including attorneys.”).
Colorado	“If there is active opposition to the retention of a candidate judge ... any committee ... may raise funds for the judge's campaign, but the judge should not solicit funds personally or accept any funds....” Colo.Code of Jud. Conduct, Canon 7B(2)(d).
Florida	“A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds....” Fla.Code of Jud. Conduct, Canon 7C(1).
Indiana	“[A] judge or a judicial candidate shall not ... personally solicit or accept campaign contributions other than through a campaign committee....” Ind.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(8).
Iowa	No rule directly addressing personal solicitation. See Iowa Code of Jud. Conduct, Canon 7B(2) (“A judge ... whose candidacy has drawn active opposition, may campaign in response thereto and may establish committees of responsible persons to obtain publicly stated support and campaign funds.”).
Kansas	“A judicial candidate may also personally solicit or accept campaign contributions.” Kan.Code of Jud. Conduct, Canon 4, Rule 4.4(A).
Maryland	No comparable rule. See Md.Code of Jud. Conduct, Canon 5B, Comm. Note (a prohibition on personal solicitation “may be too restrictive”).
Missouri	“A candidate, including an incumbent judge, for a judicial office ... shall not solicit in person campaign funds from persons likely to appear before the judge. A candidate may make a written campaign solicitation for campaign funds of any person or group, including any person or group likely to appear before the judge.” Mo.Code of Jud. Conduct, Canons 5B(2)-(3).
Nebraska	“A judicial candidate for retention election whose candidacy has drawn active opposition shall not personally solicit or accept campaign contributions....” Neb.Code of Jud. Conduct, Canon 5(C)(2).
Oklahoma	“A candidate should not personally solicit campaign contributions “ Okla.Code of Jud. Conduct, Canon 5C(2).

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South Dakota	“Candidates, including an incumbent judge, may personally solicit campaign contributions ... from individuals and organizations other than political parties.” S.D.Code of Jud. Conduct, Canon 5C(2).
Tennessee	“A candidate shall not personally solicit or accept campaign contributions.” Tenn.Code of Jud. Conduct, Canon 5C(2)(a).
Utah	“The judge shall not directly solicit or accept campaign funds....” Utah Code of Jud. Conduct, Canon 4, Rule 4.2(B)(2).
Wyoming	“[T]he judge shall not solicit funds personally or accept any funds ... and ... the judge shall not be advised of the source of funds raised by the committees.” Wyo.Code of Jud. Conduct, Canon 4, Rules 4.2(B)(4)-(5).

Legislative Election

South Carolina	“A candidate for appointment to judicial office ... shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.” S.C.Code of Jud. Conduct, Canon 5B(1).
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Virginia	No comparable rule.
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Appointment

Connecticut	No comparable rule.
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Delaware	No comparable rule.
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Hawaii	No comparable rule.
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Maine	No comparable rule as to appointed judges. Candidates for “election or reelection as a judge of probate shall not personally solicit or accept campaign contributions or personally solicit stated support.” Maine Code of Jud. Conduct, Canon 5(C).
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Massachusetts	No comparable rule.
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New Hampshire	No comparable rule.
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New Jersey	No comparable rule.
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New York	“A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions....” N.Y.Code of Jud. Conduct, Canon 5A(5); see also Cmt. 5.1 (“Canon 5 generally applies to all incumbent judges....”).
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Rhode Island	“A candidate for appointment to judicial office ... shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.” R.I.Code of Jud. Conduct, Canon 5B(1).
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Vermont	“A candidate for appointment to ... state judicial office ... shall not ... solicit or accept funds, personally or through a committee or otherwise, to support the candidacy....” Vt.Code of Jud. Conduct, Canon 5B(4)(d).
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State	Commits Clause
Kentucky	“A judge or candidate for election to judicial office ... shall not intentionally or recklessly make a statement that a reasonable person would perceive as committing the judge or candidate to rule a

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certain way on a case, controversy, or issue that is likely to come before the court....” Rules of the Supreme Court of Kentucky 4.300 Canon 5(B)(1)(c).

Partisan Election

Alabama	“A candidate for judicial office ... [s]hall not make any promise of conduct in office other than the faithful and impartial performance of the duties of the office [and] shall not announce in advance the candidate's conclusions of law on pending litigation....” Ala. Canons of Jud. Ethics, Canon 7B(1)(c).
Illinois	A “candidate for judicial office” shall not “make statements that commit or appear to commit the candidate with respect to cases, controversies or issues within cases that are likely to come before the court.” Ill.Code of Jud. Conduct, Canon 7A(3)(d)(i).
Louisiana	A “judge or judicial candidate ... shall not ... with respect to 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 the office.” La.Code of Jud. Conduct, Canon 7B(1)(d)(i).
New Mexico	“A judge shall not, with respect to 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 the office.” N.M.Code of Jud. Conduct, Rule 21–300B(11).
Pennsylvania	“Candidates ... should not ... make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court.” Pa.Code of Jud. Conduct, Canon 7B(1)(c).
Texas	“A judge or judicial candidate shall not ... make pledges or promises of conduct in office regarding pending or impending cases, specific classes of cases, specific classes of litigants, or specific propositions of law that would suggest to a reasonable person that the judge is predisposed to a probable decision in cases within the scope of the pledge....” Tex.Code of Jud. Conduct, Canon 5(1)(i).
West Virginia	“A candidate for judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” W. Va.Code of Jud. Conduct, Canon 5A(3)(d)(ii).

Partisan Nomination and Nonpartisan Election

Michigan	“A candidate ... should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office....” Mich.Code of Jud. Conduct, Canon 7B(1)(c).
Ohio	“A judge or judicial candidate shall not ... [i]n 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.” Ohio Code of Jud. Conduct, Rule 4.1(A)(7).

Nonpartisan Election

Arkansas	“[A] judge or a judicial candidate shall not ... 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.” Ark.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(13).
Georgia	“Candidates ... shall not make statements that commit the candidate with respect to issues likely to come before the court....” Ga.Code of Jud. Conduct, Canon 7B(1)(b).

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Idaho	“A candidate for judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” Idaho Code of Jud. Conduct, Canon 5A(4)(d)(ii).
Minnesota	“[A] judge or a judicial candidate shall not ... 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.” Minn.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(11).
Mississippi	“A candidate for judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” Miss.Code of Jud. Conduct, Canon 5A(3)(d)(ii).
Montana	“[A] judge or a judicial candidate shall not ... 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.” Mont.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(12).
Nevada	“[A] judge or a judicial candidate shall not ... 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.” Nev.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(13).
North Carolina	No comparable rule. See N.C.Code of Jud. Conduct, Canon 7C. Judges should “abstain from public comment about the merits of a pending proceeding.” <i>Id.</i> , Canon 3A(6).
North Dakota	“A candidate for a judicial office ... shall not ... with respect to 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 the office....” N.D.Code of Jud. Conduct, Canon 5A(3)(d)(i).
Oregon	“[A] judicial candidate shall not knowingly ... [m]ake pledges or promises of conduct in office that could inhibit or compromise the faithful, impartial and diligent performance of the duties of the office” Or.Code of Jud. Conduct, JR 4–102(B).
Washington	“Candidates, including an incumbent judge, for a judicial office ... should not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” Wash.Code of Jud. Conduct, Canon 7B(1)(c)(ii).
Wisconsin	“A judge, judge-elect, or candidate for judicial office shall not make or permit or authorize others to make on his or her behalf, with respect to cases, controversies, or issues that are likely to come before the court, pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” Wis.Code of Jud. Conduct, Rule 60.06(3)(b).
<i>Retention Election</i>	
Alaska	“A candidate for judicial office ... shall not ... make statements that commit or appear to commit the candidate to a particular view or decision with respect to cases, controversies or issues that are likely to come before the court....” Alaska Code of Jud. Conduct, Canon 5A(3)(d)(ii).
Arizona	“A judge or a judicial candidate shall not ... in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with

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	the impartial performance of the adjudicative duties of judicial office.” Ariz.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(10).
California	“A candidate for election or appointment to judicial office shall not ... make statements to the electorate or the appointing authority that commit the candidate with respect to cases, controversies, or issues that could come before the courts...” Cal.Code of Jud. Ethics, Canon 5B.
Colorado	“A judge who is a candidate for retention in office ... should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office [or] announce how the judge would rule on any case or issue that might come before the judge” Colo.Code of Jud. Conduct, Canon 7B(1)(c).
Florida	“A candidate for a judicial office ... shall not ... with respect to parties or classes of parties, 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 the office...” Fla.Code of Jud. Conduct, Canon 7A(3)(e)(i).
Indiana	“[A] judge or a judicial candidate shall not ... 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.” Ind.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(13).
Iowa	“A judge who is a candidate for retention in judicial office ... [s]hould not, with respect to 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 the office.” Iowa Code of Jud. Conduct, Canon 7B(1)(e).
Kansas	“A judge or a judicial candidate shall not ... 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.” Kan.Code of Jud. Conduct, Canon 4, Rule 4.1(A)(6).
Maryland	“A judge who is a candidate for election or re-election to or retention in a judicial office ... with respect to a case, controversy or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office...” Md.Code of Jud. Conduct, Canon 5B(1)(d).
Missouri	“A candidate ... shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office...” Mo.Code of Jud. Conduct, Canon 5B(1)(d).
Nebraska	“A candidate for a judicial office ... [s]hall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court...” Neb.Code of Jud. Conduct, Canon 5(A)(3)(d)(ii).
Oklahoma	“A candidate for judicial office ... should not ... with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with impartial performance of the adjudicative duties of the office...” Okla.Code of Jud. Conduct, Canon 5A(3)(d)(i).
South Dakota	“A candidate for a judicial office ... shall not ... with respect to 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 the office...” S.D.Code of Jud. Conduct, Canon

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5A(3)(d)(i).

Tennessee	“A candidate for a judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court....” Tenn.Code of Jud. Conduct, Canon 5A(3)(d)(ii).
Utah	“[A] judge or a judicial candidate shall not ... make pledges, promises, or commitments other than the faithful, impartial and diligent performance of judicial duties.” Utah Code of Jud. Conduct, Canon 4, Rule 4.1(A)(11).
Wyoming	“A judge who is a candidate for retention in office shall ... not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office [or] announce how the judge would rule on any case or issue that might come before the judge” Wyo.Code of Jud. Conduct, Canon 4, Rule 4.2(A)(5).

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South Carolina	“A candidate for a judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” S.C.Code of Jud. Conduct, Canon 5A(3)(d)(ii).
Virginia	No comparable rule.

Appointment

Connecticut	No comparable rule.
Delaware	No comparable rule.
Hawaii	“[A] judge shall not ... 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.” Haw.Code of Jud. Conduct, Canon 4, Rule 4.1(a)(13).
Maine	“A candidate for appointment to judicial office ... shall not ... make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office [or] make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court....” Maine Code of Jud. Conduct, Canon 5(B).
Massachusetts	No comparable rule.
New Hampshire	“A candidate for judicial office ... shall not ... with respect to 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 the office....” N.H.Code of Jud. Conduct, Canon 5B(1)(b)(i).
New Jersey	No comparable rule.
New York	“A judge or a non-judge who is a candidate for public election to judicial office shall not ... with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office....” N.Y.Code of Jud. Conduct, Canon 5A(4)(d)(ii).
Rhode Island	“A candidate for a judicial office ... shall not ... make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court....” R.I.Code of Jud. Conduct, Canon 5A(3)(d)(ii).

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Vermont

“A candidate for appointment to ... state judicial office ... shall not make statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the court....” Vt.Code of Jud. Conduct, Canon 5B(4)(b).

Carey v. Wolnitzek

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*219 WISEMAN, District Judge, concurring in part and dissenting in part.

I concur in the judgment of affirmance of the District Court on the party affiliation and solicitation clauses, as well as affirmance of the “cases and controversies” portion of the commits clause. I would go further and affirm the District Court in upholding the entire commits clause, including the issues portion. The majority's concern with an overly broad interpretation of what constitutes a commitment to vote a certain way or bias toward a party based on campaign promises regarding an “issue,” amounts to the construction of a straw man. I believe a candidate for judge knows exactly when she is making a commitment, or giving the appearance of such a commitment. I believe the same is true of the enforcer of the canons. Is there any doubt about commitment when a candidate professes to believe that life begins at conception? Is there any committed bias in favor of a potential party when a candidate for judge states a “strong belief in the right to keep and bear arms?” Maybe the definition of *White-permitted* issue commitments is like the definition of pornography. Anyone with common sense knows the portent of a campaign commitment when he hears it. Yet by remand we are asking the District Court to do what the Supreme Court could not do in *White* and we are unable to do here.

END OF DOCUMENT

Maintenance of public confidence that a litigant will receive an unbiased hearing in the courts is as compelling an interest as any possessed by the Commonwealth of Kentucky. The canon here appropriately addresses that interest. Definitional disagreements, if they arise, can be addressed when they arise.

I respectfully dissent from the holding of the majority vacating the District Court in respect to the commits clause.

C.A.6 (Ky.),2010.

Citizens United v. Federal Election Commission

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**CITIZENS UNITED v. FEDERAL ELECTION
COMMISSION**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

No. 08–205. Argued March 24, 2009—Reargued September 9, 2009—
Decided January 21, 2010

As amended by §203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), federal law prohibits corporations and unions from using their general treasury funds to make independent expenditures for speech that is an “electioneering communication” or for speech that expressly advocates the election or defeat of a candidate. 2 U. S. C. §441b. An electioneering communication is “any broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office” and is made within 30 days of a primary election, §434(f)(3)(A), and that is “publicly distributed,” 11 CFR §100.29(a)(2), which in “the case of a candidate for nomination for President . . . means” that the communication “[c]an be received by 50,000 or more persons in a State where a primary election . . . is being held within 30 days,” §100.29(b)(3)(ii). Corporations and unions may establish a political action committee (PAC) for express advocacy or electioneering communications purposes. 2 U. S. C. §441b(b)(2). In *McConnell v. Federal Election Comm’n*, 540 U. S. 93, 203–209, this Court upheld limits on electioneering communications in a facial challenge, relying on the holding in *Austin v. Michigan Chamber of Commerce*, 494 U. S. 652, that political speech may be banned based on the speaker’s corporate identity.

In January 2008, appellant Citizens United, a nonprofit corporation, released a documentary (hereinafter *Hillary*) critical of then-Senator Hillary Clinton, a candidate for her party’s Presidential nomination. Anticipating that it would make *Hillary* available on cable television through video-on-demand within 30 days of primary elections, Citizens United produced television ads to run on broadcast

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and cable television. Concerned about possible civil and criminal penalties for violating §441b, it sought declaratory and injunctive relief, arguing that (1) §441b is unconstitutional as applied to *Hillary*; and (2) BCRA's disclaimer, disclosure, and reporting requirements, BCRA §§201 and 311, were unconstitutional as applied to *Hillary* and the ads. The District Court denied Citizens United a preliminary injunction and granted appellee Federal Election Commission (FEC) summary judgment.

Held:

1. Because the question whether §441b applies to *Hillary* cannot be resolved on other, narrower grounds without chilling political speech, this Court must consider the continuing effect of the speech suppression upheld in *Austin*. Pp. 5–20.

(a) Citizen United's narrower arguments—that *Hillary* is not an “electioneering communication” covered by §441b because it is not “publicly distributed” under 11 CFR §100.29(a)(2); that §441b may not be applied to *Hillary* under *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U. S. 449 (*WRTL*), which found §441b unconstitutional as applied to speech that was not “express advocacy or its functional equivalent,” *id.*, at 481 (opinion of ROBERTS, C. J.), determining that a communication “is the functional equivalent of express advocacy only if [it] is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate,” *id.*, at 469–470; that §441b should be invalidated as applied to movies shown through video-on-demand because this delivery system has a lower risk of distorting the political process than do television ads; and that there should be an exception to §441b's ban for nonprofit corporate political speech funded overwhelming by individuals—are not sustainable under a fair reading of the statute. Pp. 5–12.

(b) Thus, this case cannot be resolved on a narrower ground without chilling political speech, speech that is central to the First Amendment's meaning and purpose. Citizens United did not waive this challenge to *Austin* when it stipulated to dismissing the facial challenge below, since (1) even if such a challenge could be waived, this Court may reconsider *Austin* and §441b's facial validity here because the District Court “passed upon” the issue, *Lebron v. National Railroad Passenger Corporation*, 513 U. S. 374, 379; (2) throughout the litigation, Citizens United has asserted a claim that the FEC has violated its right to free speech; and (3) the parties cannot enter into a stipulation that prevents the Court from considering remedies necessary to resolve a claim that has been preserved. Because Citizen United's narrower arguments are not sustainable, this Court must, in an exercise of its judicial responsibility, consider §441b's facial validity. Any other course would prolong the substantial, nationwide

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chilling effect caused by §441b’s corporate expenditure ban. This conclusion is further supported by the following: (1) the uncertainty caused by the Government’s litigating position; (2) substantial time would be required to clarify §441b’s application on the points raised by the Government’s position in order to avoid any chilling effect caused by an improper interpretation; and (3) because speech itself is of primary importance to the integrity of the election process, any speech arguably within the reach of rules created for regulating political speech is chilled. The regulatory scheme at issue may not be a prior restraint in the strict sense. However, given its complexity and the deference courts show to administrative determinations, a speaker wishing to avoid criminal liability threats and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak. The restrictions thus function as the equivalent of a prior restraint, giving the FEC power analogous to the type of government practices that the First Amendment was drawn to prohibit. The ongoing chill on speech makes it necessary to invoke the earlier precedents that a statute that chills speech can and must be invalidated where its facial invalidity has been demonstrated. Pp. 12–20.

2. *Austin* is overruled, and thus provides no basis for allowing the Government to limit corporate independent expenditures. Hence, §441b’s restrictions on such expenditures are invalid and cannot be applied to *Hillary*. Given this conclusion, the part of *McConnell* that upheld BCRA §203’s extension of §441b’s restrictions on independent corporate expenditures is also overruled. Pp. 20–51.

(a) Although the First Amendment provides that “Congress shall make no law . . . abridging the freedom of speech,” §441b’s prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions. It is a ban notwithstanding the fact that a PAC created by a corporation can still speak, for a PAC is a separate association from the corporation. Because speech is an essential mechanism of democracy—it is the means to hold officials accountable to the people—political speech must prevail against laws that would suppress it by design or inadvertence. Laws burdening such speech are subject to strict scrutiny, which requires the Government to prove that the restriction “furthers a compelling interest and is narrowly tailored to achieve that interest.” *WRTL*, 551 U. S., at 464. This language provides a sufficient framework for protecting the interests in this case. Premised on mistrust of governmental power, the First Amendment stands against attempts to disfavor certain subjects or viewpoints or to distinguish among different speakers, which may be a means to control content. The Government may also commit a constitutional wrong when by law it identifies certain

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preferred speakers. There is no basis for the proposition that, in the political speech context, the Government may impose restrictions on certain disfavored speakers. Both history and logic lead to this conclusion. Pp. 20–25.

(b) The Court has recognized that the First Amendment applies to corporations, *e.g.*, *First Nat. Bank of Boston v. Bellotti*, 435 U. S. 765, 778, n. 14, and extended this protection to the context of political speech, see, *e.g.*, *NAACP v. Button*, 371 U. S. 415, 428–429. Addressing challenges to the Federal Election Campaign Act of 1971, the *Buckley* Court upheld limits on direct contributions to candidates, 18 U. S. C. §608(b), recognizing a governmental interest in preventing *quid pro quo* corruption. 424 U. S., at 25–26. However, the Court invalidated §608(e)'s expenditure ban, which applied to individuals, corporations, and unions, because it “fail[ed] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process,” *id.*, at 47–48. While *Buckley* did not consider a separate ban on corporate and union independent expenditures found in §610, had that provision been challenged in *Buckley*'s wake, it could not have been squared with the precedent's reasoning and analysis. The *Buckley* Court did not invoke the overbreadth doctrine to suggest that §608(e)'s expenditure ban would have been constitutional had it applied to corporations and unions but not individuals. Notwithstanding this precedent, Congress soon recodified §610's corporate and union expenditure ban at 2 U. S. C. §441b, the provision at issue. Less than two years after *Buckley*, *Bellotti* reaffirmed the First Amendment principle that the Government lacks the power to restrict political speech based on the speaker's corporate identity. 435 U.S., at 784–785. Thus the law stood until *Austin* upheld a corporate independent expenditure restriction, bypassing *Buckley* and *Bellotti* by recognizing a new governmental interest in preventing “the corrosive and distorting effects of immense aggregations of [corporate] wealth . . . that have little or no correlation to the public's support for the corporation's political ideas.” 494 U. S., at 660. Pp. 25–32.

(c) This Court is confronted with conflicting lines of precedent: a pre-*Austin* line forbidding speech restrictions based on the speaker's corporate identity and a post-*Austin* line permitting them. Neither *Austin*'s antidistortion rationale nor the Government's other justifications support §441b's restrictions. Pp. 32–47.

(1) The First Amendment prohibits Congress from fining or jailing citizens, or associations of citizens, for engaging in political speech, but *Austin*'s antidistortion rationale would permit the Government to ban political speech because the speaker is an association with a corporate form. Political speech is “indispensable to decision-

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making in a democracy, and this is no less true because the speech comes from a corporation.” *Bellotti, supra*, at 777 (footnote omitted). This protection is inconsistent with *Austin*’s rationale, which is meant to prevent corporations from obtaining “‘an unfair advantage in the political marketplace’” by using “‘resources amassed in the economic marketplace.’” 494 U. S., at 659. First Amendment protections do not depend on the speaker’s “financial ability to engage in public discussion.” *Buckley, supra*, at 49. These conclusions were reaffirmed when the Court invalidated a BCRA provision that increased the cap on contributions to one candidate if the opponent made certain expenditures from personal funds. *Davis v. Federal Election Comm’n*, 554 U. S. ___, ___. Distinguishing wealthy individuals from corporations based on the latter’s special advantages of, e.g., limited liability, does not suffice to allow laws prohibiting speech. It is irrelevant for First Amendment purposes that corporate funds may “have little or no correlation to the public’s support for the corporation’s political ideas.” *Austin, supra*, at 660. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech, and the First Amendment protects the resulting speech. Under the antidistortion rationale, Congress could also ban political speech of media corporations. Although currently exempt from §441b, they accumulate wealth with the help of their corporate form, may have aggregations of wealth, and may express views “hav[ing] little or no correlation to the public’s support” for those views. Differential treatment of media corporations and other corporations cannot be squared with the First Amendment, and there is no support for the view that the Amendment’s original meaning would permit suppressing media corporations’ political speech. *Austin* interferes with the “open marketplace” of ideas protected by the First Amendment. *New York State Bd. of Elections v. Lopez Torres*, 552 U. S. 196, 208. Its censorship is vast in its reach, suppressing the speech of both for-profit and nonprofit, both small and large, corporations. Pp. 32–40.

(2) This reasoning also shows the invalidity of the Government’s other arguments. It reasons that corporate political speech can be banned to prevent corruption or its appearance. The *Buckley* Court found this rationale “sufficiently important” to allow contribution limits but refused to extend that reasoning to expenditure limits, 424 U.S., at 25, and the Court does not do so here. While a single *Bellotti* footnote purported to leave the question open, 435 U. S., at 788, n. 26, this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials

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are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy. *Caperton v. A. T. Massey Coal Co.*, 556 U. S. ___, distinguished. Pp. 40–45.

(3) The Government's asserted interest in protecting shareholders from being compelled to fund corporate speech, like the anti-distortion rationale, would allow the Government to ban political speech even of media corporations. The statute is underinclusive; it only protects a dissenting shareholder's interests in certain media for 30 or 60 days before an election when such interests would be implicated in any media at any time. It is also overinclusive because it covers all corporations, including those with one shareholder. P. 46.

(4) Because §441b is not limited to corporations or associations created in foreign countries or funded predominately by foreign shareholders, it would be overbroad even if the Court were to recognize a compelling governmental interest in limiting foreign influence over the Nation's political process. Pp. 46–47.

(d) The relevant factors in deciding whether to adhere to *stare decisis*, beyond workability—the precedent's antiquity, the reliance interests at stake, and whether the decision was well reasoned—counsel in favor of abandoning *Austin*, which itself contravened the precedents of *Buckley* and *Bellotti*. As already explained, *Austin* was not well reasoned. It is also undermined by experience since its announcement. Political speech is so ingrained in this country's culture that speakers find ways around campaign finance laws. Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. In addition, no serious reliance issues are at stake. Thus, due consideration leads to the conclusion that *Austin* should be overruled. The Court returns to the principle established in *Buckley* and *Bellotti* that the Government may not suppress political speech based on the speaker's corporate identity. No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations. Pp. 47–50.

3. BCRA §§201 and 311 are valid as applied to the ads for *Hillary* and to the movie itself. Pp. 50–57.

(a) Disclaimer and disclosure requirements may burden the ability to speak, but they “impose no ceiling on campaign-related activities,” *Buckley*, 424 U. S., at 64, or ““prevent anyone from speaking.”” *McConnell*, *supra*, at 201. The *Buckley* Court explained that disclosure can be justified by a governmental interest in providing “the electorate with information” about election-related spending sources. The *McConnell* Court applied this interest in rejecting facial challenges to §§201 and 311. 540 U. S., at 196. However, the Court

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acknowledged that as-applied challenges would be available if a group could show a “reasonable probability” that disclosing its contributors’ names would “subject them to threats, harassment, or reprisals from either Government officials or private parties.” *Id.*, at 198. Pp. 50–52.

