

PENNSYLVANIA BAR ASSOCIATION JUDICIAL CAMPAIGN ADVERTISING GUIDELINES

An independent and honorable judiciary is indispensable to the administration of justice. While a contested election for judicial office is a political event, a candidate for the judiciary of this Commonwealth should observe standards of conduct consistent with the integrity, impartiality, and independence of the judiciary. The provisions of these guidelines should be understood and applied to further that objective in the context of the free speech and fair comment necessary in an election campaign.

1. Candidates and their staffs should be conversant with and their campaign activities should conform to [Canon 4](#) of the Pennsylvania Code of Judicial Conduct and Formal Advisory [Opinion No. 99-1](#) of the Ethics Committee of the Pennsylvania Conference of State Trial Judges, of which copies are attached to these guidelines.
2. Candidates and their staffs should be conversant with and their campaign activities should conform to Rules 8.2 and 8.4 of the Pennsylvania Rules of Professional Conduct, of which copies are attached to these guidelines.
3. Candidates and their staffs should not make false or misleading statements concerning the qualifications or performance of themselves or of other candidates for judicial office.
 - A. Every effort should be made to refrain from making statements that might be subject to misinterpretation or distortion.
 - B. Every factual claim made by or on behalf of a candidate should be verified, particularly claims first made during the final four weeks of a campaign.
 - C. Factual claims regarding the qualifications or performance of candidates or their opponents should not omit or obscure information necessary to prevent misinterpretation or distortion.
4. Recognizing that the primary concern of the electorate in the selection of statewide judicial officers should be with the overall ability of a candidate to perform the judicial function in a competent, effective, independent, impartial, and honorable manner, candidates and their staffs should refrain from engaging in campaign advertising not directed to those concerns.
 - A. Campaign advertising should not imply or suggest that clients represented, actions taken, positions adopted, or arguments made by a candidate when acting in the capacity of an advocate are reflective of a candidate's ability to perform the judicial function.

B. Campaign advertising should not imply or suggest that the substance of the holdings of a candidate's previous judicial decisions and opinions are, by themselves, reflective of the candidate's ability to perform the judicial function, but the reasoning or the language used may be a proper subject for fair comment within the parameters of the Code of Judicial Conduct and the Pennsylvania Rules of Professional Conduct.

5. Recognizing that the performance of the judicial function requires the setting aside of personal emotions, bias, prejudice, and preferences, candidates and their staffs should make no promise other than the faithful performance of their duties if elected to judicial office.

6. Recognizing that impartiality and the appearance of impartiality are equally important to the successful administration of justice, campaign advertising should not imply or suggest that any candidate endorses, is sympathetic to, is indifferent to, or is antagonistic towards the requirements, interest, desires, or needs of any religious, ethnic, racial, cultural, political, economic, or any other group, faction, or class, but the existence of an actual bias may be a proper subject for fair comment.

7. Recognizing that the performance of the judicial function requires the administration of justice to all litigants in a nonpartisan manner based on the particular case and that a judge must neither be, nor may be seen to be, the spokesperson for any constituency or the advocate for any cause, campaign advertising should not imply or suggest that any candidate would tend to, or would actually, treat any class of litigant, witness, claim, violation of law, petition, application, or situation requiring judicial decision-making, in any particular manner.

8. A candidate 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.

9. A candidate may make statements concerning the change or modification of the court structure, calendar, or programs, or the improvement of the system for the administration of justice. However, any goals that cannot be accomplished without the concurrence of fellow judges, or action by the executive or legislative branches should be prominently qualified as such. Campaign advertising should not imply or suggest that the candidate alone can accomplish such goals.

10. Candidates should require their staffs and any supporters subject to their direction and control to fully observe and comply with the standards of campaign conduct expected of the candidate.

11. The Pennsylvania Bar Association's Judicial Campaign Advertising Committee will consider written, signed complaints relating to campaign advertising only from candidates involved in appellate elections, not from the general public or any other individual or source. Candidates shall be requested to sign a pledge to abide by these guidelines. A copy of the pledge is attached. Candidates and their staffs shall cooperate with the PBA Judicial Campaign Advertising Committee in connection with any alleged violation of these guidelines.

