

precinct committeemen,¹ to coordinate signature collection with other candidates, and to participate in voter education and in get out the vote drives on behalf of a political party.

THE PROPOSED AMENDMENTS REFLECT AN APPROPRIATE COMPROMISE BETWEEN POLITICAL REALITY AND MAINTAINING A JUDICIARY OF UNQUESTIONED INTEGRITY, INDEPENDENCE, AND IMPARTIALITY.

Elected judges in Arizona operate in an often ethically confusing minefield with rules that are often inconsistent and unrealistic. For example, an elected judge can give money to another candidate (which is a clear indication of an endorsement); but cannot “like” that candidate’s Facebook page.² A justice of the peace can send out a joint Christmas card with their constable and can publicize an endorsement by a constable;³ but cannot collect petition signatures from the same booth at a festival with their constable. A recent informal ethics opinion recommended against two Arizona justices of the peace riding in the same car in a municipal Christmas parade together because doing so allegedly would give the

¹ Some of the basic political organization in Arizona is statutory. The statute uses the term “precinct committeeman.” Many prefer “precinct committeeperson.” It is an entry-level volunteer neighborhood level position in a political party. A.R.S. § 16-822. Precinct committeemen can vote at legislative district meetings and can serve as delegates to their county and to their state conventions. A.R.S. §§ 16-824, 16-826.

² *Use of Social Media and Electronic Media by Judges and Judicial Employees*, Ariz. Judicial Ethics Advisory Opinion 14-01 (August 4, 2014).

³ *Publicizing Campaign Endorsements by Constables*, Ariz. Judicial Ethics Advisory Opinion 18-04 (Aug. 6, 2018).

appearance of the judges endorsing each other's candidacy. In 2006, an Arizona judge received a warning because his campaign signs were attached to another candidate's using the same wire.

Other jurisdictions do a better job of striking an appropriate ethical balance between the realities associated with a campaign and the critical need to maintain professionalism in the judicial branch.⁴ For example, Kansas has a different set of ethical rules for judicial candidates running in partisan elections.⁵ A judge in Texas may “attend political events and express his or her views on political matters” as long as they neither endorse another candidate nor comment on pending or impending cases.⁶ Alabama's judicial ethics canons acknowledge “so long as judges are subject to nomination and election as candidates of a political party, 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 which, indirectly or directly, may be involved in his or her election or re-election.”⁷ In California, judges can even contribute “to a campaign fund for

⁴ See generally Raymond McKoski, The Political Activities of Judges: Historical, Constitutional, and Self Preservation Perspectives, 80 Univ. of Pitt. L. Rev. 245 (2018).

⁵ Kansas Code of Judicial Conduct Rule 4.2(D) (March 1, 2009).

⁶ Texas Code of Judicial Conduct, Canon 5(2) (May 28, 2021).

⁷ Alabama Canons of Judicial Ethics, Canon 7(A)(1). See also, Illinois Code of Judicial Conduct, Canon 7(B)(1)(b)(iv)(Allows judges to endorse or oppose other judicial candidates); Indiana Code of Judicial

distribution among judges who are candidates for reelection or retention.”⁸

The proposed amendments would not result in anything that drastic. Instead, they would only result in minimal commonsense changes. They would also help avoid the current problem of having an endorsed double standard.

An arguably unfair fact pattern presents itself in every election cycle. Agencies that administer judicial discipline generally do not have jurisdiction over non-judge candidates during the course of a campaign.⁹ If the non-judge candidate is also an attorney, then that candidate may be subject to sanctions from a state bar; but any ethical violations committed by a non-attorney judicial candidate are usually only addressed only if that candidate wins the election.¹⁰ Otherwise, a candidate and a judge can engage in identical political behavior (e.g. collecting signatures with other elected officials); but only the non-judge candidate can do so with impunity. While this double standard will always exist, the proposed amendments limit

Conduct, Comment 6 to Rule 4.2 (Judicial candidates “may group themselves into slates or other alliances to conduct their campaigns more effectively”); Louisiana Code of Judicial Conduct Canon 7(C)(3)(e)(Judicial candidates may “be included on a political ticket or endorsement”); Maine Code of Judicial Conduct Rule 4.2(B)(5) (Judicial candidates may “be listed on election materials along with the names of other candidates for elected office” and may “appear in promotions of the ticket”); New Mexico Code of Judicial Conduct § 21-402(F)(An elected judge may “seek, accept, and use endorsements from a partisan political organization”); New York Code of Judicial Conduct § 100.5(A)(2)(iv)(Has same language as Maine).

⁸ Advisory Comm. Commentary to Cal. Code of Judicial Ethics, Canon 5(A)(3).

⁹ Jeffrey Shaman, Steven Lubet & James J. Alfini, Judicial Conduct and Ethics 360 (2d ed. 1995).

¹⁰ Id. at 361.

the likelihood of it being applied to fact patterns that are arguably hyper-technical.

CONCLUSION

We are not requesting that judges in Arizona be authorized to run campaigns as if they were running for the state legislature or for Congress. We are only requesting that the Code grant elected judges a minimal amount of political freedom. According, we respectfully request that the proposed rules and comments be adopted.

RESPECTFULLY SUBMITTED, this 15th day of December 2021.

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Attachment:
Proposed Amendments

Attachment One Proposed Amendment

The Canon 4 of the Arizona Code of Judicial Conduct of would be amended as follows (new language in red):

RULE 4.6 Additional Guidance for Competitively Elected Judges

Judges who must qualify to run in a partisan primary and subsequent general election have some limited capacity for additional participation in the political process.

(A) Elected judges may serve as a precinct committeeman.

(B) Elected judges may coordinate petition signature collection with other candidates.

(C) Elected judges may participate in voter education efforts and in get out the vote drives on behalf of a political party.

Comment

1. Elected judges may service as a precinct committeeman in accordance with Arizona law. In that capacity, they may also serve as a delegate to a county and to a state statutory meeting or convention. Elected judges should not serve as delegates to a national political convention or hold any office in a political party (e.g. secretary for a legislative district, vice-chair of a county political party) other than precinct committeeman. Elected judges should also not serve as electors in the Electoral College.

2. Elected judges are required to collect signatures to qualify for the ballot. Elected judges may appear jointly, in the same booth at public events as other political candidates, to collect signatures on their own behalf (e.g. fair, craft festival). Elected judges should not collect signatures on behalf of other candidates. An elected judge may sign the front of other nominating petitions; but should not sign as a circulator of another candidate's nominating petitions.

3. Elected judges may participate in voter registration drives, in efforts to explain the platforms of political parties, and in efforts to encourage

registered voters to vote. Elected judges should not speak on behalf of or against another candidate; but they may appear jointly with other judges as long as any such appearance could not be reasonably considered to be an endorsement.