(b) The disclaimer and disclosure requirements are valid as applied to Citizens United’s ads. They fall within BCRA’s “electioneering communication” definition: They referred to then-Senator Clinton by name shortly before a primary and contained pejorative references to her candidacy. Section 311 disclaimers provide information to the electorate, *McConnell*, *supra*, at 196, and “insure that the voters are fully informed” about who is speaking, *Buckley*, *supra*, at 76. At the very least, they avoid confusion by making clear that the ads are not funded by a candidate or political party. Citizens United’s arguments that §311 is underinclusive because it requires disclaimers for broadcast advertisements but not for print or Internet advertising and that §311 decreases the quantity and effectiveness of the group’s speech were rejected in *McConnell*. This Court also rejects their contention that §201’s disclosure requirements must be confined to speech that is the functional equivalent of express advocacy under *WRTL*’s test for restrictions on independent expenditures, 551 U. S., at 469–476 (opinion of ROBERTS, C.J.). Disclosure is the less-restrictive alternative to more comprehensive speech regulations. Such requirements have been upheld in *Buckley* and *McConnell*. Citizens United’s argument that no informational interest justifies applying §201 to its ads is similar to the argument this Court rejected with regard to disclaimers. Citizens United finally claims that disclosure requirements can chill donations by exposing donors to retaliation, but offers no evidence that its members face the type of threats, harassment, or reprisals that might make §201 unconstitutional as applied. Pp. 52–55.

(c) For these same reasons, this Court affirms the application of the §§201 and 311 disclaimer and disclosure requirements to *Hillary*. Pp. 55–56.

Reversed in part, affirmed in part, and remanded.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA and ALITO, JJ., joined, in which THOMAS, J., joined as to all but Part IV, and in which STEVENS, GINSBURG, BREYER, and SOTOMAYOR, JJ., joined as to Part IV. ROBERTS, C. J., filed a concurring opinion, in which ALITO, J., joined. SCALIA, J., filed a concurring opinion, in which ALITO, J., joined, and in which THOMAS, J., joined in part. STEVENS, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part.

McCutcheon v. Federal Election Commission

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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**MCCUTCHEON ET AL. v. FEDERAL ELECTION
COMMISSION**

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

No. 12–536. Argued October 8, 2013—Decided April 2, 2014

The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. See, e.g., *Buckley v. Valeo*, 424 U. S. 1, 26–27. It may not, however, regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others. See, e.g., *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 564 U. S. ___, ___.

The Federal Election Campaign Act of 1971 (FECA), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), imposes two types of limits on campaign contributions. Base limits restrict how much money a donor may contribute to a particular candidate or committee while aggregate limits restrict how much money a donor may contribute in total to all candidates or committees. 2 U. S. C. §441a.

In the 2011–2012 election cycle, appellant McCutcheon contributed to 16 different federal candidates, complying with the base limits applicable to each. He alleges that the aggregate limits prevented him from contributing to 12 additional candidates and to a number of noncandidate political committees. He also alleges that he wishes to make similar contributions in the future, all within the base limits. McCutcheon and appellant Republican National Committee filed a complaint before a three-judge District Court, asserting that the aggregate limits were unconstitutional under the First Amendment. The District Court denied their motion for a preliminary injunction and granted the Government’s motion to dismiss. Assuming that the

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base limits appropriately served the Government's anticorruption interest, the District Court concluded that the aggregate limits survived First Amendment scrutiny because they prevented evasion of the base limits.

Held: The judgment is reversed, and the case is remanded.

893 F. Supp. 2d 133, reversed and remanded.

CHIEF JUSTICE ROBERTS, joined by JUSTICE SCALIA, JUSTICE KENNEDY, and JUSTICE ALITO, concluded that the aggregate limits are invalid under the First Amendment. Pp. 7–40.

(a) Appellants' substantial First Amendment challenge to the current system of aggregate limits merits plenary consideration. Pp. 7–14.

(1) In *Buckley*, this Court evaluated the constitutionality of the original contribution and expenditure limits in FECA. *Buckley* distinguished the two types of limits based on the degree to which each encroaches upon protected First Amendment interests. It subjected expenditure limits to “the exacting scrutiny applicable to limitations on core First Amendment rights of political expression.” 424 U. S., at 44–45. But it concluded that contribution limits impose a lesser restraint on political speech and thus applied a lesser but still “rigorous standard of review,” *id.*, at 29, under which such limits “may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms,” *id.*, at 25. Because the Court found that the primary purpose of FECA—preventing *quid pro quo* corruption and its appearance—was a “sufficiently important” governmental interest, *id.*, at 26–27, it upheld the base limit under the “closely drawn” test, *id.*, at 29. After doing so, the Court devoted only one paragraph of its 139-page opinion to the aggregate limit then in place under FECA, noting that the provision “ha[d] not been separately addressed at length by the parties.” *Id.*, at 38. It concluded that the aggregate limit served to prevent circumvention of the base limit and was “no more than a corollary” of that limit. *Id.*, at 38. Pp. 7–9.

(2) There is no need in this case to revisit *Buckley*'s distinction between contributions and expenditures and the corresponding distinction in standards of review. Regardless whether strict scrutiny or the “closely drawn” test applies, the analysis turns on the fit between the stated governmental objective and the means selected to achieve that objective. Here, given the substantial mismatch between the Government's stated objective and the means selected to achieve it, the aggregate limits fail even under the “closely drawn” test.

Buckley's ultimate conclusion about the constitutionality of the aggregate limit in place under FECA does not control here. *Buckley* spent just three sentences analyzing that limit, which had not been

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separately addressed by the parties. Appellants here, by contrast, have directly challenged the aggregate limits in place under BCRA, a different statutory regime whose limits operate against a distinct legal backdrop. Most notably, statutory safeguards against circumvention have been considerably strengthened since *Buckley*. The 1976 FECA Amendments added another layer of base limits—capping contributions from individuals to political committees—and an anti-proliferation rule prohibiting donors from creating or controlling multiple affiliated political committees. Since *Buckley*, the Federal Election Commission has also enacted an intricate regulatory scheme that further limits the opportunities for circumvention of the base limits through “unearmarked contributions to political committees likely to contribute” to a particular candidate. 424 U. S., at 38. In addition to accounting for such statutory and regulatory changes, appellants raise distinct legal arguments not considered in *Buckley*, including an overbreadth challenge to the aggregate limit. Pp. 10–14.

(b) Significant First Amendment interests are implicated here. Contributing money to a candidate is an exercise of an individual’s right to participate in the electoral process through both political expression and political association. A restriction on how many candidates and committees an individual may support is hardly a “modest restraint” on those rights. The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse. In its simplest terms, the aggregate limits prohibit an individual from fully contributing to the primary and general election campaigns of ten or more candidates, even if all contributions fall within the base limits. And it is no response to say that the individual can simply contribute less than the base limits permit: To require one person to contribute at lower levels because he wants to support more candidates or causes is to penalize that individual for “robustly exercis[ing]” his First Amendment rights. *Davis v. Federal Election Comm’n*, 554 U. S. 724, 739.

In assessing the First Amendment interests at stake, the proper focus is on an individual’s right to engage in political speech, not a collective conception of the public good. The whole point of the First Amendment is to protect individual speech that the majority might prefer to restrict, or that legislators or judges might not view as useful to the democratic process. Pp. 14–18.

(c) The aggregate limits do not further the permissible governmental interest in preventing *quid pro quo* corruption or its appearance. Pp. 18–36.

(1) This Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or

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the appearance of corruption. See *Davis, supra*, at 741. Moreover, the only type of corruption that Congress may target is *quid pro quo* corruption. Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties. *Citizens United v. Federal Election Comm'n*, 558 U. S. 310, 359. The line between *quid pro quo* corruption and general influence must be respected in order to safeguard basic First Amendment rights, and the Court must "err on the side of protecting political speech rather than suppressing it." *Federal Election Comm'n v. Wisconsin Right to Life*, 551 U. S. 449, 457 (opinion of ROBERTS, C. J.). Pp. 18–21.

(2) The Government argues that the aggregate limits further the permissible objective of preventing *quid pro quo* corruption. The difficulty is that once the aggregate limits kick in, they ban all contributions of *any* amount, even though Congress's selection of a base limit indicates its belief that contributions beneath that amount do not create a cognizable risk of corruption. The Government must thus defend the aggregate limits by demonstrating that they prevent circumvention of the base limits, a function they do not serve in any meaningful way. Given the statutes and regulations currently in effect, *Buckley's* fear that an individual might "contribute massive amounts of money to a particular candidate through . . . unearmarked contributions" to entities likely to support the candidate, 424 U. S., at 38, is far too speculative. Even accepting *Buckley's* circumvention theory, it is hard to see how a candidate today could receive "massive amounts of money" that could be traced back to a particular donor uninhibited by the aggregate limits. The Government's scenarios offered in support of that possibility are either illegal under current campaign finance laws or implausible. Pp. 21–30.

(3) The aggregate limits also violate the First Amendment because they are not "closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley, supra*, at 25. The Government argues that the aggregate limits prevent an individual from giving to too many initial recipients who might then re-contribute a donation, but experience suggests that the vast majority of contributions are retained and spent by their recipients. And the Government has provided no reason to believe that candidates or party committees would dramatically shift their priorities if the aggregate limits were lifted. The indiscriminate ban on all contributions above the aggregate limits is thus disproportionate to the Government's interest in preventing circumvention.

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Importantly, there are multiple alternatives available to Congress that would serve the Government’s interest in preventing circumvention while avoiding “unnecessary abridgment” of First Amendment rights. *Buckley, supra*, at 25. Such alternatives might include targeted restrictions on transfers among candidates and political committees, or tighter earmarking rules. Transfers, after all, are the key to the Government’s concern about circumvention, but they can be addressed without such a direct and broad interference with First Amendment rights. Pp. 30–35.

(4) Disclosure of contributions also reduces the potential for abuse of the campaign finance system. Disclosure requirements, which are justified by “a governmental interest in ‘provid[ing] the electorate with information’ about the sources of election-related spending,” *Citizens United, supra*, at 367, may deter corruption “by exposing large contributions and expenditures to the light of publicity,” *Buckley, supra* at 67. Disclosure requirements may burden speech, but they often represent a less restrictive alternative to flat bans on certain types or quantities of speech. Particularly with modern technology, disclosure now offers more robust protections against corruption than it did when *Buckley* was decided. Pp. 35–36.

(d) The Government offers an additional rationale for the aggregate limits, arguing that the opportunity for corruption exists whenever a legislator is given a large check, even if the check consists of contributions within the base limits to be divided among numerous candidates or committees. That rationale dangerously broadens the circumscribed definition of *quid pro quo* corruption articulated in prior cases. *Buckley* confined its analysis to the possibility that “massive amounts of money” could be funneled to a particular candidate in excess of the base limits. 424 U. S., at 38. Recasting as corruption a donor’s widely distributed support for a political party would dramatically expand government regulation of the political process. And though the Government suggests that *solicitation* of large contributions poses the corruption danger, the aggregate limits are not limited to any direct solicitation by an officeholder or candidate. Pp. 36–39.

JUSTICE THOMAS agreed that the aggregate limits are invalid under the First Amendment, but would overrule *Buckley v. Valeo*, 424 U. S. 1, and subject BCRA’s aggregate limits to strict scrutiny, which they would surely fail. *Buckley*’s “analytic foundation . . . was tenuous from the very beginning and has only continued to erode in the intervening years.” *Nixon v. Shrink Missouri Government PAC*, 528 U. S. 377, 412 (THOMAS, J., dissenting). Contributions and expenditures are simply “two sides of the same First Amendment coin,” and this Court’s efforts to distinguish the two have produced mere “word

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games” rather than any cognizable constitutional law principle. *Buckley, supra*, at 241, 244 (Burger, C. J., concurring in part and dissenting in part). Pp. 1–5.

ROBERTS, C. J., announced the judgment of the Court and delivered an opinion, in which SCALIA, KENNEDY, and ALITO, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment. BREYER, J., filed a dissenting opinion, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined.

Secretary of State

**Introduction to the
SECRETARY OF STATE**

The Secretary of State is Kentucky's Chief Election Official, the Chairperson of the State Board of Elections, and the filing official for all candidates seeking an office to be voted for by the electors of more than one county, members of Congress, members of the General Assembly and of the Court of Justice. The Secretary of State also certifies candidates for those offices to be printed on the ballots, and vote totals for those offices are certified to the Secretary of State by the respective county clerks.



COMMONWEALTH OF KENTUCKY
OFFICE OF THE SECRETARY OF STATE
ALISON LUNDERGAN GRIMES

TO: Potential Candidates
FROM: Alison Lundergan Grimes, Secretary of State

To avoid any delays in the filing of candidate documents to attain ballot access required to file with the county clerk, candidates should directly contact the county clerk in their county of residence for filing procedures and requirements.

To avoid any delays in the filing of candidate documents to attain ballot access required to file with the Office of the Secretary of State, the following is provided:

1. Complete all applicable blanks on the filing form. The Office of the Secretary of State will make the necessary copies for distribution.
2. Candidates and signers must have their signatures acknowledged by a Notary Public, if applicable, and the expiration date of the notary's commission must be stated.
3. All copies of the Appointment of Campaign Treasurer and Optional Request for Reporting Exemption (**not applicable to Federal Candidates who must register with the Federal Election Commission**) should accompany the filing form. The Office of the Secretary of State provides a duplicate copy to the Registry of Election Finance.
4. Checks should be payable to the Kentucky State Treasurer.

Questions relating to campaign finance procedures and requirements should be directed to the Registry of Election Finance at 502-573-2226. In addition, the Registry's website, <http://www.kref.ky.gov>, provides for the downloading of required reporting forms and a book titled Guide to Campaign Finance. Questions relating to campaign finance matters for federal candidates should be directed to the Federal Election Commission at 1-800-424-9530.

Candidate filing forms may be filed in person or by mail at the following address:

Office of the Secretary of State
Election Division
Room 148, State Capitol
700 Capital Avenue
Frankfort, KY 40601-3493

If our office may be of further assistance to you, please contact our election staff at 502-564-3490 or by email at sos.electns@ky.gov.

ELECTION DIVISION
SUITE 148, STATE CAPITOL
700 CAPITAL AVENUE
FRANKFORT, KY 40601-3493



An Equal Opportunity Employer M/F/D

(502) 782-7416
(502) 782-7426
FAX: (502) 564-5687
WEBSITE: www.sos.ky.gov

**CIRCUIT JUDGE
NONPARTISAN JUDICIAL CANDIDATES
PRIMARY ELECTION**

The Nonpartisan Office of Circuit Judge will appear on the 2014 ballot.

Notarized Signatures Required:	Candidate's signature and two (2) registered voters from the district from which candidate seeks nomination.
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Earliest date to affix signatures	November 6, 2013
Earliest date to file	November 6, 2013
Latest date to file (4:00 p.m., local time)	January 28, 2014

Filing Form SBE 68	Court of Justice Petition for Nomination
Filing Form KREF-001	Appointment of Campaign Treasurer and Optional Request for Reporting Exemption
Filing Fee	\$200.00
Filing Official	Secretary of State

The petition shall be sworn to before an officer authorized to administer an oath by the candidate and by no less than two (2) registered voters from the district from which the candidate seeks nomination. The petition shall include a declaration sworn to by the candidate that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.

If **more** than two (2) judicial candidates file for the same office, the names of the candidates are placed on the primary ballot and the two (2) candidates who receive the highest number of votes in the primary are certified for placement on the general election ballot. If two (2) or **less** candidates file for the same office, candidates are issued a certificate of nomination by the Secretary of State subsequent to the filing deadline and the name of the candidates will appear only on the general election ballot.

For filing requirements relating to Political Committee Registration for judicial candidates and Waiver From Filing Candidate Election Finance Statement forms for judicial candidates (KREF 010 and KREF 011), please contact the **Registry of Election Finance** at (502) 573-2226.

Establishing Campaign Account: For information regarding campaign contribution and expenditure reporting requirements received or expended in the year before the year the candidate appears on the ballot, contact the **Registry of Election Finance** at (502) 573-2226.



COURT OF JUSTICE PETITION FOR NOMINATION

for filing with

THE SECRETARY OF STATE, COMMONWEALTH OF KENTUCKY

For the purpose of having my name placed on the Judicial Ballot for nomination to the office of:
(Choose only the office sought)

- Justice of the Supreme Court, Circuit Judge, District Judge, Judge of the Court of Appeals, Family Circuit Judge

(Name of Court) District/Circuit Number (Division Number if applicable)

I, (Name of candidate in full as desired on the ballot as provided in KRS 118.129)

state that I reside at (Residential Address)

City of KY, County of (Zip)

that my residence is in the district from which I seek nomination; and that I possess all the constitutional and statutory requirements of the office for which I have filed hereby.

(Signature of Candidate)

Subscribed and sworn to before me by (Name of Candidate)

this day of, 20.

(Signature of Notary/Officer) (Title of Officer) (Commission Expiration)

We, and,

state that we are registered voters of the judicial district/circuit above listed for which

(Name of Candidate) seeks nomination.

(Signature of Voter) (County of Residence)

(Residential Address) (City) KY (Zip)

(Signature of Voter) (County of Residence)

(Residential Address) (City) KY (Zip)

Subscribed and sworn to before me by (Name of Voter) and

(Name of Voter) this day of, 20. (Month)

(Signature of Notary/Officer) (Title of Officer) (Commission Expiration)

White copy: Filing officer
Canary copy: State Board of Elections
Pink copy: Candidate



APPOINTMENT OF CAMPAIGN TREASURER AND OPTIONAL REQUEST FOR REPORTING EXEMPTION- INSTRUCTIONS

FILING OFFICER INSTRUCTIONS - Filing Officer should date/stamp the form in the space provided in the center of the heading on the front of the form. If date/stamp device is not used, Filing Officer must complete the information requested by hand in the spaces provided. State the name of the office where form was filed, including the name of the county, and indicate the date on which the filing was accepted. The Filing Officer should distribute the copies of the form as follows: Original (White) - Retained by Filing Officer to be filed with candidate's filing papers; Canary - To be sent to the Registry immediately; Pink - Candidate copy.

REGISTRY USE ONLY - This space is reserved for use by the Registry of Election Finance. Do not make any marks or enter any information in this space.

GENERAL INSTRUCTIONS - Type or print all entries and provide all information requested.

Candidates are advised that, with very limited exceptions, they may not file this form directly with the Registry. It must be filed with the Secretary of State or County Clerk only, who will forward the appropriate copy to the Registry.

This form does not constitute the registration of a campaign committee. To register a campaign committee, obtain Form KREF-010 from the Registry and file it with the Registry.

SECTION 1. CANDIDATE INFORMATION - This section of the form contains information relating to the candidate. All fields are required unless designated "Optional". Do not leave any required fields blank.

NAME OF CANDIDATE - Enter the name of the candidate as it will appear on the ballot.

COUNTY OF CANDIDATE'S RESIDENCE - Enter the name of the candidate's county of residence.

CANDIDATE'S MAILING ADDRESS - CITY - STATE - ZIP - Enter the complete address of the location where all correspondence with the candidate will be mailed. Include street number and name, rural route, post office box, and apartment number, as applicable.

CANDIDATE'S TELEPHONE NUMBER - Enter the telephone number where the candidate can be reached during the daytime hours.

CANDIDATE'S ALTERNATE TELEPHONE NUMBER - Enter an alternate telephone number where the candidate can be reached, either in person, or by voice mail or other answering device.

CANDIDATE'S DATE OF BIRTH - Enter the candidate's date of birth. Include month, day, and year.

OPTIONAL METHOD OF CONTACT - The candidate may enter another method of contact in addition to the two telephone numbers requested. Optional methods of contact include, but are not limited to, cellular telephone number, pager, fax machine, e-mail address, and candidate's web page.

SECTION 2. ELECTION INFORMATION - This section contains information relating to the election. An entry in each field is required. Do not leave any fields blank.

DATE OF ELECTION - Enter the date of the election for which the candidate is filing this form.

TYPE OF ELECTION - Check the appropriate type of election: primary, general, special, or unexpired.

IS CANDIDATE THE INCUMBENT? - If candidate presently holds the office for which he or she is seeking re-election, check "Yes"; otherwise, check "No".

IS CANDIDATE FILING AS A WRITE-IN? - If filing as a write-in candidate, check "Yes", otherwise, check "No".

OFFICE SOUGHT - Enter the name of the office the candidate is seeking.

JURISDICTION OF OFFICE SOUGHT - Enter the district, circuit, or division number of office sought. Enter the name of the community served if not included in title of office sought above. Candidate for state offices shall enter "Statewide" in this field.

THIS RACE IS PARTISAN/NON-PARTISAN - If race is partisan, check "Yes", otherwise, check "No".

IF PARTISAN RACE - INDICATE CANDIDATE'S DESIGNATION ON BALLOT - If race is partisan, check or designate candidate's political party or political organization with which the candidate will be affiliated on the ballot. If running as an independent, regardless of party, check "Independent."

SECTION 3. TREASURER AND DEPOSITORY INFORMATION - This section of the form contains information relating to the campaign treasurer and campaign depository bank account. An entry in each field is required. Note that a candidate is required to notify the Registry of the death, resignation, or removal of a treasurer and appoint a successor by using this form or be accountable as his or her own treasurer.

NAME OF TREASURER - Enter the full name of the individual the candidate is appointing to serve as campaign treasurer. If candidate is serving as his or her own treasurer, "Self" may be entered in this field. A judicial candidate is advised to contact the Judicial Conduct Commission of the Kentucky Judiciary before designating himself or herself as campaign treasurer.

TREASURER'S MAILING ADDRESS - CITY - STATE - ZIP - Enter the complete address of the location where all correspondence with the treasurer will be mailed. Include street number and name, rural route, post office box, and apartment number, if applicable.

TREASURER'S TELEPHONE NUMBER - Enter the telephone number where the treasurer can be reached during the daytime hours.

TREASURER'S ALTERNATE TELEPHONE NUMBER - Enter an alternate telephone number where the treasurer can be reached, either in person, or by voice mail or other answering device.

NAME OF FINANCIAL INSTITUTION - Enter the name of the bank where the campaign depository is to be maintained. It is necessary to designate a depository even if the candidate is serving as his or her own treasurer.

ADDRESS OF FINANCIAL INSTITUTION - Enter the complete mailing address of the bank designated as the campaign depository above.

SECTION 4. OPTIONAL REQUEST FOR REPORTING EXEMPTION Pursuant to KRS 121.180(1) - This section of the form contains options for requesting reporting exemptions based on the amount of money the candidate plans to raise or spend in each election. This section of the instructions contains important information regarding deadlines for filing reporting exemptions and possible penalties for exceeding the threshold for the exemption chosen.

Deadlines

For candidates with a January filing deadline - The request for exemption for the primary nomination must be filed with the filing officer who receives the candidate's filing papers no later than the filing deadline for the primary. To revoke or change the request for exemption for the primary, the candidate must file an amended Form KREF 001 no later than 15 days after the filing deadline for the primary.

For candidates winning the primary nomination - If the candidate has not already filed a request for exemption for the general election, it must be filed with the officer who receives the candidate's filing papers no later than 25 days after the date of the primary. To revoke the request for exemption, the candidate must file an amended Form KREF 001 no later than 25 days after the date of the primary.

For candidates with an August filing deadline - The request for exemption must be filed with the officer who receives the candidate's filing papers no later than the filing deadline for the general election. To revoke or change the request for reporting exemption, the candidate must complete Form KREF 001 no later than 15 days after the filing deadline for the general election.

Exceeding the Threshold for Exemption

Candidates for county offices, city offices, or school board races - May exceed the threshold chosen without filing an amended Form KREF 001. However, the candidate must begin filing all applicable financial reports due, or be subject to civil penalties for late reporting.

For all other candidates - A candidate who fails to revoke or change the reporting exemption chosen, and then exceeds the threshold, may be subject to penalties, including civil penalties for late reporting or possible criminal penalties for knowing violations.

NO EXEMPTION OPTION - A candidate may choose to indicate that he or she is not requesting a reporting exemption, and is therefore required to file all reports for the primary election only, for the general election only, or for both elections, as indicated by checking the appropriate box. If a candidate chooses this option, all reports are required, even if no campaign activity has taken place during the reporting period.

Whether a candidate is opposed or unopposed in an election does not affect the reporting requirements.

EXEMPTION OPTION A - A candidate who intends to raise or spend \$3,000 or less (including the candidate's own money) during each election may request an exemption from all pre-election reporting. To choose this exemption option, check one box to indicate whether the exemption is being requested for the primary election only, the general election only, or both the primary and general elections.

EXEMPTION OPTION B - A candidate who intends to raise or spend \$1,000 or less (including the candidate's own money) during each election may request an exemption from all pre- and post-election reporting. To choose this exemption option, check one box to indicate whether the exemption is being requested for the primary election only, the general election only, or both the primary and general elections.

SECTION 5. AMENDED INFORMATION, REVOCATION OR CHANGE IN REPORTING EXEMPTION - This section of the form is used to indicate that information as previously filed on a Form KREF-001 has changed.

IF USING THIS FORM TO AMEND - If using this form to amend candidate, election, treasurer, or depository information, complete a new Form KREF-001 in its entirety. In Section 5, check the appropriate box to indicate that the form contains information which is different from that which was originally filed. Briefly describe the reason for the amendment. (Note: For this type of change the amended Form KREF-001 may be filed directly with the Registry.)

For example, to name a new campaign treasurer in the event of the resignation of the former treasurer, complete the entire form, include the new treasurer's name, address, and telephone numbers in the appropriate fields. Check the box in Section 5 to indicate that the form contains amended information, and in the space provided for a description of the amendment, indicate "due to resignation of treasurer, new treasurer appointed."