- A. The PBA Judicial Campaign Advertising Committee will address alleged violations of the guidelines by obtaining whatever documents, tapes, or videos of the matter in question it deems necessary and will thereafter make a preliminary determination as to whether there has been a violation. If the committee determines that a violation might have occurred, the committee will contact the candidate against whom the complaint was made for the purpose of advising of the complaint and attempting to obtain the candidate's cooperation in resolving the issue.
- B. Given the time constraints for reviewing complaints that allege campaign conduct violations, it is of the utmost importance that complainants submit with their complaint adequate evidentiary support for the allegations made in the complaint. Complaints that lack sufficient evidentiary support may be summarily dismissed by the Chair without further review. The committee may also seek from the complaining party such additional information as it deems necessary, within such time period as the committee may designate, and may conduct such additional review and investigation as it deems necessary.
- C. In order for there to be time for a meaningful and legitimate remedy, it is important that if a candidate intends to file a complaint regarding an ad that they do so as early after the ad runs as possible. Promptly filed claims may allow for a fuller range of compliance options than those filed close to Election Day. Furthermore, because of inherent time delays associated with the adjudication process, it might not be possible for the PBA Judicial Campaign Advertising Committee to implement a practical or effective remedy in all cases, particularly in the case of complaints filed just a few days before an election.
- D. If necessary, the PBA Judicial Campaign Advertising Committee will promptly investigate the possible violation and may take any of the following steps:
 - i. determine that no violation exists;
 - ii. request the responding candidate to withdraw or amend the problematic or offensive advertisement;
 - iii. request the responding candidate to issue a correction or retraction at the candidate's expense;
 - iv. direct the responding candidate to disavow any campaign material from any source not under his or her campaign staff's direction or control that is in

- violation of the guidelines;
- v. make public disclosure.

- E. Because of the nature of the complaint review process, the response time given to a responding candidate may be short. Absent exigent circumstances, for complaints filed more than two weeks prior to the election at issue the respondent candidate shall be invited to file a response within three days, exclusive of Saturdays, Sundays and holidays. For complaints filed within the two-week period preceding the election at issue, the PBA Judicial Campaign Advertising Committee will endeavor to grant a minimum of 24 hours for a response by the respondent candidate, but this time period may be inclusive of Saturdays, Sundays or holidays.
- F. Notice to the candidate's designated representative, at the address, email address, or telephone number provided by the candidate, shall be deemed notice to the candidate, and the notice shall be effective as of the time sent by the PBA Judicial Campaign Advertising Committee to the designated representative. Following receipt of a response from the candidate or the expiration of the time period for responding, whichever occurs first, the committee may then proceed with its determination of the merits of the complaint.

12. If it is determined that an ad is in violation, the PBA Judicial Campaign Advertising Committee will notify the offending party in writing with specific corrective action. A timeframe for correcting the ad will be given. The PBA Judicial Campaign Advertising Committee will notify complainant of decision and corrective action.

- A. If corrective action is taken within timeframe, no other public comment is made by the PBA Judicial Campaign Advertising Committee.
- B. If corrective action is not taken in accordance with the timeframe set forth, the Chair of the PBA Judicial Campaign Advertising Committee may take any of the following actions:
 - i. Notify the Chair of the Pennsylvania Bar Association Judicial Evaluation Commission to consider withdrawing the candidate's favorable rating;
 - ii. Make a public announcement concerning the noncompliance;
 - iii. Make a public announcement concerning the merits of the underlying complaint;
 - iv. Direct the candidate to take such additional corrective action as the PBA Judicial Campaign Advertising Committee deems appropriate;
 - v. Notify the Chair of the PBA Judicial Evaluation Commission to consider denying the candidate a favorable rating in the event the candidate again seeks an appellate position or is subject to a retention vote.

13. If a complaint is ruled frivolous or without merit, the PBA Judicial Campaign Advertising Committee may in its discretion publicly announce that ruling.

14. The activities of the PBA Judicial Campaign Advertising Committee, including any

complaint, investigation, communication or proposed remedy, are strictly confidential. Neither the responding candidate, any opponent, nor any spokesperson on their behalf, may disclose, directly or indirectly, or make public reference concerning the same, unless and until there is public disclosure by the PBA Judicial Campaign Advertising Committee or except as may be required by law or subpoena.

- A. If a candidate violates this confidentiality provision, the chair of the PBA Judicial Campaign Advertising Committee may take any of the following actions:
 - i. Notify the chair of the PBA Judicial Evaluation Commission to consider withdrawing the candidate's favorable rating;
 - ii. Make a public announcement concerning the violation;
 - iii. Make a public announcement concerning the merits of the underlying complaint;
 - iv. Notify the chair of the Pennsylvania Bar Association Judicial Evaluation Commission to consider denying the candidate a favorable rating in the event the candidate again seeks an appellate position or is subject to a retention vote.

- B. By signing the judicial candidate's pledge, candidates agree that they will release, hold harmless and indemnify the PBA Judicial Campaign Advertising Committee, its members, its staff and representatives, and the Pennsylvania Bar Association, from and for all claims, liability, damages, and causes of action which might arise from, or be related to, their decisions, their activities, or the performance of their duties.

- C. Only the Chair of the PBA Judicial Campaign Advertising Committee or his/her designee may communicate with the candidates or the media regarding a complaint or may issue statements on behalf of the committee. The Vice-Chair may act if the Chair is unavailable.