IF USING THIS FORM TO REVOKE - Prior to the deadline, this form may be used to revoke a prior exemption option and/or to exercise a different option by completing a new KREF Form 001 in its entirety. In Section 4, check the new exemption option chosen. In Section 5, check the appropriate box to indicate that the form contains a new exemption option selection, and briefly describe the reason for the revocation and/or new selection.

For example, if the candidate did not exercise an exemption option, and planned to file all campaign finance reports, but prior to the deadline to revoke determined that he or she would not raise or spend in excess of \$1,000, the candidate could file a revocation of his or her original option and then exercise a new option. To exercise the new option, the candidate would complete the form in its entirety, select Option 2 in Section 4, and check the appropriate box in Section 5 to indicate that a change has occurred. In the space provided for a description, the candidate would indicate "due to no opposition in this race, planned spending will not exceed \$1,000."

CANDIDATE'S SIGNATURE - After reading the verification statement, the candidate should sign and date the form. By signing the form the candidate acknowledges that he or she has read and understands the verification statement.

CANDIDATE WITHDRAWAL

Notarized Signatures Required:	Candidate's signature
Latest date to withdraw for name NOT to be printed on primary election ballot.	Prior to February 10, 2014
Latest date to withdraw for name NOT to be printed on general election ballot.	Prior to August 25, 2014

Filing Form SBE/SOS/05	Notice of Candidate Withdrawal
Filing Official	Same official who received candidate's filing document (Secretary of State or county clerk)

Pursuant to KRS 118.212 (1-5) candidates may withdraw at anytime by filing a written, signed and properly notarized notice that the nomination or election would not be accepted. The Notice of Candidate Withdrawal must be filed with the same filing official, Secretary of State or county clerk, that received the candidate filing documents.

The Notice of Candidate Withdrawal **must** be filed prior to the time of the certification of candidates for the name **not** to appear on the ballot. If the Notice of Candidate Withdrawal is filed **after the deadline** of the certification of candidates, the candidate's name **will appear** on the **ballot** but a notice will be conspicuously displayed in each polling place advising the voters of the withdrawal and any votes cast for the withdrawn candidate will **not** be tabulated or recorded.

Certification of candidates for the primary election is not later than the second Monday after the filing deadline for the primary.

Certification of candidates for a general election in non-presidential election years is not later than the second Monday after the filing deadline for the general election. In Presidential election years, the candidate certification deadline is not later than the Monday after the Friday following the first Tuesday in September.

There is **NO** fee for filing a Notice of Candidate Withdrawal and there is no authority for the return of the candidate filing fee.

NOTICE OF CANDIDATE WITHDRAWAL

To: _____
Filing Officer

I, _____ who resides at
(Name of Candidate)

(Candidate's Residential Address City Zip County)

filed as a _____ candidate for the office of
(Party)

(Office) (Division or District No., if applicable)

I hereby state that I will not accept the nomination or election and request the

_____ to withdraw my name as a candidate for
(County Clerk or Secretary of State)

the office listed above.

Dated this day of _____
(Month Day Year)

(Signature of Candidate)

STATE OF KENTUCKY

COUNTY OF _____

Subscribed and sworn to before me by _____
(Name of Candidate)

on this date of _____
(Month Day Year)

(Notary Public)

(Commission Expiration Date)

SBE/SOS/05 (08/06)



White Copy: Filing Officer
Canary Copy: State Board of Elections
Pink Copy: Kentucky Registry of Election Finance
Goldenrod Copy: Candidate

Kentucky Registry of Election Finance

Introduction to the KY Registry of Election Finance

The Ky Registry of Election Finance (KREF) has the responsibility of ensuring the integrity of the electoral process by providing access to campaign financial data and disclosure reports, and by administering Kentucky's campaign finance laws. The KREF ensures that financial reports are filed in a timely manner and reviews those reports for completeness and accuracy. The KREF also tracks candidate and committee election finance activities, conducts audits and investigations, reviews request for and provide advisory opinions, and adjudicates administrative charges of violations of campaign finance laws. Under KRS Chapter 121, Kentucky's campaign finance laws apply to all candidates for office including judicial candidates. Candidates and the public may seek advisory opinions concerning the application of campaign finance laws under KRS Chapters 121. These opinions are not general policies and may only be relied upon by the person or group involved in the specific action or activity for which the opinion is obtained. Prior opinions are available.

Reporting Deadlines

Deadlines for Finance reporting can be found at the KREF website. <http://kref.ky.gov/Reportingdates/>

ADVISORY OPINION 2000-001

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).

February 25, 2000

Darren L. Embry, Chairman
Forgy for Justice
1100 Vine Center
Lexington, KY 40507

Dear Mr. Embry:

This is in reference to your January 27, 2000 letter requesting an advisory opinion regarding the solicitation of campaign contributions for a judicial race. Your letter states that you are the chair of a campaign committee established to solicit contributions and make expenditures on behalf of Larry Forgy's candidacy for Kentucky Supreme Court Justice. You ask the Registry to consider the following questions:

- (1) Whether a campaign committee may accept both \$1,000.00 for a primary election and \$1,000.00 for a general election if there are only two candidates for the office and a primary is therefore unnecessary?**

KRS 121.015(2) defines an election as "any primary, runoff primary, regular or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election." (Emphasis added.) Each election is considered a separate election under KRS Chapter 121. KRS 121.015(2). KRS 121.150(6) imposes on candidates a contribution limit of no more than "one thousand dollars (\$1,000) from any person in any one (1) election." Therefore, a candidate for judicial office may accept

Mr. Darren L. Embry, Chairman
Forgy for Justice
February 25, 2000
AO 00-001
Page 2

\$1,000 per individual contributor in the primary election and \$1,000 per individual contributor in the regular (general) election. Under KRS Chapter 121, it is irrelevant that, as a result of only two (2) candidates filing for a judicial seat, the candidates will not appear on the primary ballot.

(2) Whether individuals who solicit contributions on behalf of this campaign committee, but who do not themselves receive these contributions, must register with the Registry as fundraisers?

KRS 121.015(11) defines a fundraiser as “an individual who directly solicits and secures contributions on behalf of a candidate or slate of candidate for a statewide-elected state office or an office in a jurisdiction with a population in excess of two hundred thousand (200,000) residents.” Individuals who solicit funds on behalf of a campaign committee, but who do not receive contributions resulting from such solicitations, are not fundraisers as defined by KRS 121.015(11) and are not required to register with the Registry under KRS 121.170(2). See KREF Advisory Opinion 93-015 (“By its plain language, [KRS 121.015(11)] requires that a fundraiser both solicit and directly receive the contribution that he or she has solicited.”)

This opinion reflects the Registry’s consideration of the specific transactions posed by you letter. If you have any additional questions, please do not hesitate to contact the Registry staff.

Sincerely,
Rosemary F. Center
General Counsel

RFC/jh

Enclosures

ADVISORY OPINION 94-020

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121.135(4).

November 5, 1994

Judge Wayne McGee
District Judge, 18th District, 2nd Division
Courthouse
Cynthiana, Kentucky 41031

Dear Judge McGee:

Thank you for contacting the Registry. The facts provided in your letter may be summarized as follows:

You have campaign paraphernalia remaining from a previous campaign, including ink pens, paper productions, and matches, etc., which you eventually would like to donate. You further indicate that you do not plan to run for re-election.

Based on the information you have provided, your question may be stated as follows:

Whether you may dispose of previous campaign materials without violating Kentucky campaign finance statutes.

In response to your question, the disbursement of unexpended campaign material is controlled by KRS 121.180(10), which provides:

[A]ny unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person...shall escheat to the State Treasury, be returned pro rata to all contributors...except that a candidate, committee, or an official...may donate the funds to any charitable, non-profit, or educational institution recognized under Section 501(c)(3) of the Internal Revenue Code.

Black's Law Dictionary, 108 (5th ed. 1979) defines "fund" as an "asset or group of assets set aside for a specific purpose." An "asset" is further defined as "property of all kinds, real and personal, tangible and intangible." *Id.* at 606. The campaign paraphernalia you describe would be considered campaign property. Therefore, it constitutes a campaign asset, and must be distributed in accordance with KRS 121.180(10).

Campaign paraphernalia may be distributed at your discretion provided your actions comply with the above-cited statute. A copy of Section 501(c)(3) of the Internal Revenue Code is attached for your information.

If you have any questions, please contact the Registry. Thank you.

Sincerely,

Rosemary F. Center
General Counsel

RFC/db

ADVISORY OPINION 93-021

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

October 15, 1993

Hon. William H. Allison
Allison, Garber, & Russell
1326 South Third Street
Louisville, Kentucky 40208

Dear Mr. Allison:

Thank you for contacting the Registry. Also, thank you for supplying us with additional facts over the phone on Tuesday, September 21, 1993. The facts to your question can be stated as follows:

You are the treasure for a judicial candidate, Eleanore Garber, and for your candidate, you would like to accept a \$500 contribution from a 501(C)(3) non-profit corporation. The possible corporate contributor is the Standiford Area Neighborhood Association, Inc. ("Association"). Under Article IV of its Articles of Incorporation, the Association is a service organization as defined by Section 501(C)(4) of the U.S. Internal Revenue Code.

Your letter dated September 3, 1993, written to a Registry administrator, suggest that under KREF v. Louisville Bar Association, Ky.App., 579 SW2d 622 (1979), any non-profit corporation may contribute to judicial candidates in Kentucky.

Your question can be stated as follows:

Is it permissible for a non-profit 501(C)(3) corporation to contribute to Kentucky judicial candidates?

The short answer to your question is no. In the opinion of the Registry, the case you cite, KREF v. Louisville Bar Association, Ky.App., 579 SW2d 622 (1979), does not stand for the proposition that all non-profit corporations may contribute to a judicial campaign in Kentucky. In KREF v. LBA, the court stated:

For the reasons hereinafter expressed, we conclude that it would not be a violation under the facts in this case, if the paid advertisement was presented according to the terms of the judgment of the trial court. Id., at 625, (emphasis added).

The facts in your question do not represent the facts in KREF v. LBA. KREF v. LBA is a case where a non-profit incorporated lawyers' service organization, which represents the general legal interests of all Louisville residents, paid for a general advertisement giving guidance as to voting for judicial candidates in Louisville. On the other hand, the facts in your question are that an association formed

to represent a single neighborhood wishes to contribute to the candidacy of a single judicial candidate. Because your question does not set forth similar facts to the facts in KREF v. LBA, KRS 121.025 prohibits the proposed contribution.

The Registry regulates a small portion of Kentucky law only and cannot give advice on or interpretation of federal law. However, you may wish to check the relevant federal Internal Revenue Code sections and corresponding regulations. There may be restrictions or prohibitions that apply to political contributions made by tax-exempt corporations.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt

ADVISORY OPINION 93-019

Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is required. KRS 121. 135(4).

September 25, 1993

J. Michael Brown, Esq., Chairman
Citizens for Better Judges Political Action Committee
Wyatt, Tarrant & Combs
Citizens Plaza
Louisville, Kentucky 40202

Dear Mr. Brown:

Thank you for contacting the Registry. Based on the information in your question and the written Response in Carr v. Citizens for Better Judges, KREF 93-271, the facts to your question may be stated as follows:

Citizens for Better Judges ("CBJ") is a permanent committee, registered with the Kentucky Registry of Election Finance. In the May, 1993, primary election, Citizens for Better Judges endorsed seven judicial candidates by newspaper advertisement(s). In total, CBJ spent less than \$500 per endorsed candidate to produce the newspaper advertising in support of these candidates. CBJ interviews judicial candidates before it endorses them.

Your question may be stated as follows:

For the 1993 general election, may the CBJ make in-kind contributions to judicial candidates by paying for newspaper advertising that endorses the individual candidates?

Since the CBJ's 1993 primary election activity is the subject of a current complaint before the Registry, the Registry will not pass on the question of whether or not the May, 1993, CBJ activity was permissible. However, for the 1993 general election only, the CBJ is welcome to endorse judicial candidates through newspaper advertising so long as it spends no more than \$500 per endorsed candidate. Further, the CBJ should report these expenditures as in-kind contributions to the individual candidates as well as expenditures for newspaper advertising. So the individual candidates may report these contributions, the CBJ should notify the candidates it is making the in-kind contributions.

This opinion is based upon the course of action outlined in your letter. If you should have any more questions, please give us a call. Thank you.

Sincerely,

Timothy E. Shull
General Counsel

TES/dt

KENTUCKY REGISTRY OF ELECTION FINANCE TEN IMPORTANT CAMPAIGN FINANCE QUESTIONS

1. When does a person become a candidate?

KRS 121.015(8)

A person is considered a candidate when he/she has received a contribution or made an expenditure with a view to bringing about his/her nomination or election to public office.

If a person wants to begin his or her candidacy prior to the official nominating period for public office, the person should file a Letter of Intent with the Registry. To begin a candidacy during the official nominating period, the person will file official documents with the filing officer (Secretary of State or County Clerk), including the Appointment of Campaign Treasurer and Optional Request for Reporting Exemption Form (KREF 001).

2. What determines if and/or when a candidate files an Election Finance Statement?

KRS 121.180; 32 KAR 1:020

The spending option chosen on Section 4 of the Appointment of Campaign Treasurer and Optional Request for Reporting Exemption Form (KREF 001) generally determines if and/or when a candidate files an Election Finance Statement. If a candidate indicates that he/she intends to spend over \$3,000, then the candidate must file all Pre- and Post Election Finance Statements. Candidates who register as \$3,000 or less filers (Section 4, Exemption Option A) file only Post Election Finance Statements. Candidates who register as \$1,000 or less filers (Section 4, Exemption Option B) have no campaign finance reporting requirements. **However, if a candidate exceeds the chosen \$1,000 or \$3,000 exemption option, then the candidate must immediately notify the Registry and then file all subsequent Pre- or Post Election Finance Statements.**

NOTE: If no spending option is selected, then the candidate will be deemed to have chosen to spend more than \$3,000, in which case the candidate is required to file all Pre- and Post Election Finance Statements.

3. When is a disclaimer required?

KRS 121.190(1); 32 KAR 2:110

All newspaper or magazine advertising, posters, circulars, billboards, handbills, sample ballots, and paid-for television or radio advertisements which expressly advocate the election or defeat of a clearly identified candidate or group of candidates are required to have a disclaimer.

For television and radio broadcasts, compliance with Federal Communication Commission regulations regarding sponsored programs and broadcasts by candidates for public office shall be considered compliance with Kentucky law.

4. What is the proper wording of the disclaimer?

KRS 121.190(1)

The phrase "paid for by candidate" is NEVER a correct disclaimer!

If the political advertising is paid for by the candidate's campaign fund or committee, the disclaimer must state "paid for by" and the candidate's first and last name or the committee's name. If the political advertising is paid for by an individual or other entity, the disclaimer must list the name and complete address of the individual or other entity.

5. What may a candidate use campaign funds to purchase?

KRS 121.175; KRS 121.180(10); 32 KAR 2:200

Allowable campaign expenses are only those expenditures which directly benefit the campaign. The statutes prohibit the purchase of items which provide a personal benefit to the candidate or others but do not directly benefit the campaign.

6. Is a campaign required to account for a candidate's personal funds spent on behalf of the campaign?

KRS 121.015(6); KRS 121.180(9)(b); KRS 121.220

Yes! A candidate may make unlimited contributions to his/her own campaign by depositing funds in the campaign account. Personal funds of a candidate used to seek elective office should be deposited directly into the campaign account and accounted for as either a contribution or loan direct from candidate (See Itemized Receipts Schedule 1A, KREF 006 form). Candidate loans must also be reported as debt owed by the campaign (See Debts & Obligations Schedule 4, KREF 006 form). The repayment of candidate loans will also be documented on Schedule 1A and Schedule 4.

Personal funds spent "out of pocket" by the candidate that are directly related to the campaign and documented should be reimbursed to the candidate. Meticulous records should be kept by any campaign that reimburses a candidate for "out of pocket" expenses. **Take caution**, as expenditures using a candidate's personal funds outside the campaign account may subject the candidate's personal accounts to an audit if the campaign cannot adequately document the reason for the reimbursement or the source of funds expended.

7. **May a candidate's "out of pocket expenses" be accounted for as an in-kind contribution to the campaign?**

KRS 121.015(6); KRS 121.180(9)(b); KRS 121.220

No. A candidate's "out of pocket expenses" must be documented and then either reimbursed or reported as debt owed by the campaign to the candidate. Goods valued at more than \$100 (e.g. used campaign signs, laptop computer) privately owned by the candidate prior to the campaign may be accounted for as an in-kind contribution. However, the payment of personal funds by a candidate for gas, lodging, meals, printing or other expenses directly for campaign purposes, constitutes a campaign expenditure. Ideally, campaign expenditures are made from the campaign fund. However, if made by the candidate from personal funds, the expense must be documented and subsequently reimbursed to the candidate from the campaign account or reported as a debt owed by the campaign to the candidate.

8. **A contributor is self-employed. On the Election Finance Statement, why is "self-employed" an inappropriate description for the contributor's occupation and/or place of employment?**

KRS 121.160 (2)(b)

The statute specifically prohibits the use of generic descriptions such as "Businessman" or "Self-Employed" to describe the occupation of a contributor on an Election Finance Statement. Instead, the statute requires the name under which the contributor is doing business to be disclosed.

9. **What if my campaign is contacted about "independent expenditure" efforts?**

KRS 121.015(12), KRS 121.150(1), 32 KAR 1:080

Beware any contact from individuals or organizations who want to discuss or include you in "independent expenditure" efforts. An independent expenditure is the expenditure of money or other thing of value to promote a candidate, slate of candidates or committee ***without the candidate, the campaign, or any authorized person acting on behalf of the campaign having prior knowledge, suggesting, or otherwise participating in creating the communication.***

Independent expenditures are not subject to any limits, but are subject to reporting requirements. Individuals, committees and other groups who make independent expenditures exceeding \$500 in the aggregate in any one election are required to report directly to the Registry.

10. When is a person required to register and report as a “fundraiser” on behalf of my campaign?

KRS 121.015(11), KRS 121.170(2), 32 KAR 2:070

A "fundraiser" is a person who *directly solicits and secures contributions* for candidates for an office in a jurisdiction containing more than 200,000 residents or candidates for statewide office. When a fundraiser directly solicits and receives more than \$3,000 in contributions for these types of candidates in an election, he or she is required to register with the Registry as a fundraiser and must file finance reports. It is the campaign's duty to provide forms and reporting instructions to each person who qualifies as a fundraiser for the candidate or slate of candidates.

A person may engage in the following activities without registering as a fundraiser: (1) Act as a campaign treasurer; (2) Perform clerical functions such as receiving contributions or preparing and filing campaign finance reports; (3) Communicate an endorsement of a candidate or slate of candidates which indirectly results in the receipt of contributions, provided that the communication is not followed by one-on-one direct oral or written solicitation of contributions by the person making the endorsement; or (4) Act as host of a social event at one's residence or place of business, provided that the host does not directly solicit and receive contributions in excess of \$3,000.

Need additional help? Have more questions? Contact Registry Staff at (502) 573-2226 or visit our website at www.kref.ky.gov.

KENTUCKY REGISTRY OF ELECTION FINANCE

RECORDKEEPING SUGGESTIONS

How to Organize Contribution Records

- Have each contributor complete a contribution card.
- Photocopy each contribution check.
- Attach the contribution card to the check photocopy.
- Group check copies and contribution cards by deposit and attach a copy of the deposit slip.

How to Examine a Contributor's Check

- Always examine the check prior to deposit.
- Make sure the check is from an allowable contributor.
- Make sure the check is made payable to the campaign.
- Make sure the check amount is within the legal cumulative contribution limit for that contributor.
- Unless there is other documentation, attribute the contribution to the person who signed the check.
- Corporate contributions are prohibited.

If you are not certain whether the contribution check is from a corporation, access the Online Business Database on the Secretary of State's web page (www.sos.ky.gov) for more information. If you do not have Internet access, contact the Secretary of State's office (Phone: 502-564-3490) or the Registry (Phone: 502-573-2226) for assistance.

How to Organize Disbursement Records

- Obtain an invoice from every business and individual to which payment is made or obligated.
- Directly on each invoice, write the number of the campaign check used to make payment.
- Organize invoices by the check number written on them.

Sample Campaign Contribution Card

Thank you for supporting my candidacy for Senate. In order for me to comply with Campaign Finance Laws, I must supply the following information to the Registry of Election Finance. **Make checks payable to Joe Candidate Campaign Fund.**

Please return this card with your contribution.

Maximum contribution allowable is \$1,000

Maximum cash contribution is \$50

Corporate contributions are prohibited

Contributor's Name:

Address:

Occupation:

Employer:

Amount of Contribution: \$

Have you made other contributions this election? Yes No

I am looking forward to attending the upcoming fundraiser to support your candidacy.
 people will be attending with my party.

I am unable to attend, but wish to help the campaign with a \$ _____ contribution. The required information is listed above for my contribution.

I am unable to attend.

Name:

Address:

City

State

Zip

Each Candidate should create a form with the above listed information.

Don't Miss Another Reporting Deadline!!

You are invited to participate in the Registry's E-mail Reminder Project.

A courtesy reminder that a report is due will be sent to the e-mail address provided on the candidate's KREF Form 001 five (5) days prior to the report due date.

If you did not provide an e-mail address on the KREF Form 001, it's not too late.

Go to <http://www.kref.ky.gov/candidate/e-mail> and fill out the e-mail update form, or complete and submit the below information.

Name of Candidate: _____

Filer Number: _____

Election Date: _____

E-Mail Address: _____

Mail to:
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601

Or

Fax to:
502-573-5622



www.kref.ky.gov

Kentucky Registry of Election Finance Online Resources

A. The Registry's Website

www.kref.ky.gov

- Contains candidate and committee guides
- Includes all KREF forms and brochures
- Maintains a "Frequently Asked Questions" section
- Lists reporting date information
- Links to KY campaign statutes and regulations
- Houses past KREF Advisory Opinions
- Is searchable by key terms or words

B. The Registry's Online Election Finance Training Seminar

www.kref.ky.gov/OnlineTrainingSeminar.htm

- Helps first-time candidates and treasurers become familiar with campaign finance terms and procedures
- Brings veteran candidates and their campaign staffs up-to-date on campaign finance laws
- Teaches candidates how to accurately report campaign contributions, disbursements and other activities
- Makes candidates aware of common pitfalls to avoid
- Shows candidates how to maintain records and how to close out a campaign

C. The Registry's Online Searchable Database (OSD)

kref.state.ky.us/krefsearch/

- Contains contribution information for all reports filed with KREF since 1998
- Offers the opportunity for the public to search the OSD by election date, candidate name, contributor name, office, committee or by organization
- Facilitates downloading to a campaign finance data text file or a spreadsheet program for more detailed analysis

D. The Registry's Electronic Filing System

kref.ky.gov/efile/

- Provides a choice of approved vendors for software for the filing of campaign finance reports
- Allows campaigns to maintain information and submit reports in a more orderly manner
- Permits the purchase of campaign finance software as a campaign expense

**For more information, contact: Tom Messinger, (502) 573-2226, ext. 235
or Tom.Messinger@ky.gov**

KENTUCKY REGISTRY OF ELECTION FINANCE

140 WALNUT STREET, FRANKFORT, KENTUCKY 40601-3240

(502) 573-2226 / FAX (502) 573-5622

www.kref.ky.gov

ELECTION FINANCE STATEMENT - COVER PAGE

(Please type or print)

This Space for Registry Use Only

1. Candidate/Slate of Candidates : _____
Committee Name: _____
Date of Birth: ___/___/___ KREF Filer # _____
Office Sought: _____
District/Division Number: _____
County of Residence: _____
Political Party: _____

Logged _____ Keyed _____
Election Status: W L

2. Candidate/Slate of Candidates/Committee Mailing Address:

Daytime Phone Number: (_____)_____-_____

Candidate Status: | Reporting Status:
INELG | S Only
WD | Debt Only
DD | S/D
T | Continue to G
TFC

3. Treasurer's Name and Mailing Address:

Daytime Phone Number: (_____)_____-_____

4. This Statement Covers:
From: _____
Month - Day - Year
To: _____
Month - Day - Year

INCLUDE INFORMATION FOR THIS ELECTION ONLY

5. Date of Election: _____ This Statement relates to: Primary General Special
Month-Day-Year Run-off Primary

6. Type of Statement
a. Quarterly
b. 32-day Pre-Election
c. 15-day Pre-Election
d. 30-day Post-Election
e. 60-day Post-Election Supplemental
f. Annual Supplemental
g. Termination _____
Month-Day-Year
h. AMENDMENT - Check one of the items above to indicate which statement is being amended.

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this statement to the penalties of KRS 121.990.

7. Verification: I certify that I have examined this Election Finance Statement and to the best of my knowledge and belief it is true, correct, and complete.

Candidate or Treasurer: _____ Date: _____
Type or Print Name Authorized Signature Month-Day-Year



SUMMARY PAGE

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ____/____/____ To: ____/____/____

RECEIPTS	COLUMN 1	COLUMN 2
1. CONTRIBUTIONS: (including all receipts from Fundraisers)	(This Period)	(Cumulative This Election)
a. Itemized by check or written instrument (Schedule 1A, Item 4a)	\$ _____	\$ _____
b. Other receipts (Schedule 1A, Item 4c)	+ \$ _____	\$ _____
c. Receipts in currency (Number of people _____) (Individual cash contribution limit is \$50)	+ \$ _____	\$ _____
d. Anonymous (Number of people _____) (Maximum \$50 per contribution)	+ \$ _____	\$ _____ (\$1,000 Maximum Per Election)
e. Unitemized contributions (Number of people _____) (Contributions by check of \$100 or less)	+ \$ _____	\$ _____
f. Political Action Committee (PAC) contributions (Schedule 1B, Item 4a)	+ \$ _____	\$ _____
g. Executive Committee contributions (Schedule 1C, Item 3a)	+ \$ _____	\$ _____
h. Caucus Campaign Committee contributions (Schedule 1D, Item 3a)	+ \$ _____	\$ _____
2. TOTAL RECEIPTS	= \$ _____	\$ _____
DISBURSEMENTS		
3. TOTAL DISBURSEMENTS (Schedule 2, Item 4)	\$ _____	
IN-KIND CONTRIBUTIONS		
4. a. In-kind Contributions Received (Schedule 1A, Item 4b)	\$ _____	\$ _____
b. In-kind Contributions Received (PAC) (Schedule 1B, Item 4b)	\$ _____	\$ _____
c. In-kind Contributions Received (Executive Com.) (Schedule 1C, Item 3b)	\$ _____	\$ _____
d. In-kind Contributions Received (Caucus Campaign Com.) (Schedule 1D, Item 3b)	\$ _____	\$ _____
DEBTS AND OBLIGATIONS		
5. TOTAL DEBTS AND OBLIGATIONS (Schedule 4, Item 7)	\$ _____	
BALANCE STATEMENT		
6. Ending balance of previous report (Enter -0- if no previous report)	\$ _____	<div style="border: 1px solid black; padding: 5px;"> <p>No change since last report <input type="checkbox"/> (check if applicable)</p> <p><i>If nothing of value has been received and no expenditures have been made since the last report, list the Ending Balance line 10 amount from the last report as the Ending Balance line 10 amount on this report.</i></p> </div>
7. Add total receipts during reporting period (Line 2, Column 1)	+ \$ _____	
8. Sub-Total (Add lines 6 and 7)	= \$ _____	
9. Subtract total disbursements during reporting period (Line 3, Column 1)	- \$ _____	
10. ENDING BALANCE (Subtract Line 9 from Line 8)	= \$ _____	

RECEIPTS SCHEDULE 1A

Receipts in Excess of \$100 Must be Itemized

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ **Period From:** ____/____/____ **To:** ____/____/____

1. Contributor Name and Address Contributor Occupation and Employer Spouse's Name, Occupation and Employer	1b. Marital Status	2. Date of Receipt ----- 3. Type of Contribution	4a. Contribution by Check or Written Instrument	4b. Description and Value of In-Kind	4c. Other Receipts	5. Cumulative for Election (per Contributor)
		____/____/____ <input type="checkbox"/> Direct from Candidate <input type="checkbox"/> Loan from Candidate <input type="checkbox"/> Direct from a person or authorized entity <input type="checkbox"/> Fundraising Event <input type="checkbox"/> Fundraiser (person) <input type="checkbox"/> In-kind <input type="checkbox"/> Other: _____				
		____/____/____ <input type="checkbox"/> Direct from Candidate <input type="checkbox"/> Loan from Candidate <input type="checkbox"/> Direct from a person or authorized entity <input type="checkbox"/> Fundraising Event <input type="checkbox"/> Fundraiser (person) <input type="checkbox"/> In-kind <input type="checkbox"/> Other: _____				
		____/____/____ <input type="checkbox"/> Direct from Candidate <input type="checkbox"/> Loan from Candidate <input type="checkbox"/> Direct from a person or authorized entity <input type="checkbox"/> Fundraising Event <input type="checkbox"/> Fundraiser (person) <input type="checkbox"/> In-kind <input type="checkbox"/> Other: _____				
		____/____/____ <input type="checkbox"/> Direct from Candidate <input type="checkbox"/> Loan from Candidate <input type="checkbox"/> Direct from a person or authorized entity <input type="checkbox"/> Fundraising Event <input type="checkbox"/> Fundraiser (person) <input type="checkbox"/> In-kind <input type="checkbox"/> Other: _____				

SUBTOTAL THIS PAGE			
TOTAL THIS PERIOD (Only on last page of Schedule)	_____	_____	_____
	Enter this total on Col. 1, line 1a of Summary Page	Enter this total on Col. 1, line 4a of Summary Page	Enter this total on Col. 1, line 1b of Summary Page

PAC RECEIPTS SCHEDULE 1B

Receipts from PACs must be itemized regardless of amount

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ___/___/___ To: ___/___/___

1. Permanent Committee Name and Address ----- 2. Major business, social, or political interest represented by committee	3. Date of Receipt	4a. Contribution by Check or Written Instrument	4b. Description and Value of In-Kind	5. Cumulative for Election (per Contributor)
	___/___/___			
	___/___/___			
	___/___/___			
	___/___/___			
	___/___/___			

SUBTOTAL THIS PAGE		
TOTAL THIS PERIOD (Only on last page of Schedule)	_____	_____
	Enter this total on Col. 1, line 1f of Summary Page	Enter this total on Col. 1, line 4b of Summary Page

EXECUTIVE COMMITTEE RECEIPTS SCHEDULE 1C

Receipts in Excess of \$100 Must be Itemized

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ____/____/____ To: ____/____/____

1. Executive Committee Name and Address	2. Date of Receipt	3a. Contribution by Check or Written Instrument	3b. Description and Value of In-Kind	4. Cumulative for Election (per Contributor)
	____/____/____			
	____/____/____			
	____/____/____			
	____/____/____			
	____/____/____			

SUBTOTAL THIS PAGE		
5. Total Cash and Unitemized Executive Committee Contributions Cash _____ + Unitemized _____ = Number of Cash Receipts _____ Number of Unitemized Receipts _____		
TOTAL THIS PERIOD (Only on last page of Schedule)	\$ _____ <small>Enter this total on Col. 1, line 1g of Summary Page</small>	\$ _____ <small>Enter this total on Col. 1, line 4c of Summary Page</small>

CAUCUS CAMPAIGN COMMITTEE RECEIPTS SCHEDULE 1D

Page ____ of ____

Receipts in Excess of \$100 Must be Itemized

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ____/____/____ To: ____/____/____

1. Caucus Campaign Committee Name and Address	2. Date of Receipt	3a. Contribution by Check or Written Instrument	3b. Description and Value of In-Kind	4. Cumulative for Election (per Contributor)
	__/__/____			
	__/__/____			
	__/__/____			
	__/__/____			
	__/__/____			

SUBTOTAL THIS PAGE			
5. Total Cash and Unitemized Caucus Campaign Committee Contributions Cash _____ + Unitemized _____ = Number of Cash Receipts _____ Number of Unitemized Receipts _____			
TOTAL THIS PERIOD (Only on last page of Schedule)		\$ _____ <small>Enter this total on Col. 1, line 1h of Summary Page</small>	\$ _____ <small>Enter this total on Col. 1, line 4d of Summary Page</small>

ITEMIZED DISBURSEMENTS SCHEDULE 2

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ___/___/___ To: ___/___/___

1. Name and Address of Person or Business Paid List Occupation if Paid to a Person	2. Purpose of Disbursement (Be specific)	3. Date of Disbursement	4. Amount Disbursed
		___/___/___	
		___/___/___	
		___/___/___	
		___/___/___	
		___/___/___	
		___/___/___	
		___/___/___	
		___/___/___	

SUBTOTAL THIS PAGE	
TOTAL THIS PERIOD (Only on last page of Schedule)	_____ <small>Enter this total on Col. 1, line 3 of Summary Page</small>

EVENTS SCHEDULE 3

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ___ / ___ / ___ To: ___ / ___ / ___

1. Sponsor of Event and Address where the Event was Held	2. Type of Fundraising Activity or Event	3. Date Event was Held	4. Total Amount Received	5. Cost of Event
		___ / ___ / ___		
		___ / ___ / ___		
		___ / ___ / ___		
		___ / ___ / ___		
		___ / ___ / ___		
		___ / ___ / ___		

NOTE: Each fundraising activity or event must be listed separately. This schedule must be filed with the Election Finance Statement covering the period in which the fundraising activity or event took place, and is for informational purposes only. All receipts must be itemized on Schedule 1A, Schedule 1B, Schedule 1C, Schedule 1D or be included in unitemized, cash, or anonymous totals on the Summary Page. All costs incurred in connection with fundraising activities or events must be included on Schedule 2, or as in-kind contributions on Schedule 1A.

DEBTS & OBLIGATIONS SCHEDULE 4

Candidate/Slate of Candidates/Committee: _____

KREF Filer #: _____ Period From: ____/____/____ To: ____/____/____

1. Name and Mailing Address of Party to Whom Debt is Owed	2. Type of Obligation	3. Date Incurred	4. Original Amount	5. Prior Payment	6. Payment made this reporting period	7. Outstanding Balance at close of this period
		//____				
		//____				
		//____				
		//____				
		//____				
		//____				

NOTE: If you have debts or obligations, this schedule must be filed with every Election Finance Statement with reportable activity (contributions and/or expenditures) up to and including the period in which all debts are paid or assumed.

The candidate/slate of candidates may convert outstanding obligations or debt to candidate contribution by personally assuming the debt. If you wish to assume debt outstanding from your campaign, please execute the Certificate of Debt Assumption below.

SUBTOTAL THIS PAGE	\$ _____
TOTAL THIS PERIOD (Only on last page of Schedule)	\$ _____

Enter this total on line 5 "Total Debts and Obligations" on the Summary Page

CERTIFICATE OF DEBT ASSUMPTION		Amount Assumed by Candidate (Only when closing campaign account)
I hereby assume personal responsibility for payment of all outstanding campaign debts for this election.		
_____ SIGNATURE	_____ DATE	\$ _____

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COVER PAGE

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- BOX 1 Candidate/Slate:** Enter the name of the candidate. For a slate of candidates, enter only the last names of the two slate members.
- Committee:** Enter the name of the campaign committee, if applicable.
- Date of Birth:** Enter the Month/Day/Year the candidate was born. For a slate of candidates, list only the date of birth of the candidate for Governor.
- KREF Filer #:** Enter the KREF filer number assigned by the Registry.
- Office Sought:** Enter the name of the office sought as shown on the campaign filing papers.
- District/Division:** Enter the district or division number, if applicable.
- County of Residence:** Enter the county name of the candidate's main residence. For a slate of candidates, enter only the county of residence of the candidate for Governor.
- Political Party:** Enter the name of the political party affiliated with the campaign. If non-partisan, list N/A.
- BOX 2** Enter the complete mailing address for the campaign and a daytime telephone number.
- BOX 3** Enter the name and complete mailing address for the treasurer and a daytime telephone number.
- BOX 4** Enter the beginning and ending date for this statement. These dates should be consecutive from one report to the next.
- BOX 5 Date of Election:** Enter the Month/Day/Year of the election covered by this statement.
- Statement relates to:** Check one of the four boxes to identify the election pertained to by this report.
- BOX 6 Type of statement:** Check one of the boxes to identify the type of statement being filed.
- For the final campaign finance report, also check box "g" and fill in the Month/Day/Year the campaign account was closed and all campaign activity ceased.
- For an amended report, check the appropriate box for the reporting period being amended and also check amendment box "h."
- BOX 7** The election finance statement must be signed and dated by either the candidate or the campaign treasurer. The name of the person signing the report must be printed or typed and that person must provide his/her authorized signature and indicate the Month/Day/Year the signature was applied.

Note that the election finance statement should only include information for the reporting period shown on the cover page.

If the candidate or committee had no activity (contributions and/or expenditures) during the reporting period, complete the Cover Page and check the box marked "No change since last report" in the Balance Statement portion of the Summary Page.

Use only those pages that apply to your campaign during this reporting period.

You may duplicate these schedules as needed.

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SUMMARY PAGE

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

RECEIPTS – these Summary Page instructions refer to Column 1

- **Line 1a:** Transfer the total **itemized** receipts from Schedule 1A, Item 4a.
- **Line 1b:** Transfer the total **other** receipts from Schedule 1A, Item 4c.
- **Line 1c:** Enter the total **cash** receipts. Record the number of cash contributions this period on the Line 1c space provided. (Note that any cash contribution which campaign records cannot attribute to a specific contributor by name and address must be classified as anonymous cash and must be reported as part of the total on Line 1d.)
- **Line 1d:** Enter the total of all **anonymous cash** receipts. Record the number of anonymous cash contribution transactions this period on the Line 1d space provided.
- **Line 1e:** Enter the total of all **unitemized** monetary receipts. Record the number of unitemized contribution transactions this period on the Line 1e space provided.
- **Line 1f:** Transfer the total **PAC** receipts from Schedule 1B, Item 4a.
- **Line 1g:** Transfer the total **Executive Committee** receipts from Schedule 1C, Item 3a.
- **Line 1h:** Transfer the total **Caucus Campaign Committee** receipts from Schedule 1D, Item 3a.
- **Line 2:** Enter the total of all the amounts in Column 1. This figure is the total receipts for the period.

DISBURSEMENTS – these Summary Page instructions refer to Column 1

- **Line 3:** Enter the total from Schedule 2, Item 4. This figure is the total disbursements for the period.

IN-KIND CONTRIBUTIONS – these Summary Page instructions refer to Column 1

- **Line 4a:** Transfer the total **itemized** in-kind receipts from Schedule 1A, Item 4b.
- **Line 4b:** Transfer the total **PAC** in-kind receipts from Schedule 1B, Item 4b.
- **Line 4c:** Transfer the total **Executive Committee** in-kind receipts from Schedule 1C, Item 3b.
- **Line 4d:** Transfer the total **Caucus Campaign Committee** in-kind receipts from Schedule 1D, Item 3b.

DEBTS AND OBLIGATIONS

- **Line 5:** Transfer the total debts owed by the campaign from Schedule 4, Item 7.

BALANCE STATEMENT

- **Line 6:** Transfer the ending balance from the last finance statement Summary Page Line 10.
- **Line 7:** Transfer the total monetary receipts from Line 2, Column 1 of the Summary Page.
- **Line 8:** Enter the total of Line 6 and Line 7.
- **Line 9:** Transfer the total disbursement amount from Line 3, Column 1 of the Summary Page.
- **Line 10:** Enter the total of Line 8 minus Line 9. This is the ending balance for this reporting period.

If this is the first election finance statement filed, copy the figures in Column 1 to Column 2.

For each subsequent election finance statement with activity, add the Column 2 figures of the prior statement with activity to the Column 1 figures of the current statement. The result is the total of Column 2 for the current statement. If no activity (contributions and/or expenditures) occurred during the reporting period, complete the Cover Page and Summary Page only, checking the box “No change since last report” on the Balance Statement portion of the Summary Page.

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ITEMIZED RECEIPTS SCHEDULE 1A

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

Contributions are required to be itemized when the cumulative contribution from an individual has exceeded \$100 during the course of an election.

Refunds of contributions are recorded as “receipts adjustments” here on Schedule 1A and not as expenditures on Disbursement Schedule 2.

Refunds of amounts disbursed by the campaign are recorded as “disbursement adjustments” on Disbursement Schedule 2, not as receipts on Schedule 1A.

BOX 1

- Enter the name and complete address of each contributor along with the contributor’s occupation and the name of the contributor’s employer.
- The contributor’s occupation must be specific. If the contributor is self-employed, list the name under which the contributor is doing business. The term “businessman” is not acceptable.

ADDITIONAL REQUIREMENTS ONLY FOR SLATES AND STATEWIDE CANDIDATES

Box 1b must list the marital status of the contributor (enter S for single or M for married). If the contributor is married, list the contributor’s spouse’s name, occupation and employer.

BOX 2 Enter the date of receipt (Month/Day/Year) of each itemized contribution or other receipt.

BOX 3 Check one of the boxes to disclose which type of itemized receipt the campaign is reporting:

- *Direct from Candidate* for a contribution from the candidate to the campaign account.
- *Loan from Candidate* for a loan from the candidate to the campaign account.
- *Direct from a person or authorized entity* for a contribution received directly from an individual or contributing organization.
- *From Fundraising Event* for a contribution received in conjunction with a campaign event.
- *From Fundraiser Person* for a contribution raised by a registered fundraiser person.
- *In-kind Contribution* for a non-monetary contribution received by the campaign.
- *Other* for a type of receipt other than those listed above along with a description of the “other” receipt.

BOX 4a Enter the amount of each monetary contribution.

BOX 4b Enter the fair market value of each in-kind contribution of goods, services, or discounts along with a detailed explanation of what was given in-kind.

BOX 4c Enter the amount of each “other” receipt (such as interest on a checking account).

BOX 5 Enter the cumulative contribution total (which includes both monetary and in-kind contributions) from each itemized contributor as of the current contribution.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 1A on the last page of the schedule. Transfer the totals from the last page of Schedule 1A to the appropriate lines in Column 1 of the Summary Page.

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PAC RECEIPTS SCHEDULE 1B

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the full name and complete address of the permanent committee. (Enter the official name of the PAC and not an acronym the PAC may be known to use.)

BOX 2 Enter the major business, social, or political interest represented by the PAC.

BOX 3 Enter the date of receipt (Month/Day/Year) of the monetary or in-kind PAC contribution.

BOX 4a Enter the amount of each PAC monetary contribution.

BOX 4b Enter the fair market value of each in-kind PAC contribution of goods, services, or discounts along with a description of what was given in-kind by the PAC.

BOX 5 Enter the cumulative contribution total (which includes both monetary and in-kind contributions) from each PAC as of the current contribution.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 1B on the last page of the schedule. Transfer the totals from the last page of Schedule 1B to the appropriate lines in Column 1 of the Summary Page.

Campaigns must be aware that permanent committees affiliated by by-law structure or by registration are considered as one (1) committee for the purposes of applying contribution limits.

Campaigns cannot accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the campaign in any one election or ten thousand dollars (\$10,000) in any one election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate from permanent committees shall be calculated as of the day of each election. If a campaign has accepted more than ten thousand dollars (\$10,000) from PACs, refer to the candidate guide for the method used to calculate the PAC contributions percentage. The candidate guide details the procedures that must be used by the campaign if the PAC percentage is found to be in excess of the fifty percent (50%) limitation.

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EXECUTIVE COMMITTEE RECEIPTS SCHEDULE 1C

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the full name and complete address of the executive committee.

BOX 2 Enter the date of receipt (Month/Day/Year) of the itemized monetary or in-kind executive committee contribution.

BOX 3a Enter the amount of the itemized executive committee monetary contribution.

BOX 3b Enter the fair market value of each in-kind executive committee contribution of goods, services, or discounts along with a detailed explanation of what was given in-kind by the executive committee.

BOX 4 Enter the cumulative contribution total (which includes both monetary and in-kind contributions) from each executive committee as of the current contribution.

BOX 5

- Enter the total of all **cash** receipts from executive committees and record the number of executive committee cash contributions this period on the spaces provided.
- Enter the total of all **unitemized** monetary receipts from executive committees and record the number of unitemized contributions this period on the spaces provided.
- Enter the total of all executive committee **cash** and **unitemized** receipts in Item 3a.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 1C on the last page of the schedule. Transfer the totals from the last page of Schedule 1C to the appropriate lines in Column 1 of the Summary Page.

Campaigns cannot accept contributions from executive committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the campaign in any one election or ten thousand dollars (\$10,000) in any one election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate from executive committees shall be calculated as of the day of each election. If a campaign has accepted more than ten thousand dollars (\$10,000) from executive committees, refer to the candidate guide for the method used to calculate the executive committee contributions percentage. The candidate guide details the procedures that must be used by the campaign if the executive committee percentage is found to be in excess of the fifty percent (50%) limitation.

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CAUCUS CAMPAIGN COMMITTEE RECEIPTS
SCHEDULE 1D
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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the full name and complete address of the caucus campaign committee.

BOX 2 Enter the date of receipt (Month/Day/Year) of the itemized monetary or in-kind caucus campaign committee contribution.

BOX 3a Enter the amount of the itemized caucus campaign committee monetary contribution.

BOX 3b Enter the fair market value of each in-kind caucus campaign committee contribution of goods, services, or discounts along with a description of what was given in-kind by the caucus campaign committee.

BOX 4 Enter the cumulative contribution total (which includes both monetary and in-kind contributions) from each caucus campaign committee as of the current contribution.

BOX 5

- Enter the total of all **cash** receipts from caucus campaign committees and record the number of caucus campaign committee cash contributions this period on the spaces provided.
- Enter the total of all **unitemized** monetary receipts from caucus campaign committees and the number of unitemized contributions this period on the spaces provided.
- Enter the total of all caucus campaign committee **cash** and **unitemized** receipts in Item 3a.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 1D on the last page of the schedule. Transfer the totals from the last page of Schedule 1D to the appropriate lines in Column 1 of the Summary Page.

Campaigns cannot accept contributions from caucus campaign committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the campaign in any one election or ten thousand dollars (\$10,000) in any one election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate from caucus campaign committees shall be calculated as of the day of each election. If a campaign has accepted more than ten thousand dollars (\$10,000) from caucus campaign committees, refer to the candidate guide for the method used to calculate the caucus campaign committee contributions percentage. The candidate guide details the procedures that must be used by the campaign if the caucus campaign committee percentage is found to be in excess of the fifty percent (50%) limitation.

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DISBURSEMENTS SCHEDULE 2

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the name and complete address of any person or business that receives a payment of more than \$25. If the payment is to an individual, Box 1 must also list the occupation of this person.

Payment of **any amount** to a person for hauling voters must be made by check and detailed on this schedule.

BOX 2 Enter the purpose of the disbursement. The purpose of a disbursement must be disclosed regardless of the amount.

The purpose must be specific.

When a single payment is made for various types of expenses or reimbursements, each item of the total expense must be described individually.

BOX 3 Enter the date of the disbursement check. The date a disbursement is made must be disclosed regardless of the amount.

BOX 4 Enter the amount of the disbursement. The amount of a disbursement must always be disclosed and any disbursement in excess of \$25 must be made by check.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 2 on the last page of the schedule. Transfer the totals from the last page of Schedule 2 to Line 3 on Column 1 of the Summary Page.

When the campaign receives a refund, it should be shown on this statement as a “disbursements adjustment” and not on Schedule 1A as an “other receipt.” The amount of the refund is subtracted from disbursements so the campaign’s cumulative disbursements are not overstated on the Summary Page.

The repayment of a candidate loan is reported as a “receipts adjustment” on Schedule 1A, and is not reported as a disbursement on Schedule 2.

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EVENTS SCHEDULE 3

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the name of the person(s) sponsoring the event and the address where the activity was held.

BOX 2 Enter a description of the event or fundraising activity that took place.

BOX 3 Enter the date the event was held. For events held over multiple dates, such as the sale of campaign paraphernalia, enter the beginning and ending dates.

BOX 4 Enter the total receipts for the event. All event receipts must **also** be itemized on Schedule 1 or be included in unitemized, cash, or anonymous cash totals on the Summary Page.

BOX 5 Enter the total cost of the event. The costs associated with each event should **also** be included as disbursements on Schedule 2 or as in-kind contributions on Schedule 1.

Each fundraising activity or event must be listed separately. This schedule must be filed with the Election Finance Statement covering the period in which the fundraising activity or event took place, and is for informational purposes only. All receipts in excess of \$100 must be itemized on Schedule 1, and all other fundraiser receipts must be included in either unitemized, cash, anonymous, or in-kind receipts on the Summary Page. All costs incurred in connection with the fundraising activities or events must be included on Schedule 2, or as in-kind contributions on Schedule 1A.

An Event is a testimonial affair, dinner, luncheon, rally, or similar events, mass collections and the sale of items such as buttons, hats, ties, literature and similar materials. For sale of items, list the date the sales began through the date the sales ended in Box 3.

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DEBTS AND OBLIGATIONS SCHEDULE 4

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TOP OF EVERY PAGE

- Enter the name of the candidate, slate of candidates, or campaign committee.
- Enter the KREF filer number assigned by the Registry.
- Enter the time period this statement covers.

BOX 1 Enter the name and address of the party to whom debt is owed. List each debt or obligation on a separate line.

BOX 2 Enter the type of debt or obligation. This could be something such as “candidate loan” or “prepaid advertising.” Unpaid bills and written contracts or agreements to make expenditures are also considered debts and must be reported here.

BOX 3 Enter the date the debt was incurred or the loan was made.

BOX 4 Enter the original amount loaned to or unpaid by the campaign.

BOX 5 Enter the total of the debt repaid during prior reporting periods.

BOX 6 Enter the total of the debt or loan repaid during this period. For a debt owed, this amount would also be recorded on Schedule 2 as a disbursement. For a loan repayment, this amount would also be recorded on Schedule 1A as a “receipts adjustment.”

BOX 7 Enter the original amount less prior payments and payments this reporting period (Box 4 minus Box 5 minus Box 6 equals Box 7). This is the outstanding amount owed on each debt or obligation. Continue reporting each debt or obligation on Schedule 4 until it has been retired.

Subtotal each page of the schedule at the bottom of the page. Total all pages of Schedule 4 on the last page of the schedule. Transfer the total from the last page of Schedule 4 to Line 5 of the Summary Page.

Each debt and obligation must be listed separately and this schedule must be filed with the Election Finance Statement.



**KENTUCKY REGISTRY OF ELECTION FINANCE
140 WALNUT STREET
FRANKFORT, KENTUCKY 40601-3240
TELEPHONE (502) 573-2226
FAX (502) 573-5622**

FINANCIAL DISCLOSURE REPORT
KRS CHAPTER 61
PLEASE TYPE OR PRINT

(Name of Incumbent/Candidate) (Date of Birth) (Office Held/Seeking, including District/Division)

(Address where individual receives mail) (City-State-Zip)

(Name of Spouse) (Address where spouse receives mail) (City-State-Zip)

If you need more space, please attach separate sheets.

SECTION I, FINANCIAL INTERESTS: Describe your financial interests in the categories listed below. You are not required to list deposits in banks, savings and loan associations or credit unions.

Section I-A, *STOCKS*: List all stocks valued at more than **\$1,000** owned by you, your spouse, and your dependents. You are not required to list the name of the entity whose stock is held nor the value of the stock. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

DESCRIPTION OF STOCKS

**RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE**

Section I-B, *BONDS*: List all bonds valued at more than **\$1,000** owned by you, your spouse, and your dependents. You are not required to list the name of the entity whose bonds are held nor the value of the bonds. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

DESCRIPTION OF BONDS

**RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE**

Section I-C, *Real Estate and Credit Interests (Notes, Etc)*: List all real estate and credit interests valued at more than **\$1,000** owned by you, your spouse, and your dependents in any business enterprise whether it be a corporation, partnership, proprietorship or otherwise. You are not required to list the name of the entity or the amount of the interest. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

**DESCRIPTION OF REAL ESTATE
AND CREDIT INTERESTS**

**RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE**

SECTION II, OFFICE, DIRECTORSHIPS AND EMPLOYMENT: List every office, directorship, or employment held by you, your spouse, and your dependents in any entity regardless of the income received or equity held, excepting such activities in political, religious or charitable entities if compensation of less than \$1,000 per year is received. You are not required to list the name of the entity in which the office, directorship or employment is held or the amount of the income received. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity.

**DESCRIPTION OF OFFICES, DIRECTORSHIPS
AND EMPLOYMENT HELD**

**RELATIONSHIP OF OWNER TO
INCUMBENT/CANDIDATE**

SECTION III, COMPENSATED SERVICES: List all entities to whom you furnished compensated services valued at more than **\$1,000** during the period covered by this report. You are not required to list the entity by name or the amount of compensation. However, you must provide a description of the nature of business and types of products or services manufactured or sold by the subject entity. Where disclosure is required because of legal services rendered to it, such entity may also be described by the type of legal service it received.

DESCRIPTION OF ENTITY SERVED

NATURE OF SERVICES PERFORMED

I hereby certify that the above and foregoing statement is complete, true and correct for the preceding twelve (12) months.

Date

Signature of Incumbent/Candidate

Reprinted 02/06





KENTUCKY REGISTRY OF ELECTION FINANCE
140 WALNUT STREET
FRANKFORT, KY 40601-3240

FINANCIAL DISCLOSURE REPORT INSTRUCTIONS

The information required must cover the **preceding calendar year** (January 1 through December 31). This period of time is also referred to as the **reporting year**.

WHO MUST FILE

1. Justices and Judges of the Court of Justice and Commonwealth's Attorneys.
2. Persons **appointed to a vacancy** of an unexpired term to any office listed in 1.
3. **Candidates** for any offices listed in 1.

WHEN TO FILE

Persons subject to this Act shall file the required report with the Registry by **March 15th of each year.**

PUBLIC INSPECTION

Reports shall be filed with the Registry thirty (30) days after reports are due. The Registry shall publish a list of persons who have filed and those who have failed to file reports.

GENERAL INSTRUCTIONS

- ✓ Type or print legibly, all responses with blue or black ink. Remember to sign and date the report.
- ✓ Attach extra sheets to the report if necessary.
- ✓ You are **not** required to list names of entities or values of financial interests.
- ✓ Persons who fail to file this report within 30 days after receipt of the Registry's notice of noncompliance, or willfully files fraudulent information, the office/candidacy shall be void. The office or candidacy shall be filled by established guidelines for filling vacancies.

(over)

SECTION BY SECTION INSTRUCTIONS

- Report your **full name** on the form. State the office you are currently holding or seeking. If you are currently holding a judicial or Commonwealth's Attorney office and are seeking a **different** judicial or Commonwealth's Attorney office, indicate the incumbent office. You are required to file only one (1) financial disclosure report.
- Provide your complete mailing address. Include the street, PO Box, city, state and zip code.
- If married, state spouse's full name, including a middle or maiden name. If you were married during the reporting year to someone to whom you are not currently married, write your former spouse's full name and the reporting period during which you were married, on a separate sheet.
- Provide your spouse's complete mailing address.

SECTION I-A List all stocks valued more than \$1,000 owned by you, your spouse, and/or your dependent(s). You are not required to list names of entities whose stock is held or the value of the stock. Example: *Description of Stocks*; if you own stock in Toyota, indicate "*Automobile Stock*", and whether it is for "*self, spouse, or dependent*". **That is all the information required in this section.**

SECTION I-B List all bonds valued more than \$1,000 owned by you, your spouse, and/or your dependent(s). You are not required to list names of entities whose bonds are held or the value of the bonds. Example: *Description of Bond*; if you bought a savings bond for a dependent's education, indicate "*Saving Bonds*" and that it is for "*dependent*". If you are involved in a 401K program, indicate "*Qualified Retirement Plan*" and whether it is for "*self and/or spouse*".

SECTION I-C List all real estate and credit interest valued more than \$1,000 owned by you, your spouse, and/or your dependents. A detailed address is not required. Example: *Description of Real Estate*; "*Residential, Rental Property, Farm Land*" and indicate if it is owned by "*self, spouse, or dependent*".

SECTION II List every office, directorship, or employment held by you, your spouse, and/or dependent(s) in any entity regardless of the amount received or equity held, except for activities in political, religious or charitable organizations, if compensation is less than \$1,000 per year. Example: LIST WHAT YOU DO – "*Attorney, Judge*" and WHAT YOUR SPOUSE DOES (IF INCOME IS RECEIVED) "*Attorney, Doctor*". If you and/or your spouse are sitting on a board and receive income over \$1,000, etc., list those entities on the form.

SECTION III List all entities to whom you furnished compensated services valued more than \$1,000 during the period covered by this report. **You are not required to list clients.** Example: *Description of Entity Served*: "*Clientele*", *Nature of Services Performed*: "*Legal*".

REMEMBER TO SIGN AND DATE THE REPORT

Mail the completed report to the address provided on the front of the form,
and retain a copy for your records.



KENTUCKY REGISTRY OF ELECTION FINANCE

140 Walnut Street, Frankfort, KY 40601-3240

(502) 573-2226 / FAX (502) 573-5622

www.kref.ky.gov

POLITICAL COMMITTEE REGISTRATION

Please type or print

REGISTRY USE

Date Received

Date Approved

Committee Name - Do not include candidate's name in committee name unless authorized by candidate. (KRS 121.210(4)). Acronyms are permitted but full title from which derived must be shown. (KRS 121.170).

Mailing address (including city, state and zip) _____ (____)____ - _____
Daytime Telephone Number

State the name of sponsor, the specific source of funds and the purpose for which this committee is being registered. (Permanent committees must list the major business, social, or political interest represented.)

This committee is being organized as a: (check one)

Dates committee plans to be active:
(Committees with on-going activity use "Indefinite")

CAMPAIGN COMMITTEE (for candidate(s) during an election campaign) - KRS 121.015(3)(a).

CANDIDATE AUTHORIZED **UNAUTHORIZED**

FROM: ____/____/____

CAUCUS CAMPAIGN COMMITTEE - KRS 121.015(3)(b).

THROUGH: ____/____/____

POLITICAL ISSUES COMMITTEE (for an issue which will appear on the ballot) - KRS 121.015(3)(c).

INDEFINITE

PERMANENT COMMITTEE (a permanent organization which functions on a regular basis) - KRS 121.015(3)(d).

INAUGURAL COMMITTEE - KRS 121.015(3)(f).

NOTE: The chairperson and the treasurer of a committee shall be separate persons. The official contact person of a permanent committee shall not be a legislative agent or an executive agency lobbyist. See KRS 121.170(4).

CHAIRPERSON INFORMATION:

Daytime Telephone Number: (____)____ - _____

Home Telephone Number: (____)____ - _____

Name _____

E-mail Address: _____

Mailing address (including city, state and zip) _____

TREASURER INFORMATION:

Daytime Telephone Number: (____)____ - _____

Home Telephone Number: (____)____ - _____

Name _____

E-mail Address: _____

Mailing address (including city, state and zip) _____

OFFICIAL CONTACT PERSON:

Daytime Telephone Number: (____)____ - _____

Home Telephone Number: (____)____ - _____

Name _____

E-mail Address: _____

Mailing address (including city, state and zip) _____



This Section to be completed by Campaign Committees Only

Candidate to be supported by committee, if applicable:

_____/_____/_____
Name of candidate Date of Birth Party Affiliation

Mailing Address (Including city, state and zip) Office Sought

For unauthorized campaign committees, if candidate is unknown or several candidates will be supported by independent expenditures, check here:

Does the candidate's name appear in the name of the committee? ____YES ____NO (Required if unauthorized)

Has the candidate approved use of his/her name? ____YES (See Candidate's Authorization Box at bottom)
____NO (If unauthorized)

This Section to be completed by Political Issues Committees ONLY

Constitutional amendment or public question to be advocated or opposed - KRS 121.015(3)(c)

This committee **Supports** or **Opposes** the above listed constitutional amendment or public question.

This Section to be completed by ALL Committees

Primary Depository - Designate depository bank or financial institution in which the committee will maintain its funds.

Name of bank or institution

Mailing Address (Including city, state and zip)

VERIFICATION BY OATH OR AFFIRMATION

We, the undersigned, state we are the Chairperson and Treasurer of the above described committee and this Political Committee Registration is true, correct and complete.

Signature of Chairperson *Date* *Signature of Treasurer* *Date*

CANDIDATE'S AUTHORIZATION - (If Applicable) I have read and understand the conditions of KRS 121.180(9); and further understand that I am personally relieved from filing the CANDIDATE ELECTION FINANCE STATEMENT, as long as I comply with these conditions. I will immediately notify the Registry of Election Finance if I can no longer comply with these conditions and I will file any and all reports required by KRS Chapter 121.

I, _____, hereby agree to the above statement and authorize the
Print Candidate's Name
use of my name by this committee.

Signature of Candidate *Date*

COMMITTEE UPDATE FORM

Please type or print all information

COMMITTEE NAME: _____ Filer #: _____

Please complete this form to ensure that the Registry has the most current information on officers and the committee's financial depository (bank). If either position is vacated, a new appointment must be made and the Registry notified in writing within three (3) days.

CHAIR INFORMATION

Name: _____

Street Address: _____

City, State, Zip Code: _____

Daytime Phone: (____) _____ Home Phone: (____) _____

TREASURER INFORMATION

Name: _____

Street Address: _____

City, State, Zip Code: _____

Daytime Phone: (____) _____ Home Phone: (____) _____

CONTACT PERSON INFORMATION

Name: _____

Street Address: _____

City, State, Zip Code: _____

Daytime Phone: (____) _____ Home Phone: (____) _____

REQUIRED: PRIMARY DEPOSITORY (Bank or Financial Institution where committee funds are maintained.)

Name: _____

Street Address: _____

City, State, Zip Code: _____

Signature of Chair or Treasurer: _____ Date: _____

PLEASE COMPLETE THIS FORM AND RETURN IT TO THE REGISTRY IMMEDIATELY. THANK YOU!

**Kentucky Registry of Election Finance
140 Walnut Street, Frankfort, KY 40601**

RIGHT TO APPEAL

Any person directly involved or affected by a final action of the Registry, other than a determination to refer a violation to the Attorney General or appropriate Commonwealth's or county attorney for prosecution, may appeal the action within thirty (30) days after the date of the Registry's order. Appeals may be brought in Franklin Circuit Court. KRS 121.140(6).

PENALTIES

Substantial civil penalties may be assessed for nonknowing violations of KRS Chapter 121. In the case of a knowing violation by an individual, a Class D felony conviction may result.

Corporations convicted of knowingly violating the campaign finance laws stand to have their corporate charters revoked or lose their ability to do business in Kentucky, and face substantial fines.

For specific penalty provisions, see KRS 121.140, 121.175(3) and 121.990.

FOR MORE INFORMATION

For more information on how to file a complaint, please contact the Registry at (502) 573-2226 or visit our website at www.kref.ky.gov

BROCHURE DISCLAIMER

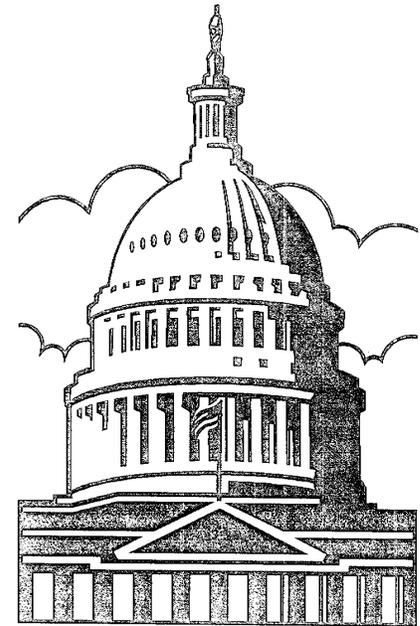
This brochure is intended as a general reference tool and in no way supersedes statutory law or administrative regulations promulgated by the Registry. The Registry recommends a complete reading of the campaign finance laws contained in KRS Chapter 121 and the rules contained in Kentucky Administrative Regulations Title 32.



KREF016/C
Rev. 9/2006

#160
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601-3240

HOW TO FILE A COMPLAINT



Kentucky Registry of Election Finance
140 Walnut Street / Frankfort, KY 40601
502-573-2226 Fax: 502-573-5622
www.kref.ky.gov

INTRODUCTION

The Kentucky Registry of Election Finance ("Registry") frequently receives questions on how to file a complaint concerning possible violations of the campaign finance laws under KRS Chapter 121. This brochure explains how to file a complaint with the Registry and describes how complaints are processed.

FILING A COMPLAINT

Any person may file a complaint if he or she believes a violation of the campaign finance laws under KRS Chapter 121 has occurred or is about to occur. The complaint must be made in writing and sent to the Office of the General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, KY 40601. Faxes are not acceptable.

According to 32 KAR 2:030(3), a complaint filed with the General Counsel shall comply with the following requirements:

- The complaint shall provide the full name and address of the person who files the complaint ("Complainant").
- The complaint shall clearly identify each person or entity that is alleged to have committed a violation or is about to commit a violation ("Respondent").
- The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be duly notarized.
- Statements contained in the complaint shall be made under penalty of perjury.
- The complaint shall differentiate between statements based upon personal knowledge and statements based upon information and belief.
- Statements which are not based upon personal knowledge shall be accompanied by an identification of the source of information which gives rise to the Complainant's belief in the truth of the statements contained in the complaint.

- The complaint shall contain a clear and concise recitation of the facts which support the allegation of a violation of a campaign finance statute or administrative regulation.
- The complaint shall be accompanied by documentation supporting the allegations if the documentation is known by and available to the Complainant.

COMPLAINT PROCESS

Notification

Upon receipt of a sworn, written complaint that meets the above requirements, the General Counsel will notify each Respondent that a complaint has been filed. The Respondent then has fifteen (15) days to provide a written response to the Registry.

Investigation

The General Counsel will conduct an investigation to determine if there is reason to believe that a violation may have occurred or is about to occur.

Upon completion of the investigation, the General Counsel will report the findings and make a recommendation to the Registry for further action. The Respondent will be notified in writing of the legal basis for and the alleged facts which support the recommendations of the General Counsel.

Registry Action

If the Registry concludes that there is probable cause to believe that a civil violation has occurred, the matter is then referred to the General Counsel and Executive Director to enter into conciliation negotiations with the Respondent.

Conciliation Agreement

A conciliation agreement may require the Respondent to comply with one (1) or more of the following:

- To cease and desist violations of the law;
- To file required reports or other documents or information;
- To pay a penalty not to exceed \$100 a day, up to a maximum total fine of \$5,000, for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document or information is filed; except there shall be no maximum fine for candidates for statewide office; or
- To pay a penalty not to exceed \$5,000 per violation for acts of noncompliance with provisions contained in KRS Chapter 121.

Upon compliance with the conciliation agreement by Respondent and final approval by the Registry, no further action will be taken in this matter. However, if no conciliation agreement is reached, a hearing will be conducted before a retired or former judge or Justice appointed by the Chief Justice of the Kentucky Supreme Court. The judge shall render a decision which, upon approval by the Registry, may order the Respondent to comply with the same provisions discussed above. Conciliation agreements and final orders of the Registry may be enforced in Franklin Circuit Court or other court of competent jurisdiction.

REFERRALS FOR PROSECUTION

If the Registry determines that there is probable cause to believe that a knowing violation has occurred, the Registry will refer the violation to the Attorney General for prosecution pursuant to KRS 121.140(5). A knowing violation may constitute a Class D felony under KRS 121.990. The Attorney General may request the General Counsel for the Registry or the appropriate Commonwealth's or county attorney to prosecute the matter.

FOR MORE INFORMATION

For more information on how to request an advisory opinion, please contact the Registry at (502) 573-2226 or visit our website at www.kref.ky.gov



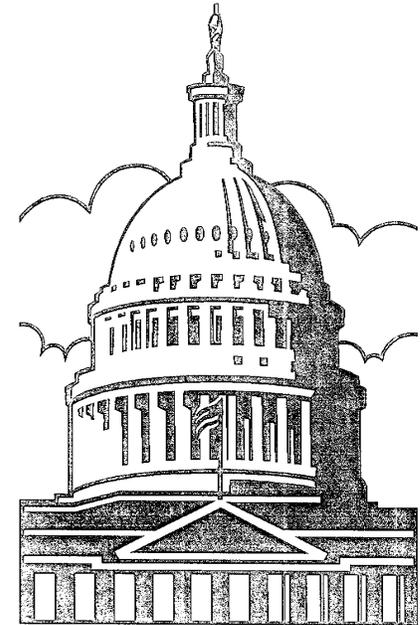
BROCHURE DISCLAIMER

This brochure is intended as a general reference tool and in no way supersedes statutory law or administrative regulations promulgated by the Registry. The Registry recommends a complete reading of the campaign finance laws contained in KRS Chapter 121 and the rules contained in Kentucky Administrative Regulations Title 32.

KREF016/C
Rev. 9/2006

#160
Kentucky Registry of Election Finance
140 Walnut Street
Frankfort, KY 40601-3240

**HOW TO REQUEST
AN ADVISORY
OPINION**



Kentucky Registry of Election Finance
140 Walnut Street / Frankfort, KY 40601
502-573-2226 Fax: 502-573-5622
www.kref.ky.gov

INTRODUCTION

This brochure answers questions about how individuals may seek guidance from the Kentucky Registry of Election Finance ("Registry") by requesting advisory opinions. An advisory opinion is an official Registry response to a question relating to the application of the campaign finance laws under KRS Chapter 121.

Who may request an advisory opinion?

Any person may request an advisory opinion from the Registry concerning the application of campaign finance laws to a specific transaction or activity by that individual.

Must an advisory opinion request follow a certain format?

Yes. Advisory opinion requests must be in writing and must clearly identify the person(s) involved in the specific activity. General questions of interpretation or questions posing a hypothetical situation or regarding actions by a third party will not be considered for an advisory opinion. Advisory opinion requests should be addressed to the Office of the General Counsel, Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, KY 40601.

Is there a statutory deadline for issuing an advisory opinion?

Yes. The Registry is required to issue an advisory opinion within thirty (30) days of receipt of the request. If a candidate, slate of candidates, or either of their campaign committees request an opinion not more than thirty (30) days before an election in which they are to appear on the ballot, the advisory opinion must be issued within twenty (20) days after the Registry receives the request. KRS 121.135(2).

Who may rely on guidance provided by an advisory opinion?

An advisory opinion issued by the Registry is binding only as to the person involved in the specific transaction or activity with respect to which the advisory opinion is rendered. If a person or committee to whom an advisory opinion has been issued acts in good faith in accordance with the terms of the advisory opinion, it shall be a defense against any sanction provided by law or administrative regulation.

It shall be no defense in any civil or criminal proceeding for a person to rely on an advisory opinion if he or she was not the party involved in the specific transaction or activity with respect to which the advisory opinion was rendered. KRS 121.135; 32 KAR 2:060.

Once issued, are advisory opinions made available to the public?

Yes. A searchable version of advisory opinions is available on the Registry's website at www.kref.ky.gov. Advisory opinions are listed by topic and by year. Advisory opinions may also be ordered by writing to the Kentucky Registry of Election Finance, 140 Walnut Street, Frankfort, KY 40601, or by phone at (502) 573-2226.

Statutes

KRS Chapter 118A

118A.010 Definitions; applicability of provisions of KRS Chapter 118

As used in this chapter, unless the context otherwise requires:

- (1) "Ballot" or "official ballot" means the voting machine ballot label, ballot cards, paper ballots, an absentee ballot, a special ballot, or a supplemental paper ballot which has been authorized for the use of the voters in any primary, general, or special election by the Secretary of State or the county clerk;
- (2) "Ballot card" means a tabulating card on which votes may be recorded by a voter by use of a voting device or by marking with a pen or special marking device;
- (3) "Ballot label" means the cards, papers, booklet, pages, or other material on which appear the names of candidates and the questions to be voted on by means of ballot cards or voting machines;
- (4) "Election" refers only to elections for offices of the Court of Justice; and
- (5) "Voting machine" or "machine" shall include lever machines and, as far as applicable, any electronic or electro-mechanical unit and supplies utilized or relied upon by a voter in casting his vote in an election.

No provisions of KRS Chapter 118 existing on March 10, 1976, except [KRS 118.015](#) through [118.045](#) shall apply to such elections. All other provisions of the election laws not inconsistent with this chapter shall be applicable thereto.

118A.020 Justices of the Supreme Court

Justices of the Supreme Court shall be elected from the Supreme Court districts established by KRS Chapter 21A.

118A.030 Judges of the Court of Appeals

- (1) Judges of the Court of Appeals shall be elected from the same districts as are justices of the Supreme Court.
- (2) In each Court of Appeals district there shall be, for election purposes, numbered divisions corresponding to the number of Court of Appeals Judges in the district. Each judge shall be elected at large from the entire district.
- (3) Each numbered division of a district shall be voted upon and shall be tallied separately.

118A.040 Circuit Judges

- (1) Circuit Judges shall be elected from the judicial circuits established in KRS Chapter 23A.
- (2) In judicial circuits having two (2) or more judges there shall be, for election purposes, numbered divisions corresponding to the number of Circuit Judges in the circuit. Each judge shall be elected at large from the entire circuit.
- (3) Each numbered division of a circuit shall be voted upon and shall be tallied separately.

118A.045 Election of family court judges

- (1) Family court judges shall be elected from the judicial circuits established in KRS Chapter 23A and to a family court division so designated by the Supreme Court pursuant to [Section 112\(6\) of the Constitution of Kentucky](#).
- (2) All family court divisions as certified by the Clerk of the Supreme Court of Kentucky shall have such designation specifically appear on the ballot. The words "Family Court" shall be printed on the ballot in an appropriate location for divisions of Circuit Court certified by the Clerk of the Supreme Court of Kentucky as family court divisions. Prior to the first Wednesday after the first Monday in November of each scheduled election year, the Clerk of the Supreme Court of Kentucky shall certify the divisions of Circuit Court within a judicial circuit that are designated as family court divisions and deliver such certification to the Secretary of State.
- (3) Except as provided in [KRS 23A.070](#), in judicial circuits having two (2) or more judges there shall be, for election purposes, numbered divisions corresponding to the number of Circuit Judges in the circuit. Each judge shall be elected at large from the entire circuit.
- (4) Each numbered division of a circuit shall be voted upon and shall be tallied separately.

118A.050 District Judges

- (1) District Judges shall be elected from judicial districts.
- (2) In judicial districts having two (2) or more judges there shall be, for election purposes, numbered divisions corresponding to the number of District Judges in the district. Each judge shall be elected at large from the entire district.
- (3) Each numbered division of a district shall be voted upon and shall be tallied separately.

118A.060 Petition for nomination; examination of petition; form and order of names on ballot; Secretary of State's duties; ballot position unalterable; certification of nomination

- (1) Except as provided in [KRS 118A.100](#), no person's name shall appear on a ballot label or absentee ballot for an office of the Court of Justice without first having been nominated as provided in this section.
- (2) Each candidate for nomination shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the last Tuesday in January preceding the day fixed by law for holding the primary election for the office. The petition shall be sworn to before an officer authorized to administer an oath by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (3) The petition for nomination shall be in the form prescribed by the State Board of Elections. The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (4) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing. The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the last Tuesday in January preceding the primary election.
- (5) Not later than the date set forth in [KRS 118.215\(1\)\(a\)](#) preceding the primary election, and after the order of names on the ballot has been determined as required in subsection (4) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for nomination filed with him; and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (6) The ballot position of a candidate shall not be changed after the ballot position has been designated by the Secretary of State.

- (7) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the primary the names of the candidates for offices in the Court of Justice.
- (8) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot." The words "Vote for one," or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (9) The two (2) candidates receiving the highest number of votes for nomination for justice or judge of a district or circuit, or numbered division thereof if divisions exist, shall be nominated. Certificates of nomination shall be issued as provided in [KRS 118A.190](#).
- (10) If it appears after expiration of the time for filing petitions for nomination that there are not more than two (2) candidates who have filed the necessary petitions for a place on the ballot in the regular election, no drawing for ballot position shall be held and the Secretary of State shall immediately issue and file in the Secretary's office certificates of nomination, and send copies to the candidates.

118A.080 Denial of right to have name placed on ballot; restoration; ineligibility of Senior Status Special Judge

- (1) No person who was a candidate for nomination for any office of the Court of Justice in a primary and who, before the succeeding regular election, is declared by the final judgment of any court of competent jurisdiction to have violated, in the primary, any provision of KRS Chapter 121, or to be responsible for such violation by others, shall have his or her name placed on the ballot for any office to be voted for in the succeeding regular election. However, if such judgment is subsequently reversed prior to the time of printing of the ballots, the candidate's name shall be restored on the ballot.
- (2) A judge who elected to retire as a Senior Status Special Judge in accordance with [KRS 21.580](#) shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in [KRS 21.580\(1\)\(a\)](#) 1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

118A.090 Determination of order of names on ballot for regular election; Secretary of State's duties; ballot labels; ballot position unalterable; who elected

- (1) For the regular election, the order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (2) Not later than the date set forth in [KRS 118.215\(1\)\(c\)](#) after the filing deadline for the regular election in a year in which there is no election for President and Vice President of the United States, or not later than the date set forth in [KRS 118.215\(1\)\(d\)](#) preceding a regular election in a year in which there is an election for President and Vice

President of the United States, and after the order of names on the ballot has been determined as required in subsection (1) of this section, the Secretary of State shall:

- (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as certified under [KRS 118A.060](#); and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (3) The ballot position of a candidate shall not be changed after the ballot position has been designated by the Secretary of State. The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the special ballots for the regular elections the names of the candidates for offices of the Court of Justice.
- (4) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in such a manner that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the ballot in an appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (5) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

118A.100 Filling vacancy for unexpired term; filling nomination when nominees unavailable; ineligibility of Senior Status Special Judge

- (1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in [KRS 118A.060](#) if the vacancy occurs not later than the second Tuesday in January preceding the primary. If the vacancy occurs on or after that date, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and [Section 152 of the Constitution of Kentucky](#).
- (2) If in a regular election for judicial office no candidates nominated as provided in [KRS 118A.060](#) are available due to death, incapacity, or withdrawal, and the candidates have not been replaced as provided in [KRS 118A.060](#), the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through (11) of this section.
- (3) Each candidate shall file a petition for nomination with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the election for the unexpired term will

be held and not later than the second Tuesday in August preceding the day fixed by law for holding the regular election for the unexpired term. The petition shall be sworn to by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination, before an officer authorized to administer an oath. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.

- (4) The petition for nomination shall be in the form prescribed by the State Board of Elections. The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.
- (5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (6) The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (7) Not later than the date set forth in [KRS 118.215](#) and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for nomination filed with the Secretary of State; and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (9) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the absentee ballots for the regular election the names of the candidates for offices of the Court of Justice.
- (10) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in a manner so that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for

one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.

- (11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.
- (12) A judge who elected to retire as a Senior Status Special Judge in accordance with [KRS 21.580](#) shall not become a candidate or a nominee for any elected office during the five (5) year term prescribed in [KRS 21.580\(1\)\(a\)](#) 1., regardless of the number of days served by the judge acting as a Senior Status Special Judge.

118A.130 Candidate's name to appear but once

No judicial candidate's name shall appear on any voting machine or absentee ballot more than once.

118A.140 Register of candidates

- (1) The Secretary of State shall keep a book entitled "Register of Candidates for Nomination to Offices of the Court of Justice," and shall enter in that book the name and place of residence of each candidate for nomination to the office of justice or judge in the primary election and the date of receipt of his nomination papers. The book shall be a public record.
- (2) Petitions for candidacy filed pursuant to [KRS 118A.100](#) shall also be entered in this book.

118A.150 Certification of candidates; ballot labels; effect of death or withdrawal of candidate; penalty

- (1) In certification of candidates for judicial office, no reference shall be made to political affiliation.
- (2) The Secretary of State shall not knowingly certify to the county clerk of any county the name of any candidate who has not filed the required nomination or candidacy papers, nor knowingly fail to certify the name of any candidate who has filed the required nomination or candidacy papers.
- (3) No county clerk shall knowingly cause to be printed on the ballot labels or absentee ballots for any election, the name of a candidate for an office of the Court of Justice who has not been certified in the manner specified in this chapter.
- (4) If, before the time of certification of candidates who will appear on the ballot provided for in this chapter, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in writing, signed and properly notarized, that he will not accept the nomination or election, the Secretary of State shall not certify his name.

- (5) If, after the certification of candidates who will appear on the ballot, any candidate whose petition or certificate of nomination or petition for candidacy has been filed, dies or notifies the Secretary of State in the manner described in subsection (4) of this section, that he will not accept the nomination or election, the Secretary of State shall immediately notify the appropriate county clerk, and the clerk shall ensure that notice is provided to the appropriate precincts as provided in subsection (7) of this section.
- (6) If after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot shall withdraw or die, neither the precinct election officers nor the county board of elections shall tabulate or record the votes cast for the candidate; and, in a primary election, if there are only one (1) or two (2) remaining candidates on the ballot for that office, following the withdrawal or death of the other candidate or candidates, neither the precinct election officers nor the county board of elections shall tabulate or record the votes for the remaining candidate or candidates, and the officer with whom the remaining candidate or candidates has filed his or her nomination papers shall immediately issue and file in his or her office a certificate of nomination for that remaining candidate or candidates and send a copy to the remaining candidate or candidates.
- (7) If, after the certification of candidates who will appear on the ballot, any candidate whose name appears on the ballot shall withdraw pursuant to [KRS 118.212](#) or die, the county clerk shall provide notices to the precinct election officers who shall see that a notice is conspicuously displayed at the polling place advising voters of the change, and that votes for the candidate shall not be tabulated or recorded. If the county clerk learns of the death or withdrawal at least five (5) days prior to the election and provides the notices required by this subsection and the precinct officers fail to post the notices at the polling place, the officers shall be guilty of a violation, subject to a fine of not less than ten dollars (\$10) nor more than two hundred fifty dollars (\$250).

118A.160 Hours for filing; inspection

All nomination or candidacy papers filed under this chapter shall during normal business hours be subject to inspection by any person.

118A.190 Issuance of certificates by State Board of Elections; tie votes

- (1) The State Board of Elections shall issue certificates of nomination or election for all primary and regular elections as provided in this section.
- (2) Following a primary or regular election, the board of elections of each county shall make out duplicate certificates of the total number of votes received by each candidate, by circuit or district, and numbered division thereof if divisions exist. The certificate of the total number of votes shall be certified to the Secretary of State's Office not later than 12 noon, prevailing time, on the Friday following the primary or regular election. The clerk shall keep one (1) of the certificates in his or her office and, within three (3) days of their receipt from the board, shall forward the other certificate by mail to the Secretary of State who shall deliver it to the State Board of Elections.

- (3) The State Board of Elections shall meet to count and tabulate the votes received by the different candidates as certified to the Secretary of State no later than the third Monday after the primary or regular election. When the board certifies the results of a primary or regular election, the right to contest the election or primary shall not be impaired. A majority of the members of the board shall constitute a quorum and may act. The board shall prepare the certificates of nomination or election in the office of the board, from the returns made. The certificates shall be in writing and in duplicate, and shall be signed by the board members. The board shall forward the original certificate, by mail, to the nominated or elected candidate, unless he or she has failed to comply with KRS Chapter 121. The duplicate shall be retained in the office of the board.
- (4) Certificates of nomination for a judicial office shall be issued to the two (2) candidates receiving the highest number of votes, except that if more than two (2) candidates are found to have received the highest and an equal number of votes for the same office or if two (2) or more candidates are found to have received the second highest and an equal number of votes for the same office, the election shall be determined by lot in the manner the board directs, in the presence of not less than three (3) other persons.
- (5) The certificate of election for a judicial office shall be issued to the candidate receiving the highest number of votes, except that if two (2) or more candidates are found to have received the highest and an equal number of votes for the same office, the election shall be determined by lot in the manner the board directs, in the presence of not less than three (3) other persons.

118A.990 Penalty

Any person who violates any of the provisions of this chapter or who fails to perform his duties in the manner specified in this chapter shall be guilty of a Class A misdemeanor.

KRS Chapter 121

Baldwin's Kentucky Revised Statutes Annotated [Currentness](#)

Title X. Elections

→ [Chapter 121](#). Campaign Finance Regulation ([Refs & Annos](#))

→ **121.005 Legislative findings on electronic storage and retrieval of campaign finance information**

(1) The General Assembly finds and declares that:

- (a) The intent of disclosure of campaign finance information is to make that information about the role of money in politics accessible to the public;
- (b) The volume of campaign finance reports submitted each year to the state renders it virtually impossible, without the help of computer technology, to derive meaningful conclusions from the records;
- (c) Computer automation is a necessary and effective means of transmitting, organizing, storing, and retrieving vast amounts of data submitted by candidates in election campaigns; and
- (d) Although candidates are currently permitted to file campaign finance reports electronically if they so choose, very few candidates have chosen to do so, and therefore access to campaign finance data through electronic or on-line technology is limited.

(2) The General Assembly enacts this legislation to accomplish the following:

- (a) To improve the existing system of electronic reporting and extend its usage to more candidates;
- (b) To allow concerned persons easy, convenient, and timely access to campaign finance reports submitted to the state;
- (c) To ease the burden on candidates and committees of tabulating, filing, and maintaining public records of financial activity;
- (d) To strengthen both the disclosure and enforcement capabilities of the Registry of Election Finance;
- (e) To cooperate in the standardization of reporting formats among states so that interstate as well as intrastate sources of political money can be known;
- (f) To provide for a fully informed electorate; and
- (g) To help restore public trust in the governmental and electoral institutions of this state.

→ 121.015 Definitions for chapter

As used in this chapter:

- (1) “Registry” means the Kentucky Registry of Election Finance;
- (2) “Election” means any primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election. Each primary, regular, or special election shall be considered a separate election;
- (3) “Committee” includes the following:
 - (a) “Campaign committee,” which means one (1) or more persons who receive contributions and make expenditures to support or oppose one (1) or more specific candidates or slates of candidates for nomination or election to any state, county, city, or district office, but does not include an entity established solely by a candidate which is managed solely by a candidate and a campaign treasurer and whose name is generic in nature, such as “Friends of (the candidate),” and does not reflect that other persons have structured themselves as a committee, designated officers of the committee, and assigned responsibilities and duties to each officer with the purpose of managing a campaign to support or oppose a candidate in an election;
 - (b) “Caucus campaign committee,” which means members of one (1) of the following caucus groups who receive contributions and make expenditures to support or oppose one (1) or more specific candidates or slates of candidates for nomination or election, or a committee:
 1. House Democratic caucus campaign committee;
 2. House Republican caucus campaign committee;
 3. Senate Democratic caucus campaign committee; and
 4. Senate Republican caucus campaign committee;
 - (c) “Political issues committee,” which means three (3) or more persons joining together to advocate or oppose a constitutional amendment or public question which appears on the ballot if that committee receives or expends money in excess of one thousand dollars (\$1,000);
 - (d) “Permanent committee,” which means a group of individuals, including an association, committee or organization, other than a campaign committee, political issues committee, inaugural committee, caucus campaign committee, or party executive committee, which is established as, or intended to be, a permanent organization having as a primary purpose expressly advocating the election or defeat of one (1) or more clearly identified candidates, slates of candidates, or political parties, which functions on a regular basis throughout the year;

- (e) An executive committee of a political party; and
- (f) “Inaugural committee,” which means one (1) or more persons who receive contributions and make expenditures in support of inauguration activities for any candidate or slate of candidates elected to any state, county, city, or district office;
- (4) “Contributing organization” means a group which merely contributes to candidates, slates of candidates, campaign committees, caucus campaign committees, or executive committees from time to time from funds derived solely from within the group, and which does not solicit or receive funds from sources outside the group itself. However, any contributions made by the groups in excess of one hundred dollars (\$100) shall be reported to the registry;
- (5) “Testimonial affair” means an affair held in honor of a person who holds or who is or was a candidate for nomination or election to a political office in this state designed to raise funds for any purpose not charitable, religious, or educational;
- (6) “Contribution” means any:
- (a) Payment, distribution, loan, deposit, or gift of money or other thing of value, to a candidate, his agent, a slate of candidates, its authorized agent, a committee, or contributing organization. As used in this subsection, “loan” shall include a guarantee, endorsement, or other form of security where the risk of nonpayment rests with the surety, guarantor, or endorser, as well as with a committee, contributing organization, candidate, slate of candidates, or other primary obligor. No person shall become liable as surety, endorser, or guarantor for any sum in any one (1) election which, when combined with all other contributions the individual makes to a candidate, his agent, a slate of candidates, its agent, a committee, or a contributing organization, exceeds the contribution limits provided in [KRS 121.150](#);
- (b) Payment by any person other than the candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or a contributing organization, of compensation for the personal services of another person which are rendered to a candidate, slate of candidates, committee, or contributing organization, or for inauguration activities;
- (c) Goods, advertising, or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are furnished to a candidate, slate of candidates, committee, or contributing organization or for inauguration activities without charge, or at a rate which is less than the rate normally charged for the goods or services; or
- (d) Payment by any person other than a candidate, his authorized treasurer, a slate of candidates, its authorized treasurer, a committee, or contributing organization for any goods or services with a value of more than one hundred dollars (\$100) in the aggregate in any one (1) election which are utilized by a candidate, slate of can-

didates, committee, or contributing organization, or for inauguration activities;

(7) Notwithstanding the foregoing meanings of “contribution,” the word shall not be construed to include:

(a) Services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate, a slate of candidates, committee, or contributing organization;

(b) A loan of money by any financial institution doing business in Kentucky made in accordance with applicable banking laws and regulations and in the ordinary course of business; or

(c) An independent expenditure by any individual or permanent committee;

(8) “Candidate” means any person who has received contributions or made expenditures, has appointed a campaign treasurer, or has given his consent for any other person to receive contributions or make expenditures with a view to bringing about his nomination or election to public office, except federal office;

(9) “Slate of candidates” means any two (2) persons who have filed a joint notification and declaration pursuant to [KRS 118.127](#), received contributions or made expenditures, appointed a campaign treasurer, designated a campaign depository, or given their consent for any other person to receive contributions or make expenditures with a view to bringing about their nomination for election to the offices of Governor and Lieutenant Governor. Unless the context requires otherwise, any provision of law that applies to a candidate shall also apply to a slate of candidates;

(10) “Knowingly” means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists;

(11) “Fundraiser” means an individual who directly solicits and secures contributions on behalf of a candidate or slate of candidates for a statewide-elected state office or an office in a jurisdiction with a population in excess of two hundred thousand (200,000) residents;

(12) “Independent expenditure” means the expenditure of money or other things of value for a communication which expressly advocates the election or defeat of a clearly identified candidate or slate of candidates, and which is made without any coordination, consultation, or cooperation with any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them, and which is not made in concert with, or at the request or suggestion of any candidate, slate of candidates, campaign committee, or any authorized person acting on behalf of any of them;

(13) “Electronic reporting” means the use of technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities, by which an individual or other entity submits, compiles, or transmits campaign finance reports to the registry, or by which the registry receives, stores, analyzes, or discloses the reports;

(14) “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature,

record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures;

(15) “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record;

(16) “Filer” means any candidate, a slate of candidates, committee, or other individual or entity required to submit financial disclosure reports to the registry; and

(17) “Filer-side software” means software provided to or used by the filer that enables transmittal of financial reports to the registry.

→ **121.025 Corporate contributions to candidates prohibited**

No corporation authorized to do business in this state or in another state, and no officer or agent of a corporation on its behalf, shall contribute, either directly or indirectly, any money, service, or other thing of value towards the nomination or election of any state, county, city, or district officer in this state, or pay, promise, loan, or become liable in any way for any money or other valuable thing on behalf of any candidate for office at any election, primary or nominating convention held in this state. No attorney or other person shall accept employment and compensation from a corporation with the understanding or agreement, either direct or implied, that he will contribute to any such candidate, or on his behalf, any part or all of such compensation, towards the nomination or election of such candidate.

→ **121.035 Corporate contributions to aid candidates for public office prohibited; aid to support a constitutional amendment or a public issue permitted**

(1) No corporation organized or authorized to do business in this state or in another state shall, by itself or by or through an officer, agent, attorney, or employee, subscribe, give, procure or furnish, or afterwards reimburse or compensate in any way any person who has subscribed, given, procured, or furnished, any money, privilege, favor, or other thing of value to any political or quasi-political organization, or any officer or member thereof, to be used by such organization for the purpose of aiding, assisting, or advancing any candidate for public office in this state in any way whatever.

(2) No officer, agent, attorney, or employee of any corporation organized or authorized to do business in this state or in another state, or person acting for or representing any such corporation, shall disburse, distribute, pay out, or in any way handle any money, funds, or other thing of value that belongs to or has been or is being furnished by any such corporation or any officer, agent, attorney, or employee thereof to be used or employed in any way for the purpose of aiding, assisting, or advancing any candidate for public office in this state in any way whatever.

(3) Nothing in this section shall be construed to prohibit a corporation from making contributions in support of a constitutional amendment, a public question which appears on the ballot, or position on an issue of public importance. Nothing in this chapter shall be construed to prohibit a not-for-profit corporation, which does not derive a substantial portion of its revenue from for-profit corporations, from making independent expenditures.

→ **121.045 Contributions to certain candidates or slates of candidates by individuals prohibited**

No person and no agent of any person on his behalf, shall contribute, either directly or indirectly, any money, service, or other thing of value towards the nomination or election of any state, county, city, or district officer who, in his official capacity, is required by law to perform any duties peculiar to the person not common to the general public, or to supervise, regulate, or control in any manner the affairs of the person, or to perform any duty in assessing the property of the person for taxation. No person, and no agent of any person on his behalf, shall pay, promise, loan, or become liable in any way for any money or other valuable thing on behalf of any candidate or slate of candidates for any office at any election, primary, or nominating convention held in this state. No attorney or other person shall accept employment and compensation from any person with the understanding or agreement, either direct or implied, that he will contribute to any candidate or slate of candidates for any office, or on his behalf, any part or all of his compensation, towards the nomination or election of any candidate or slate of candidates.

→ **121.055 Candidates prohibited from making expenditure, loan, promise, agreement or contract as to action when elected, in consideration for vote**

No candidate for nomination or election to any state, county, city or district office shall expend, pay, promise, loan or become liable in any way for money or other thing of value, either directly or indirectly, to any person in consideration of the vote or financial or moral support of that person. No such candidate shall promise, agree or make a contract with any person to vote for or support any particular individual, thing or measure, in consideration for the vote or the financial or moral support of that person in any election, primary or nominating convention, and no person shall require that any candidate make such a promise, agreement or contract.

→ **121.056 Restrictions upon specified campaign contributors**

(1) No person who contributes more than the maximum legal contribution established by [KRS 121.150](#) in any one (1) election to a slate of candidates for Governor and Lieutenant Governor that is elected to office shall hold any appointive state office or position, which shall be made by gubernatorial appointment, during the term of office following the campaign in which the contribution shall be made.

(2) No person who has contributed more than the maximum legal contribution established by [KRS 121.150](#) in any one (1) election to a slate of candidates for Governor and Lieutenant Governor that is elected to office or any entity in which such a person has a substantial interest shall have any contract with the Commonwealth of Kentucky during the term of office following the campaign in which the contributions shall be made unless the contract shall be attained by competitive bidding and the person or entity shall have the lowest and best bid.

(a) “Substantial interest” means the person making the contribution owns or controls ten percent (10%) or more of an entity or a member of the person's immediate family owns or controls ten percent (10%) of the entity or the person and his immediate family together own or control ten percent (10%) or more of the entity.

(b) “Immediate family” means the spouse of the person, the parent of the person or spouse, or the child of the person or spouse.

(3) No person shall give or conspire to contribute money or property to any other person for the purpose of making a campaign contribution, in violation of this section. The restrictions established by subsections (1) and (2) of this section to a person who shall contribute in excess of the maximum legal contribution established by [KRS 121.150](#) in any one (1) election as provided by those subsections, shall apply to a person who makes a total contribution in excess of the maximum legal contribution established by [KRS 121.150](#) in any one (1) election to a slate of candidates for Governor and Lieutenant Governor that is elected to office as provided by this subsection.

→ [121.065 Limitation of political advertising rates; injunction](#)

(1) No publisher of newspapers, magazines, handbills, or other printed matter, owner or lessor of billboards, radio or television station or network, or any other person, company, corporation, or organization offering its communications services for hire to the public shall be permitted to charge fees for political advertising in excess of the lowest rate charged to other advertisers at the time the political advertising is purchased.

(2) Political advertising means any communication intended to support or defeat a candidate for public office.

(3) An action to enjoin violations of this section shall be in the Circuit Court of the county where the complaining candidate resides.

Registry of Election Finance

→ [121.110 Registry of Election Finance; membership; terms; meetings; compensation](#)

(1) There is hereby created as an independent agency of state government a Kentucky Registry of Election Finance. The registry shall be composed of seven (7) members appointed as provided herein. The registry shall remain independent of any other agency or department of state government. Members shall be at least twenty-five (25) years of age, registered voters in Kentucky, not announced candidates for public office, not officers of a political party's state central executive committee, shall not have been convicted of an election offense, and shall be persons of high ethical standards who have an active interest in promoting fair elections. Appointees shall be subject to Senate confirmation at the next regular session of the General Assembly following appointment, or at the next special session if included in the Governor's call. Appointees shall have full power to serve until any vote of nonconfirmation.

- (2) Members of the registry shall be selected as follows:
- (a) One (1) member shall be appointed by the Governor from a list of three (3) nominees submitted by the state central committee of the political party polling the largest vote at the last gubernatorial election.
 - (b) One (1) member shall be appointed by the Governor from a list of three (3) nominees submitted by the state central committee of the political party polling the second largest vote at the last gubernatorial election. The members appointed pursuant to subsections (a) and (b) of this section shall take office on August 15, 1990, for a term of one (1) year and their successors shall serve a term of four (4) years beginning August 15, 1991, or until their successors are appointed and qualified.
 - (c) Two (2) other members shall be appointed by the Governor. Before making these appointments, the Governor shall solicit nominations from at least two (2) organizations which have demonstrated a nonpartisan interest in fair elections and informed voting. The Governor's solicitations and the replies shall be public records. The Governor shall give due consideration to such nominations. The two (2) members appointed pursuant to this subsection shall be one (1) from each of the two (2) political parties which polled the greatest number of votes at the last gubernatorial election. Members appointed pursuant to this subsection shall take office on August 15, 1988, for a term of four (4) years or until their successors are appointed and qualified and their successors shall serve a term of four (4) years.
 - (d) One (1) member shall be appointed by the Auditor of Public Accounts after soliciting nominations as provided by subsection (c) of this section. The appointee shall be a member of one (1) of the two (2) political parties which polled the greatest number of votes at the last gubernatorial election. The member appointed pursuant to this subsection shall take office on August 15, 1997, for a term of four (4) years or until his successor is appointed and qualified and his successors shall serve a term of four (4) years.
 - (e) One (1) member shall be appointed by the Attorney General after soliciting nominations as provided by subsection (c) of this section. The appointee shall not be a member of the same political party as the person appointed by the Auditor of Public Accounts pursuant to subsection (d) of this section. The member appointed pursuant to this subsection shall take office on August 15, 1990, for a term of four (4) years or until his successor is appointed and qualified and his successors shall serve a term of four (4) years.
 - (f) One (1) member shall be appointed by the Secretary of State after soliciting nominations as provided by subsection (c) of this section. The Secretary of State's appointment shall be without regard to political affiliation. The member appointed pursuant to this subsection shall take office on August 15, 1990, for a term of three (3) years or until his successor is appointed and qualified and his successors shall serve a term of four (4) years.
- (3) The members of the registry shall select a chairman from among the appointed membership, effective August 15, 1990. The chairman shall serve in that capacity for one (1) year and shall be eligible for reelection. The chairman shall preside at all meetings and shall have all the powers and privileges of the other members.
- (4) In the event of a vacancy in the office of any member, the vacancy shall be filled in the same manner as the

vacating member's office was filled pursuant to subsection (2) of this section.

(5) The registry shall fix the place and time of its regular meetings by order duly recorded in its minutes. No action shall be taken without a quorum present. Special meetings shall be called by the chairman on his own initiative or on the written request of three (3) members. Members shall receive seven (7) days' written notice of a special meeting and the notice shall specify the purpose, time and place of the meeting, and no other matters may be considered, without a specific waiver by all the members.

(6) The members of the registry shall receive sixty-five dollars (\$65) per diem, and shall be reimbursed for all reasonable and necessary expenses.

→ **121.120 Duties and powers of registry; appointment of certain employees; electronic reporting system**

(1) The registry may:

(a) Require by special or general orders, any person to submit, under oath, any written reports and answers to questions as the registry may prescribe;

(b) Administer oaths or affirmations;

(c) Require by subpoena, signed by the chairman, the attendance and testimony of witnesses and the production of all documentary evidence, excluding individual and business income tax records, relating to the execution of its duties;

(d) In any proceeding or investigation, to order testimony to be taken by deposition before any person who is designated by the registry and has the power to administer oaths and, in those instances, to compel testimony and the production of evidence in the same manner as authorized under paragraph (c) of this subsection;

(e) Initiate, through civil actions for injunctive, declaratory, or other appropriate relief, defend, or appeal any civil action in the name of the registry to enforce the provisions of this chapter through its legal counsel;

(f) Render advisory opinions under [KRS 121.135](#);

(g) Promulgate administrative regulations necessary to carry out the provisions of this chapter;

(h) Conduct investigations and hearings expeditiously, to encourage voluntary compliance, and report apparent campaign finance law violations to the appropriate law enforcement authorities;

(i) Petition any court of competent jurisdiction to issue an order requiring compliance with an order or subpoena issued by the registry. Any failure to obey the order of the court may be punished by the court as contempt; and

(j) Conduct random audits of receipts and expenditures of committees which have filed registration papers with the registry pursuant to [KRS 121.170](#).

(2) No person shall be subject to civil liability to any person other than the registry or the Commonwealth for disclosing information at the request of the registry.

(3) The registry may appoint a full-time executive director, legal counsel, and an accountant for auditing purposes, all of whom shall serve at the pleasure of the registry. The registry may also appoint such other employees as are necessary to carry out the purposes of this chapter. All requests for personnel appointments shall be forwarded by the registry directly to the secretary of the Personnel Cabinet and shall be subject to his review and certification only.

(4) The registry shall adopt official forms and perform other duties necessary to implement the provisions of this chapter. The registry shall not require the listing of a person's Social Security number on any form developed by the registry. Without limiting the generality of the foregoing, the registry shall:

(a) Develop prescribed forms for the making of the required reports;

(b) Prepare and publish a manual for all candidates, slates of candidates, and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting, requirements as to reporting dates, and the length of time that candidates, slates of candidates, and committees are required to keep any records pursuant to the provisions of this chapter;

(c) Develop a filing, coding, and cross-indexing system;

(d) Make each report filed available for public inspection and copying during regular office hours at the expense of any person requesting copies of them;

(e) Preserve all reports for at least six (6) years from the date of receipt. Duly certified reports shall be admissible as evidence in any court in the Commonwealth;

(f) Prepare and make available for public inspection a summary of all reports grouped according to candidates, slates of candidates, committees, contributing organizations, and parties containing the total receipts and expenditures; and

1. For each contribution made by a permanent committee of any amount to a candidate or slate of candidates, the date, name, and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;

2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a

statewide-elected state office, to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically; and

3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2., the date, name, address, occupation, and employer of each other contributor or, if the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor, listed alphabetically;
- (g) Prepare and publish an annual report with cumulative compilations named in paragraph (f) of this subsection;
 - (h) Distribute upon request, for a nominal fee, copies of all summaries and reports;
 - (i) Determine whether the required reports have been filed and if so, whether they conform with the requirements of this chapter; give notice to delinquents to correct or explain defections; issue an order, if appropriate, as provided in [KRS 121.140](#); and make public the fact that a violation has occurred and the nature thereof;
 - (j) Conduct random audits of receipts and expenditures of candidates running for city, county, urban-county government, charter county government, and district offices. When the registry audits the records of any selected candidate, it shall also audit the records of all other candidates running for the same office in the selected city, county, urban-county government, charter county government, or district office;
 - (k) Conduct audits of receipts and expenditures of all candidates or slates of candidates running for statewide office;
 - (l) Require that candidates and slates of candidates shall maintain their records for a period of six (6) years from the date of the regular election in their respective political races;
 - (m) Initiate investigations and make investigations with respect to reports upon complaint by any person and initiate proceedings on its own motion; and
 - (n) Forward to the Attorney General or the appropriate Commonwealth's or county attorney any violations of this chapter which may become the subject of civil or criminal prosecution.

(5) All policy and enforcement decisions concerning the regulation of campaign finance shall be the ultimate responsibility of the registry. No appointed or elected state officeholder or any other person shall, directly or indirectly, attempt to secure or create privileges, exemptions, or advantages for himself or others in derogation of the public interest at large in a manner that seeks to leave any registry member or employee charged with the enforcement of the campaign finance laws no alternative but to comply with the wishes of the officeholder or person. Registry members and employees shall be free of obligation or the appearance of obligation to any interest other than the fair and efficient enforcement of the campaign finance laws and administrative regulations. It shall not be

considered a violation of this subsection for an officeholder or other person to seek remedies in a court of law to any policy or enforcement decision he considers to be an abridgement of his legal rights.

(6) If adequate and appropriate agency funds are available, the registry shall:

(a) Develop or acquire a system for electronic reporting for use by individuals and entities required to file campaign finance reports with the registry under this chapter. The registry shall promulgate administrative regulations under KRS Chapter 13A which provide for a nonproprietary standardized format or formats, using industry standards, for the transmission of data required under this chapter;

(b) Accept test files from software vendors and persons wishing to file reports electronically for the purpose of determining whether the file format complies with the nonproprietary standardized format developed under paragraph (a) of this subsection and is compatible with the registry's system for receiving the data;

(c) Make all paper or electronic reports filed with the registry pertaining to candidates for the General Assembly and statewide office available on the Internet free of charge, in an easily understood format that allows the public to browse, search, and download the data contained in the reports by each of the reporting categories required by this chapter, including but not limited to:

1. The name of each candidate or committee;

2. The office sought by each candidate;

3. The name of each contributor;

4. The address of each contributor;

5. The employer or business occupation of each contributor, or if the contributor is a permanent committee, a description of the major business, social, or political interest represented by the permanent committee;

6. The date of each contribution; and

7. The amount of each contribution;

(d) Make all data specified in paragraph (c) of this subsection available on the Internet no later than ten (10) business days after its receipt by the registry. If a contribution or expenditure report is filed late with the registry, that data shall be made available on the Internet within twenty-four (24) hours of the registry's receipt of the data;

(e) Make filer-side software available free of charge to all individuals or entities subject to the reporting requirements of this chapter;

- (f) Establish a training program on the electronic reporting program and make it available free of charge to all individuals and entities subject to the reporting requirements of this chapter;
 - (g) Maintain all campaign finance data pertaining to legislative and statewide candidates on-line for twenty (20) years after the date the report containing the data is filed, and then archive the data in a secure format; and
 - (h) Require candidates and slates of candidates running for statewide office, and campaign committees of candidates and slates of candidates registered to run for statewide office, beginning with elections scheduled in 2015, to electronically report all election finance reports that must be submitted to the registry under this chapter. If any statewide candidate, slate of candidates, or campaign committee of a statewide candidate or slate of candidates submits an election finance report in a nonelectronic format for an election scheduled in 2015 or later, the registry shall require the statewide candidate, slate of candidates, or campaign committee of the statewide candidate or slate of candidates to resubmit the election finance report in an electronic format the first time that entity files an electronic report for that election.
- (7) In conjunction with the program of electronic reporting set out in subsection (6) of this section, the registry shall deem an electronic report to be filed when submitted by either of the following methods:
- (a) Online Internet transmission; or
 - (b) Delivery by mail or hand delivery of the electronic report saved on optical or magnetic disk.

→ **121.130 Dissemination of information to candidates, treasurers, depositories and general public**

- (1) The registry shall take such steps as may be necessary to furnish timely and adequate information to every candidate or prospective candidate for public office who becomes or is likely to become subject to the provisions of this chapter. The registry shall also take such steps as are necessary to inform every treasurer and depository duly designated under this chapter of their actual obligations and responsibilities under this chapter.
- (2) The registry shall take such steps to disseminate among the general public such information as may serve to guide all persons who may become subject to the provisions of this chapter by reason of their participation in election campaigns or in the dissemination of political information, for the purpose of facilitating voluntary compliance with the provisions and purposes of this chapter.

→ **121.135 Advisory opinion by registry; effect; publication**

- (1) Any person may file a written request with the registry for an advisory opinion concerning the application of the provisions of this chapter or any administrative regulation promulgated by the registry with respect to a specific transaction or activity by the person. The registry shall render a written advisory opinion relating to the specific transaction or activity to the person making the request not later than thirty (30) days after the registry receives the request.

(2) If a candidate, slate of candidates, or either of their campaign committees files a written request with the registry for an advisory opinion not more than thirty (30) days before the date of an election at which the candidate or slate of candidates shall appear on the ballot, the registry shall render a written advisory opinion relating to the request not later than twenty (20) days after the registry receives a complete request.

(3) No advisory opinion shall be issued by the registry or any of its employees except in accordance with the provisions of this section.

(4) (a) Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered.

(b) Notwithstanding any other provision of law, any person or committee to whom a written advisory opinion has been rendered who relies upon any provision or finding of the advisory opinion and who acts in good faith in accordance with the provisions and findings of the advisory opinion shall not, as a result of any act with respect to a transaction or activity addressed by the advisory opinion, be subject to any sanction provided by this chapter or any administrative regulation promulgated by the registry.

(c) It shall be no defense in any civil or criminal proceeding regarding a violation of any provision of this chapter or any administrative regulation promulgated by the registry for a person or committee to claim that he relied upon and acted in good faith based upon any provision or finding of an advisory opinion if the person or committee was not the person or committee involved in the specific transaction or activity with respect to which the advisory opinion was rendered.

(5) (a) The registry shall make public all written requests for an advisory opinion made under subsection (1) or (2) of this section. Before rendering an advisory opinion, the registry shall accept written comments submitted by any interested party within the ten (10) day period following the date the request is made public.

(b) The registry shall make public all advisory opinions rendered under subsection (1) or (2) of this section.

→ 121.140 Investigation of complaint; conciliation agreement hearing; decision and order; appeal from order; reference for possible prosecution; judicial review

(1) Upon the sworn complaint of any person, or on its own initiative, the registry shall investigate alleged violations of campaign finance law. In conducting any investigation, the registry shall have the power of subpoena and may compel production of evidence including the financial records of any person determined by the registry to be vital to the investigation. The records subject to subpoena include, but are not limited to, a person's bank records and other relevant documents, but excluding individual and business income tax records.

(2) If the registry concludes that there is probable cause to believe that the law has been violated, the registry shall

notify the alleged violator of its conclusions and the evidence supporting them, and shall offer the alleged violator a conciliation agreement to resolve the issue. A conciliation agreement may require the alleged violator to comply with one (1) or more of the following:

- (a) To cease and desist violations of the law;
- (b) To file required reports or other documents or information;
- (c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or
- (d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter.

(3) To accept a conciliation agreement, an alleged violator shall deliver the signed agreement to the registry either in person or by mail postmarked not later than ten (10) days after the day he received it. The registry may institute a civil action in Franklin Circuit Court or the Circuit Court for the county of the violator's residence to enforce the provisions of any conciliation agreement accepted by a violator who is not complying with its provisions.

(4) If the alleged violator declines to accept the conciliation agreement or fails to respond within the time allowed, the registry shall submit a written request to the Chief Justice of the Kentucky Supreme Court to recommend not fewer than five (5) nor more than ten (10) retired or former justices or retired or former judges of the Court of Justice who are qualified and willing to conduct a hearing to determine if a violation has occurred. Upon receipt of the recommendations of the Chief Justice, the registry shall randomly select one (1) retired or former justice or judge from the list to conduct the hearing, which shall be held in accordance with the Kentucky Rules of Civil Procedure, or, if the Chief Justice declines to make recommendations, the registry, on its own initiative, shall request retired or former justices or judges to serve. The time and location of hearings shall be determined by the registry. Retired or former justices or judges selected to serve shall receive reimbursement from the registry for their reasonable and necessary expenses incurred as a result of the performance of their duties at the hourly rate set for attorneys by the Finance and Administration Cabinet. The registry shall notify the complainant and the alleged violator that a hearing shall be conducted of the specific offenses alleged not less than thirty (30) days prior to the date of the hearing. At the hearing, which shall be open to the public pursuant to [KRS 61.810](#), the attorney for the registry shall present the evidence against the alleged violator, and the alleged violator shall have all of the protections of due process, including, but not limited to, the right to be represented by counsel, the right to call and examine witnesses, the right to the production of evidence by subpoena, the right to introduce exhibits and the right to cross-examine opposing witnesses. If the justice or judge determines that the preponderance of the evidence shows a violation has occurred, the justice or judge shall render a decision not more than sixty (60) days after the case is submitted for determination. The decision shall become the final decision of the registry unless the registry board at its next regular meeting acts to set aside or modify the justice's or judge's decision, in which case the registry board's decision shall become the final registry decision. A party adversely affected by the registry's order may appeal to Franklin Circuit Court

within thirty (30) days after the date of the registry's order. The violator may be ordered to comply with any one (1) or more of the following requirements:

(a) To cease and desist violation of this law;

(b) To file any reports or other documents or information required by this law;

(c) To pay a penalty not to exceed one hundred dollars (\$100) a day, up to a maximum total fine of five thousand dollars (\$5,000), for failure to file any report, payment of an administrative fee, or other document or information required by law until the report, fee payment, document, or information is filed; except that there shall be no maximum total fine for candidates for statewide office; or

(d) To pay a penalty not to exceed five thousand dollars (\$5,000) per violation for acts of noncompliance with provisions contained within this chapter. An appeal of an order shall be advanced on the docket to permit a timely decision.

(5) If the registry concludes that there is probable cause to believe that the campaign finance law has been violated knowingly, it shall refer the violation to the Attorney General or the appropriate Commonwealth's or county attorney for prosecution. The Attorney General may request the registry's attorney or the appropriate county or Commonwealth's attorney to prosecute the matter and may request from the registry all evidence collected in its investigation. In the event the Attorney General or the appropriate local prosecutor fails to prosecute in a timely fashion, the registry may petition the Circuit Court to appoint the registry's attorney to prosecute, and upon a motion timely filed, for good cause shown, the court shall enter an order to that effect. Prosecutions involving campaign finance law violations, in which the reports are required to be filed in Frankfort, may be conducted in Franklin Circuit Court or in the Circuit Court for the county in which the contribution or expenditure constituting a campaign finance violation was solicited, made, or accepted. The prosecution of a person who unlawfully solicits, makes, or accepts a contribution or expenditure through the use of the mail may be conducted in the Circuit Court for the county in which the solicitation is mailed, the county in which the contribution is mailed or received, or the county in which the expenditure is mailed.

(6) Any person directly involved or affected by an action of the registry which is final, other than of a determination to refer a violation to the Attorney General or appropriate Commonwealth's or county attorney for prosecution, may seek judicial review of the action within thirty (30) days after the date of the action.

(7) If judicial review is sought of any action of the registry relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

→ **121.150 Campaign contribution and loan restrictions and expenditure limitations**

(1) No contribution shall be made or received, directly or indirectly, other than an independent expenditure, to support inauguration activities or to support or defeat a candidate, slate of candidates, constitutional amendment, or

public question which will appear on the ballot in an election, except through the duly appointed campaign manager, or campaign treasurer of the candidate, slate of candidates, or registered committee. Any person making an independent expenditure, shall report these expenditures when the expenditures by that person exceed five hundred dollars (\$500) in the aggregate in any one (1) election, on a form provided or using a format approved by the registry and shall sign a statement on the form, under penalty of perjury, that the expenditure was an actual independent expenditure and that there was no prior communication with the campaign on whose behalf it was made.

(2) Except as provided in [KRS 121.180\(10\)](#), the solicitation from and contributions by campaign committees, caucus campaign committees, political issues committees, permanent committees, and party executive committees to any religious, charitable, civic, eleemosynary, or other causes or organizations established primarily for the public good is expressly prohibited; except that it shall not be construed as a violation of this section for a candidate or a slate of candidates to contribute to religious, civic, or charitable groups.

(3) No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf, shall accept any anonymous contribution in excess of fifty dollars (\$50), and all anonymous contributions in excess of fifty dollars (\$50) shall be returned to the donor, if the donor can be determined. If no donor is found, the contribution shall escheat to the state. No candidate, slate of candidates, committee, or contributing organization, nor anyone acting on their behalf shall accept anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate in any one (1) election. Anonymous contributions in excess of one thousand dollars (\$1,000) in the aggregate which are received in any one (1) election shall escheat to the state.

(4) No candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf, shall accept a cash contribution in excess of fifty dollars (\$50) in the aggregate from each contributor in any one (1) election. No candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf, shall accept a cashier's check or money order in excess of the maximum cash contribution limit unless the instrument clearly identifies both the payor and the payee. A contribution made by cashier's check or money order which identifies both the payor and payee shall be treated as a contribution made by check for purposes of the contribution limits contained in this section. No person shall make a cash contribution in excess of fifty dollars (\$50) in the aggregate in any one (1) election to a candidate, slate of candidates, committee, or contributing organization, nor anyone on their behalf.

(5) No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf, shall accept any contribution in excess of one hundred dollars (\$100) from any person who shall not become eighteen (18) years of age on or before the day of the next general election.

(6) No candidate, slate of candidates, campaign committee, political issues committee, nor anyone acting on their behalf, shall accept a contribution of more than one thousand dollars (\$1,000) from any person, permanent committee, or contributing organization in any one (1) election. No person, permanent committee, or contributing organization shall contribute more than one thousand dollars (\$1,000) to any one (1) candidate, campaign committee, political issues committee, nor anyone acting on their behalf, in any one (1) election.

(7) Permanent committees or contributing organizations affiliated by bylaw structure or by registration, as deter-

mined by the Registry of Election Finance, shall be considered as one (1) committee for purposes of applying the contribution limits of subsection (6) of this section.

(8) No permanent committee shall contribute funds to another permanent committee for the purpose of circumventing contribution limits of subsection (6) of this section.

(9) No person shall contribute funds to a permanent committee, political issues committee, or contributing organization for the purpose of circumventing the contribution limits of subsection (6) of this section.

(10) No person shall contribute more than one thousand five hundred dollars (\$1,500) to all permanent committees and contributing organizations in any one (1) year.

(11) No person shall contribute more than two thousand five hundred dollars (\$2,500) to the state executive committee of a political party and its subdivisions and affiliates in any one (1) year. No person shall contribute more than two thousand five hundred dollars (\$2,500) to a caucus campaign committee in any one (1) year. Contributions a person makes to any executive committee other than the state executive committee in excess of one thousand dollars (\$1,000) in any one (1) year shall be deposited in a separate account which the state executive committee maintains for the exclusive purpose of paying administrative costs incurred by the political party.

(12) No person shall make a payment, distribution, loan, advance, deposit, or gift of money to another person to contribute to a candidate, a slate of candidates, committee, contributing organization, or anyone on their behalf. No candidate, slate of candidates, committee, contributing organization, nor anyone on their behalf shall accept a contribution made by one (1) person who has received a payment, distribution, loan, advance, deposit, or gift of money from another person to contribute to a candidate, a slate of candidates, committee, contributing organization, or anyone on their behalf.

(13) No candidates running as a slate for the offices of Governor and Lieutenant Governor shall make combined total personal loans to their committee in excess of fifty thousand dollars (\$50,000) in any one (1) election. No candidate for any other statewide elected state office shall lend to his committee any amount in excess of twenty-five thousand dollars (\$25,000) in any one (1) election. In campaigning for all other offices, no candidate shall lend to his committee more than ten thousand dollars (\$10,000) in any one (1) election.

(14) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for nomination to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for primary election expenses after the date of the primary. No person other than the candidate or slate of candidates shall contribute for primary election expenses after the date of the primary.

(15) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for any state, county, city, or district office at a regular election, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for regular election expenses after the date of the regular election. No person other than the candidate or slate of candidates shall contribute for regular election expenses after the date of the regular election.

(16) Subject to the provisions of subsection (18) of this section, no candidate or slate of candidates for nomination or election to any state, county, city, or district office, nor their campaign committees, nor anyone on their behalf, shall solicit or accept contributions for special election expenses after the date of the special election. No person other than the candidate or slate of candidates shall contribute for special election expenses after the date of the special election.

(17) The provisions of subsections (14) and (15) of this section shall apply only to those candidates in a primary or regular election which shall be conducted subsequent to January 1, 1989. The provisions of subsection (16) of this section shall apply only to those candidates or slates of candidates in a special election which shall be conducted subsequent to January 1, 1993.

(18) A candidate, slate of candidates, or a campaign committee may solicit and accept contributions after the date of a primary election, regular election, or special election to defray necessary expenses that arise after the date of the election associated with election contests, recounts, and recanvasses of a specific election, complaints regarding alleged campaign finance violations that are filed with the registry pertaining to a specific election, or other legal actions pertaining to a specific election to which a candidate, slate of candidates, or campaign committee is a party. Reports of contributions received and expenditures made after the date of the specific election shall be made in accordance with [KRS 121.180](#).

(19) No slate of candidates for Governor and Lieutenant Governor or their immediate families shall loan any money, service, or other thing of value to their campaign, and all moneys, services, or other things of value which are loaned shall be deemed a contribution, which may not be recovered by the slate of candidates, except to the extent of a combined total of fifty thousand dollars (\$50,000).

(20) No candidate, slate of candidates, committee, except a political issues committee, or contributing organization, nor anyone on their behalf, shall knowingly accept a contribution from a corporation, directly or indirectly.

(21) Nothing in this section shall be construed to restrict the ability of a corporation to administer its permanent committee insofar as its actions can be deemed not to influence an election as prohibited by [KRS 121.025](#).

(22) No candidate, slate of candidates, or committee, nor anyone on their behalf, shall solicit a contribution of money or services from a state employee, whether or not the employee is covered by the classified service provisions of KRS Chapter 18A. However, it shall not be a violation of this subsection for a state employee to receive a solicitation directed to him as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees.

(23) (a) A candidate or a slate of candidates for elective public office shall not accept contributions from permanent committees which, in the aggregate, exceed fifty percent (50%) of the total contributions accepted by the candidate or a slate of candidates in any one (1) election or ten thousand dollars (\$10,000) in any one (1) election, whichever is the greater amount. The percentage of the total contributions or dollar amounts of contributions accepted by a candidate or a slate of candidates in an election that is accepted from permanent committees shall be calculated as of

the day of each election. Funds in a candidate's or a slate of candidates' campaign account which are carried forward from one (1) election to another shall not be considered in calculating the acceptable percentage or dollar amount of contributions which may be accepted from permanent committees for the election for which the funds are carried forward. A candidate or a slate of candidates may, without penalty, contribute funds to his campaign account not later than sixty (60) days following the election so as not to exceed the permitted percentage or dollar amount of contributions which may be accepted from permanent committees or the candidate or a slate of candidates may, not later than sixty (60) days after the end of the election, refund any excess permanent committee contributions on a pro rata basis to the permanent committees whose contributions are accepted after the aggregate limit has been reached.

(b) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from executive committees of any county, district, state, or federal political party in any one (1) election.

(c) The provisions of paragraph (a) of this subsection regarding the receipt of aggregate contributions from permanent committees in any one (1) election shall also apply separately to the receipt of aggregate contributions from caucus campaign committees.

(24) No candidate or slate of candidates for any office in this state shall accept a contribution, including an in-kind contribution, which is made from funds in a federal campaign account. No person shall make a contribution, including an in-kind contribution, from funds in a federal campaign account to any candidate or slate of candidates for any office in this state.

→ **121.160 Campaign treasurers; duties**

(1) As part of the filing papers each candidate or slate of candidates shall, on a duplicate form prescribed and furnished by the registry, designate a campaign treasurer to act as their agent at the time and at the office with which they file as a candidate or slate of candidates and until this requirement is met the candidate or slate of candidates shall be listed as their own treasurer and accountable as such. The candidate or slate of candidates may appoint themselves or any registered voter in Kentucky as the campaign treasurer. The office with which the candidate or slate of candidates is required to file shall immediately forward to the registry the duplicate copy of the completed form designating the candidate's or slate's campaign treasurer and shall attach the original to the candidate's or slate's filing papers. The office with which the candidate or slate of candidates files shall promptly notify the registry when a candidate withdraws.

(2) The duties of a campaign treasurer shall be to:

(a) Designate a depository bank in which the primary campaign account shall be maintained and deposit all contributions in that account;

(b) Keep detailed and exact accounts of:

1. Contributions of any amount made by a permanent committee, by name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. Contributions in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a state-wide-elected state office, by the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
 3. Contributions in excess of one hundred dollars (\$100) made to any candidate other than those specified in subparagraph 2., by name, address, age if under legal voting age, date of the contribution, amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed. The occupation listed for the contributor shall be specific. A general classification, such as "businessman", shall be insufficient;
- (c) Make or authorize all expenditures on behalf of a candidate or slate of candidates. Any expenditure in excess of twenty-five dollars (\$25) shall be by check and the treasurer's records shall disclose the name, address, and occupation of every person or firm to whom made, and shall list the date and amount of the expenditure and the treasurer shall keep a receipted bill for each;
- (d) Maintain all receipted bills and accounts required by this section for a period of six (6) years from the date he files his last report under [KRS 121.180\(3\)\(b\)1.](#); and
- (e) Make no payment to any person not directly providing goods or services with the intent to conceal payment to another.
- (3) A candidate or slate of candidates may remove a campaign treasurer at any time.
- (4) In case of the death, resignation, or removal of a campaign treasurer, the candidate or slate of candidates shall within three (3) days after receiving notice thereof by certified mail, appoint a successor and shall file his name and address with the registry. The candidate, or slate shall be accountable as their own campaign treasurer if they fail to meet this filing requirement.
- (5) A person may serve as campaign treasurer for more than one (1) candidate or slate of candidates, but all reports shall be made separately for each individual candidate or slate.
- (6) The candidate or slate of candidates may pay a campaign treasurer a salary for his services which shall be considered a campaign expense and shall comply with the reporting provisions of [KRS 121.180](#) and administrative regulations promulgated by the registry.

→ **121.170 Registration of committees and fundraisers; information required; permanent committee by member of General Assembly prohibited; official contact person**

(1) Any committee, except a federally registered out-of-state permanent committee, organized under any provisions of this chapter shall register with the registry, by filing official notice of intention at the time of organization, giving names, addresses, and positions of the officers of the organization, identifying an official contact person of the committee, and designating the candidate or candidates, slate of candidates, or question it is organized to support or oppose on forms prescribed by the registry; except that no campaign committee for a slate of candidates for Governor and Lieutenant Governor shall be registered prior to the filing of a joint notification and declaration by the slate of candidates pursuant to [KRS 118.125](#) and [118.127](#). No entity which is excluded from the definition of “campaign committee” established in [KRS 121.015\(3\)\(a\)](#) shall be required to register as a committee with the registry. The name of the committee shall reasonably identify to the public the sponsorship and purpose of the committee. The forms filed with the registry shall require the registrant to clearly identify the specific purpose, sponsorship, and source from which the committee originates; and the registry shall refuse to allow filing by any committee until this requirement has been satisfied.

(2) Any person who acts as a fundraiser by directly soliciting contributions for an election campaign of a candidate or slate of candidates for statewide-elected state office or an office in a jurisdiction containing in excess of two hundred thousand (200,000) residents shall register with the registry when he or she raises in excess of three thousand dollars (\$3,000) in any one (1) election for the campaign committee by filing official notice giving his or her name, address, occupation, employer or, if he or she is self-employed, the name under which he or she is doing business, and all candidates or slates of candidates for whom he or she is soliciting on forms prescribed by the registry. A registered fundraiser shall comply with the campaign finance reporting requirements of [KRS 121.180\(3\)](#), [\(4\)](#), and [\(5\)](#).

(3) All provisions of [KRS 121.160](#) governing the duties and responsibilities of a candidate, slate of candidates, or campaign treasurer shall apply to a registered committee, except a federally registered out-of-state permanent committee, and a person acting as a campaign fundraiser. In case of the death, resignation, or removal of a campaign treasurer for a permanent committee or executive committee, the chairperson of the permanent committee or executive committee shall, within three (3) days after receiving notice of the vacancy by certified mail, appoint a successor as treasurer for the committee and file the name and address of the successor with the registry. The chairperson of the permanent committee or executive committee shall be accountable as the treasurer for the committee if the chairperson fails to meet this filing requirement.

(4) The chairperson of a committee and the campaign treasurer shall be separate persons.

(5) Any federally registered out-of-state permanent committee that contributes to a Kentucky candidate or a slate of candidates shall:

(a) File with the registry a copy of its federal registration (Federal Election Commission Form 1--Committee Registration Form);

- (b) File with the registry a copy of the Federal Election Commission finance report when a contribution is made to a Kentucky candidate or a slate of candidates; and
 - (c) Contribute not more than the maximum amount permitted for a permanent committee to make under Kentucky law to any candidate or to any slate of candidates for any office in this Commonwealth.
- (6) Notwithstanding any provision of law to the contrary, a contribution made by a federally registered permanent committee to any candidate or to any slate of candidates for any office in this Commonwealth that complies with the provisions of [2 U.S.C. sec. 441b](#), [11 C.F.R. sec. 104.10](#), [11 C.F.R. sec. 106.6](#), and [11 C.F.R. sec. 114.1-114.12](#) regarding limitations on contributions by corporations shall be deemed to comply with the campaign finance laws of this Commonwealth prohibiting corporate contributions to candidates or slates of candidates.
- (7) The organization, formation, or registration of a permanent committee by any member of the General Assembly shall be prohibited.
- (8) The official contact person of a permanent committee shall not be a legislative agent as defined in [KRS 6.611](#) or an executive agency lobbyist as defined in [KRS 11A.201](#).

→ **121.175 Allowable campaign expenditures; administrative regulations; penalties**

(1) No candidate, committee, or contributing organization shall permit funds in a campaign account to be expended for any purpose other than for allowable campaign expenditures. “Allowable campaign expenditures” means expenditures including reimbursement for actual expenses, made directly and primarily in support of or opposition to a candidate, constitutional amendment, or public question which will appear on the ballot and includes, but is not limited to, expenditures for staff salaries, gifts and meals for volunteer campaign workers, food and beverages provided at a campaign rally, advertising, office space, necessary travel, campaign paraphernalia, purchases of advertisements in athletic and scholastic publications, communications with constituents or prospective voters, polling and consulting, printing, graphic arts, or advertising services, postage, office supplies, stationery, newsletters, and equipment which is used primarily for the administration of the campaign. “Allowable campaign expenditures” does not include expenditures of funds in a campaign account for any purpose made unlawful by other provisions of the Kentucky Revised Statutes or which would bestow a private pecuniary benefit, except for payment of the reasonable value of goods and services provided upon a candidate, member of the candidate's family, committee, or contributing organization, or any of their employees, paid or unpaid, including: tickets to an event which is unrelated to a political campaign or candidacy; items of personal property for distribution to prospective voters except items bearing the name, likeness, or logo of a candidate or a campaign-related communication; expenditures to promote or oppose a candidacy for a leadership position in a governmental, professional, or political organization, or other entity; and equipment or appliances the primary use of which is for purposes outside of the campaign. The provisions of [KRS 121.190](#) notwithstanding, a candidate shall not be required to include a disclaimer on campaign stationery purchased with funds from his campaign account. A member of the General Assembly may utilize funds in his campaign account to purchase admission tickets for political party functions and caucus campaign committee functions, to purchase items with a value of not in excess of one hundred dollars (\$100) for donation to a political party or caucus campaign committee for auctions and fundraisers, and to participate in or support other events

sponsored by a political party or caucus campaign committee. A member of the General Assembly may make allowable campaign expenditures in both election years and nonelection years.

(2) By December 31, 1993, the registry shall promulgate administrative regulations to implement and enforce the provisions of subsection (1).

(3) In lieu of the penalties provided in [KRS 121.140](#) and [121.990](#) for a violation of this section, the registry may, after hearing:

(a) For a violation which was not committed knowingly, order the violator to repay the amount of campaign funds which were expended for other than allowable campaign expenditures, and if not repaid within thirty (30) days, may impose a fine of up to one hundred dollars (\$100) for each day the amount is not repaid, up to a maximum fine of one thousand dollars (\$1,000); and

(b) For a violation which was committed knowingly, in addition to referring the matter for criminal prosecution, order the violator to repay the amount of campaign funds which were expended for other than allowable campaign expenditures, and if not repaid within thirty (30) days, may impose a fine of up to one hundred dollars (\$100) for each day the amount is not repaid, up to a maximum fine of one thousand dollars (\$1,000).

→ 121.180 Reports required of committees and treasurers; exemptions; administrative fee; exceptions; use of campaign funds; prohibited uses; disposition of unexpended campaign funds; electronic reporting; “No change since last report” designation

(1) (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars (\$3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in paragraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section if the candidate, slate of candidates, or political

issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars (\$1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (l)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.

(c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.

(d) 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.

2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.

- (e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.
- (f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.
- (g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.
- (j) A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.

(k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.

(l) 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars (\$500) plus the amount by which the spending limit was exceeded.

2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.

(2) (a) State and county executive committees, and caucus campaign committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:

1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
2. For other contributions in excess of one hundred dollars (\$100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
3. The total amount of cash contributions received during the reporting period; and
4. A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.

(b) This report shall be in the hands of the registry or postmarked within five (5) days after the thirtieth day following the primary and regular elections. If an individual gives a reportable contribution to a caucus campaign committee or to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on

the committee report. The receipts and expenditures of funds remitted to each political party under [KRS 141.071](#) to [141.073](#) shall be separately accounted for and reported to the registry in the manner required by [KRS 121.230](#). The separate report may be made a separate section within the report required, by this subsection, to be in the hands of the registry or postmarked within five (5) days after the thirtieth day following each regular election.

(3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars (\$3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars (\$3,000) in any one (1) election, shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:

1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2. of this paragraph or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
4. The total amount of cash contributions received during the reporting period; and
5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.

(b) Reports of all candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:

1. Candidates as defined in [KRS 121.015\(8\)](#), slates of candidates, campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate, a slate of candidates, or public question shall appear on the ballot, shall file financial reports with the registry at the end of

the first calendar quarter after persons become candidates or slates of candidates, or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, slates of candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;

2. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;
3. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and
4. All reports to the registry shall be received by the registry or postmarked within five (5) days after each filing deadline.

(4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.

(5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.

(6) Each permanent committee, except a federally registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:

- (a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
- (b) For other contributions in excess of one hundred dollars (\$100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
- (c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and
- (d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures on a form provided or using a format approved by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.
- (7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be received by the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate or a slate of candidates seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate or a slate of candidates shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate or slate of candidates files nomination papers for the next year's primary or regular election. All contributions shall be subject to [KRS 121.150](#).
- (8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate paper copy of each report filed either on paper or electronically with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.
- (9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:

- (a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;
- (b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and
- (c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.

(10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars (\$100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of candidates, or public issue is on the ballot. Any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to a caucus campaign committee, or to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under [Section 501\(c\)\(3\) of the United States Internal Revenue Code of 1986, \[FN1\]](#) as amended, and any successor thereto.

(11) (a) For the purposes of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a candidate for a particular office, means the period of time beginning January 1 following a regular election for the office and ending December 31 following the next regular election for that office.

(b) For the purpose of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a constitutional amendment or public question which appears on the ballot, means the period of time beginning January 1 following a regular election for any state legislative office and ending December 31 fol-

lowing the next regular election for any state legislative office.

(c) If adequate and appropriate agency funds are available to implement this subsection, the option of electronic reporting shall be made available by the registry to all candidates, committees, registered fundraisers, and persons making independent expenditures, in addition to those candidates, slates of candidates, and campaign committees that are required to electronically report under [KRS 121.120\(6\)\(h\)](#) .

(12) Filers specified in subsection (11) of this section shall also continue to file required campaign finance reports in paper format until the registry deems it is no longer necessary. The paper copy shall continue to be the official version for audit and other legal purposes.

(13) Filers not required to file reports electronically, as set forth in this section, are strongly encouraged to do so voluntarily.

(14) The date that an electronic or on-line report shall be deemed to have been filed with the registry shall be the date on which it is received by the registry.

(15) All electronic or online filers shall affirm, under penalty of perjury, that the report filed with the registry is complete and accurate.

(16) Filers who submit computer disks which are not readable, cannot be copied, or are not accompanied by any requisite paper copy shall be deemed to not be in compliance with the requirements set forth in this section.

(17) No candidate is obligated to file any reports electronically, except for those candidates, slates of candidates, and campaign committees that are required to electronically report under [KRS 121.120\(6\)\(h\)](#)

(18) (a) On each paper and electronic form that it supplies for the reports required under subsections (2), (3), and (6) of this section, the registry shall include an entry reading, “No change since last report.”

(b) If a person or entity that is required to report under subsection (2), (3), or (6) of this section has received no money, loans, or other things of value from any source since the date of its last report and has not authorized, incurred, or made any expenditures since that date, the person or entity may check or otherwise designate the entry that reads, “No change since last report.” A person or entity designating this entry in a report shall state the balance carried forward from the last report but need not specify receipts or expenditures in further detail.

[FN1] [26 U.S.C.A. § 501\(c\)\(3\)](#)

→ 121.190 Identification of contributors and advertisers

(1) All newspaper or magazine advertising, posters, circulars, billboards, handbills, sample ballots, and paid-for television or radio announcements which expressly advocate the election or defeat of a clearly identified candidate, slate of candidates, or group of candidates for nomination or election to any public office shall be identified by the words "paid for by" followed by the name and address of the individual or committee which paid for the communication; except that if paid for by a candidate, slate of candidates, or campaign committee, it shall be identified only by the words "paid for by" followed by the name of the candidate, slate of candidates, or campaign committee, whichever is applicable. For television and radio broadcasts, compliance with Federal Communications Commission regulations regarding sponsored programs and broadcasts by candidates for public office shall be considered compliance with this section.

(2) The management of newspapers and magazines shall keep a one (1) year record of all statements, articles, or advertisements referred to in subsection (1) of this section, that appear in their publications, however, nothing in subsection (1) of this section shall be construed to require editors or editorial writers of newspapers and magazines to identify themselves in the manner therein required with any article or editorial written by them as part of their duties as an employee or employer.

→ 121.210 Central campaign committee; designation; duties; unauthorized or disavowed campaign committee

(1) Each candidate may designate one (1) central campaign committee. If so designated, the central campaign committee shall receive all reports made by any other campaign committee authorized in writing by the candidate to accept contributions or make expenditures for the purpose of influencing the nomination for election, or election, of the candidate who designated it as his central campaign committee.

(2) Each statement or report which an authorized committee is required to file with or furnish to the registry shall, if that committee is not a central campaign committee, be furnished instead to the central campaign committee for the candidate on whose behalf that committee is, or is established for the purpose of, accepting contributions or making expenditures.

(3) Each central campaign committee shall receive all reports and statements filed with or furnished to it by other authorized committees, and shall consolidate and furnish the reports and statements to the registry, together with its own reports and statements as prescribed by [KRS 121.180](#).

(4) Campaign committees not authorized by, or which have been disavowed by the candidate, shall not include the name of the candidate as part of the committee's name and shall file the reports and statements with the registry as prescribed in [KRS 121.180](#).

→ 121.220 Primary campaign depository; secondary depository; deposits; statements

(1) Each candidate, slate of candidates, and each committee shall, before receiving any contributions or expending

any money, designate one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate, slate of candidates, or committee. The candidate, slate of candidates, or committee may also designate one (1) secondary depository in each county in which an election is held and in which the candidate, slate of candidates, or committee participates. Deputy campaign treasurers may make expenditures from secondary depositories but only from moneys which first have been deposited in the primary campaign depository. Only a financial institution authorized to transact business in Kentucky may be designated as a campaign depository. The candidate, slate of candidates, or committee shall file the name and address of each primary and secondary depository so designated at the same time the candidate, slate of candidates, or committee files the name of his or its campaign treasurer.

(2) All funds received by the campaign treasurer or any deputy campaign treasurer of any candidate, slate of candidates, or committee shall be deposited in a campaign depository in an account designated "Campaign Fund of (name of candidate or committee)." For each deposit, the campaign treasurer or deputy campaign treasurer shall retain a statement showing the name and business address of the permanent committee, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee for each contribution of any amount made by a permanent committee, and the full name, address, employer of each other contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and occupation of each contributor of more than one hundred dollars (\$100) and the amount contributed. Cash contributions shall be accompanied by the same receipt form.

→ **121.230 Use of portion of income tax designated to political party; records and reports; audit**

(1) No state or local governing authority of a political party to which funds are remitted under [KRS 141.071](#) to [141.073](#) shall use such funds other than in support of the party's candidates in a general election and for the administrative costs of maintaining a political party headquarters.

(2) Each state or local governing authority of a political party to which funds are remitted under [KRS 141.071](#) to [141.073](#) shall deposit such funds in a bank account and shall report the amount of such funds received as a separate entry on its committee report. All expenditures from such remitted funds shall be by check. A copy of each canceled check written on the account of funds remitted under [KRS 141.071](#) to [141.073](#) shall be retained by the state or local governing authority of the political party for a period of not less than four (4) years.

(3) The designated official of each state or local governing authority of a political party to which funds are remitted under [KRS 141.071](#) to [141.073](#) shall maintain a current record of the receipts, balance, and expenditures of the funds so remitted. In addition, the official shall, within thirty (30) days after each general election, forward to the Registry of Election Finance a report of:

(a) The unexpended and unobligated balance of such remitted funds; and

(b) An itemized listing of each expenditure authorized, incurred or made from such remitted funds, indicating the amount, date, and purpose of each expenditure, regardless of the amount, and the name, address, and occupation of each person to whom an expenditure of fifty dollars (\$50) or more was made, since the date of the last report.

(4) The reports required by subsection (3) of this section shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry.

(5) The Registry of Election Finance may annually audit the accounts and records of receipts and expenditures of funds in the amount of one thousand five hundred dollars (\$1,500) or less that are remitted to each state or local governing authority of a political party under [KRS 141.071](#) to [141.073](#). The registry shall annually audit the accounts and records of receipts and expenditures of funds in the amount of more than one thousand five hundred dollars (\$1,500) that are remitted to each state or local governing authority of a political party under [KRS 141.071](#) to [141.073](#). The registry shall report the results of each audit conducted to the General Assembly. In the course of such audits, the registry or its authorized agents may ascertain the amount of such remitted funds on deposit in the separate bank account, required by subsection (2) of this section, of the political party audited and may audit the account on the books of the bank. No bank shall be liable for making available to the registry any of the information required under this section.

Prohibitions

→ 121.310 Coercement of employee's vote prohibited

(1) No person shall coerce or direct any employee to vote for any political party or candidate for nomination or election to any office in this state, or threaten to discharge any employee if he votes for any candidate, or discharge any employee on account of his exercise of suffrage, or give out or circulate any statement or report that employees are expected or have been requested or directed by the employer, or by anyone acting for him, to vote for any person, group of persons or measure.

(2) No corporation organized or authorized to do business in this state shall influence or attempt to influence, by bribe, favor, promise, inducement or otherwise, the vote or suffrage of any employee of such corporation against or in favor of any candidate, platform, principle or issue in any election held under the laws of this state.

→ 121.320 Assessment of state or federal employee prohibited

(1) No person shall obtain or attempt to obtain money by assessment or coercion from any state or federal employee with the purpose of using the money to promote or aid the candidacy of any person, or any political party, or any question to be voted upon by the voters of this state or any section or portion of this state in any state, national, district, county, city or precinct election, or primary election, or in securing delegates or in any manner where nominations are to be made by convention. Every assessment and each act of coercion shall constitute a separate offense.

(2) The term "assessment," as used in this section, means the fixing of any amount, to be given in money by any employee, and the soliciting of that amount or any amount in money from a person so assessed. The term "coercion," as used in this section, means any threat of discharging any employee for failure to contribute any amount of

money for campaign or political purposes, or any attempt to force contribution of any amount of money for political or campaign purposes by any influence, or discharging, demoting or reducing the salary or wages of any employee for failure to contribute portions of his salary or wages, or by putting such employee in fear in any manner.

(3) The term “state or federal employee,” as used in this section, means any person who holds any appointive office in any department of the state or federal government, and who receives wages or salary for his work from the funds of the state or the United States.

→ **121.330 Restrictions on elected officials and their appointees in dealing with certain contributors and fundraisers**

(1) No elected official or any of his appointees shall knowingly award any nonbid contract with the governing authority which the elected official serves to any entity whose officers or employees, or the spouses of officers or employees, knowingly contributed in excess of five thousand dollars (\$5,000) in the aggregate in any one (1) election to the election campaign of the elected official during the term of office following the election campaign in which the contributions were made.

(2) No entity whose officers or employees, or the spouses of officers or employees, have knowingly contributed in excess of five thousand dollars (\$5,000) in the aggregate in any one (1) election to the election campaign of any elected official shall knowingly receive any nonbid contract with the governing authority which the elected official serves during the term of office following the election campaign in which the contributions were made.

(3) No elected official or any of his appointees shall knowingly award any nonbid contract, lease, or appointment to any office or board with the governing authority which the elected official serves to any person who has acted as a fundraiser by directly soliciting contributions to the election campaign of the elected official who secured in excess of thirty thousand dollars (\$30,000) in contributions in the aggregate in any one (1) election for the election campaign, or to his immediate family, employer, or employee, during the term of office following the election campaign in which the contributions were made, nor shall any award of a nonbid contract or lease with the governing authority knowingly be made to the entity in which the person has an interest during the term of office following the election campaign in which the contributions were made.

(4) No person who has acted as a fundraiser by directly soliciting contributions for the election campaign of an elected official who secured in excess of thirty thousand dollars (\$30,000) in contributions in the aggregate in any one (1) election for the election campaign, nor his immediate family, employer, or employee, shall knowingly receive any nonbid contract, lease, or appointment to any office or board with the governing authority which the elected official serves during the term of office following the election campaign in which the contributions were made, nor shall an entity in which the person has an interest knowingly receive a nonbid contract or lease with the governing authority during the term of office following the election campaign in which the contributions were made.

(5) For the purposes of this section, “entity” means any person, sole proprietorship, partnership, unincorporated association, unincorporated company, joint stock company, public service corporation, professional services cor-

poration, corporation, or any other business organization.

(6) For the purposes of this section, “immediate family” means the spouse of the person, the parent of the person or spouse, or the child of the person or spouse.

(7) For the purposes of this section, “governing authority” means the elected legislative, executive, and judicial officers charged with the administration of the affairs of the political subdivision which they serve.

Penalties

→ 121.990 Penalties

(1) Any corporation or any officer, agent, attorney, or employee of a corporation, who knowingly violates any of the provisions of [KRS 121.025](#), shall be fined not more than ten thousand dollars (\$10,000), and, in the case of individuals, be guilty of a Class D felony.

(2) Any corporation that knowingly violates any of the provisions of [KRS 121.035\(1\)](#) or [KRS 121.310\(2\)](#) shall be fined not more than ten thousand dollars (\$10,000) for each offense, and upon conviction its charter shall be forfeited or its authority to do business revoked.

(3) Any person who knowingly violates any of the provisions of [KRS 121.035\(2\)](#), [121.045](#), [121.055](#), [121.150](#) to [121.230](#), [121.310\(1\)](#), or [121.320](#) shall, for each offense, be guilty of a Class D felony. Violations of [KRS 121.150](#) to [121.230](#) shall include, but shall not be limited to, any of the following acts or omissions:

(a) Failure to make required reports or to file reports at times specified;

(b) Making any false statement or report;

(c) Giving money under a fictitious name; or

(d) Making any communication in violation of [KRS 121.190\(1\)](#).

(4) The nomination for, or election to, an office of any candidate or slate of candidates who knowingly violates any provision of [KRS 121.150](#) to [121.220](#), or whose campaign treasurer knowingly violates any provision of [KRS 121.150](#) to [121.220](#), with the knowledge of that candidate or slate of candidates, shall be void, and, upon a final judicial determination of guilt, the office shall be declared vacant and the officeholder shall forfeit all benefits which he would have been entitled to receive had he continued to serve, and the office or candidacy shall be filled as provided by law for the filling of a vacancy. An action to declare a vacancy under this subsection may be brought by the registry, the Attorney General, any candidate or slate of candidates for the office sought to be declared vacant, or any qualified voter.

(5) The Attorney General, Commonwealth's attorney, the registry, or any qualified voter may sue for injunctive relief to compel compliance with the provisions of [KRS 121.056](#) and [KRS 121.120](#) to [121.230](#).

(6) The Commonwealth's attorney or county attorney for the county in which the candidate or slated candidates reside shall be the chief prosecutor upon receipt of a written request from the registry and shall prosecute any violator under this chapter. In the event he fails or refuses to prosecute a violator, upon written request from the registry, the Attorney General shall appoint a special prosecutor with full authority to carry out the provisions of this section.

(7) Any officeholder who knowingly violates the provisions of [KRS 121.150\(12\)](#) shall, upon a final judicial determination of guilt, have his office declared vacant and shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(8) Any Governor or any gubernatorial appointee who knowingly appoints, approves the appointment, or participates in the appointing of any person to any appointive state office or position in violation of [KRS 121.056\(1\)](#) shall be guilty of a Class D felony and, upon a final judicial determination of guilt, have his office declared vacant and shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(9) Any person who knowingly receives an appointment to any appointive state office or position in violation of [KRS 121.056\(1\)](#) shall be guilty of a Class D felony and, upon a final judicial determination of guilt, have his office declared vacant, forfeit all benefits which he would have been entitled to receive, and shall be ineligible to receive an appointment to a state office or position for a period of five (5) years from the date of a final judicial determination of guilt.

(10) Any elected or appointed state officeholder who knowingly awards or participates in the awarding of a contract with the Commonwealth of Kentucky to a person or entity in violation of [KRS 121.056\(2\)](#) shall be guilty of a Class D felony and, upon a final judicial determination of guilt, have his office declared vacant and shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(11) Any person or entity who knowingly receives a contract with the Commonwealth of Kentucky in violation of [KRS 121.056\(2\)](#) shall be guilty of a Class D felony. Upon conviction, the contract shall be canceled, and the person or entity convicted shall be ineligible to receive a contract with the Commonwealth of Kentucky for a period of five (5) years from the date of a final judicial determination of guilt.

(12) Any person who knowingly violates any of the provisions of [KRS 121.056\(3\)](#) shall be guilty of a Class D felony.

(13) Any person who knowingly fails to pay a civil penalty, assessed by the registry or a judicial panel pursuant to [KRS 121.140](#) for violation of campaign finance laws, shall be disqualified from filing for public office until such penalty is paid or the registry rules that settlement has otherwise been made.

(14) Any elected official who knowingly awards or participates in the awarding of a nonbid contract or whose appointee knowingly awards or participates in the awarding of a nonbid contract in violation of [KRS 121.330\(1\)](#) shall be guilty of a Class D felony and, upon a final judicial determination of guilt, have his office declared vacant and shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(15) Any entity who knowingly receives a nonbid contract with a governing authority in violation of [KRS 121.330\(2\)](#) shall be guilty of a Class D felony. Upon conviction, the nonbid contract shall be canceled, and the entity convicted shall be ineligible to receive a nonbid contract with a governing authority for a period of five (5) years from the date of final judicial determination of guilt.

(16) Any elected official who knowingly awards or participates in awarding of a nonbid contract, lease, or appointment to an office or board or whose appointee knowingly awards or participates in the awarding of a nonbid contract, lease, or appointment to an office or board in violation of [KRS 121.330\(3\)](#) shall be guilty of a Class D felony and, upon a final judicial determination of guilt, have his office declared vacant and shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(17) (a) Any fundraiser who knowingly receives a nonbid contract, lease, or appointment to an office or board or any entity in which he has an interest who knowingly receives a nonbid contract or lease in violation of [KRS 121.330\(4\)](#) shall be guilty of a Class D felony;

(b) Any immediate family member, employer, or employee of a fundraiser who knowingly receives a nonbid contract, lease, or appointment to an office or board in violation of [KRS 121.330\(4\)](#) shall be guilty of a Class D felony; and

(c) Upon conviction, the nonbid contract, lease, or appointment shall be canceled, and the person or entity convicted shall be ineligible to receive a nonbid contract, lease, or appointment with a governing authority for a period of five (5) years from the date of a final judicial determination of guilt.

(18) Any appointed or elected state office holder or any other person who knowingly violates the provisions of [KRS 121.120\(5\)](#) shall be guilty of a Class D felony. In the event a candidate has assumed office, upon a final judicial determination of guilt, his office shall be declared vacant and he shall forfeit all benefits which he would have been entitled to receive had he continued to serve.

(19) Any person who knowingly violates the provisions of [KRS 121.065\(1\)](#) shall be guilty of a Class A misdemeanor.



Ethics Committee of the Kentucky Judiciary

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