

Quick Tips: Judicial Campaign Ethics Summary

The Code of Judicial Ethics

There are a number of authorities that establish standards for ethical behavior by judges and those running for election to be a judge, including portions of the Code of Civil Procedure, the Government Code, and the regulations adopted under the Political Reform Act. In addition, the principal authority for most judicial ethics issues is the Code of Judicial Ethics. The code is adopted by the California Supreme Court and addresses conduct both on and off the bench. A fundamental purpose of the Code of Judicial Ethics is to ensure the integrity and impartiality of the process of judicial decision making and of judicial decisions.

The code also governs the behavior of attorneys running for election to judicial office. Rule of Professional Conduct 8.2(b) (formerly rule 1-700) specifically makes canon 5 of the Code of Judicial Ethics applicable to attorneys. Canon 5 addresses conduct by candidates for judicial office.

Campaign Funds

The amount a judicial candidate may accept from a donor is unlimited as long as it complies with all of the other rules discussed in this section.

Any cash donation of \$100 and over is improper, and must be returned to the donor; anonymous cash donations of \$100 and over must be forwarded to the office of the Secretary of State for deposit in the General Fund. (Gov. Code, §§ 84300(a), 84304; *Inquiry Concerning Brehmer* (2012) Com. Jud. Performance; FPPC Campaign Disclosure Manual 2 (August 2018) ch. 4.)

A judicial candidate may make a personal loan to his or her campaign committee if the funds are deposited in the campaign account and the loan is properly reported to the FPPC on FPPC Form 460. (Gov. Code, §§ 84216.5, 85201.)

It is improper to place campaign loans or contributions in the candidate's personal account. (See Gov. Code, § 85201.)

The source of all loans to the campaign must be accurately reported. (Gov. Code, § 84211.)

It is a misdemeanor for a judicial candidate to directly and knowingly solicit a contribution from a court employee. (Gov. Code, § 3205.)

A judge's failure to appropriately disclose the sources of contributions to his or her campaign and/or the amounts of expenditures made by the campaign has been found to constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and the judge may be disciplined for this failure. (*Inquiry Concerning Brehmer* (2012) Com. Jud. Performance.)

The FPPC has specific mandated forms and rules concerning timing and content of reporting. Because the system of disclosure is relatively complicated, many judicial candidates hire professionals to handle campaign fundraising, expenditures, and reporting.

Judicial candidates have an affirmative responsibility to supervise campaign staff and may be disciplined for failure to do so. (Cal. Code Jud. Ethics, canon 5B(2); Gov. Code, § 84213; *Inquiry Concerning Brehmer* (2012) Com. Jud. Performance.)

A judge may continue fundraising to retire a campaign debt, provided that required reports are submitted to the FPPC. (FPPC Campaign Disclosure Manual 2 (August 2018) ch. 11.)

A judicial candidate is NOT permitted to pay campaign expenses from his or her personal bank account. (Gov. Code, § 85201.)

No campaign expenditure of \$100 or more may be paid in cash. (Gov. Code, § 84300(b).)

Attorney fees may not be paid with campaign funds with the following exceptions:

- Initiating or defending a legal action to halt defamation;
- Defending an action for violation of campaign disclosure or election laws; or
- Litigating an action challenging the wording of the ballot statement or designation.

(Gov. Code, § 89514.)

Campaign funds may be used to pay for reasonable costs associated with an election night celebration, regardless of whether the candidate wins the election. (Gov. Code, § 89513(f).)

Government Code § 89519 and FPPC regulation 18525 specify how leftover campaign funds may be used.

Campaign Conduct

Candidates for judicial office and judges are barred from endorsing nonjudicial candidates. (Cal. Code Jud. Ethics, canon 5A(2).)

Every candidate for judicial office shall complete a judicial campaign ethics course approved by the Supreme Court no earlier than one year before or no later than 60 days after either the filing of a declaration of intention by the candidate, the formation of a campaign committee, or the receipt of any campaign contribution, whichever is earliest. (Cal. Code Jud. Ethics, canon 5B(3).)

An attorney judicial candidate who is or has served as a temporary judge may not use his or her title or service as a description of the lawyer's current or former principal profession, vocation, or occupation on a ballot designation for judicial or other elected office. (Cal. Code Jud. Ethics, canon 6D(9).)

A judge is prohibited from using court resources in furtherance of his or her campaign. (Gov. Code, § 8314.)

A judge should conduct all election activities outside of court facilities. (See, e.g., Cal. Judges Assn., Judicial Ethics Update (Nov. 2010) p. 5; Cal. Judges Assn., Judicial Ethics Update (1997) p. 10.)

Campaign Speech

Candidates for judicial office are prohibited from making any statements that commit them with respect to cases, controversies, or issues that are likely to come before the courts. (Cal. Code Jud. Ethics, canon 5B(1)(a).)

A candidate for judicial office is prohibited from making false or misleading statements about any facts concerning himself or herself or any other applicants for judicial office. (Cal Code Jud. Ethics, canon 5B(1)(b).)

A candidate for judicial office must review and approve the content of all campaign statements and materials and take reasonable measures to prevent misrepresentations being made by third parties. (Cal. Code Jud. Ethics, canon 5B(2).) A candidate for judicial office shall take appropriate corrective action if he or she learns of any misrepresentations made in his or her campaign statements or materials. (Cal. Code Jud. Ethics, canon 5B(2).)

A candidate for judicial office shall take reasonable measures to prevent – and ensure that appropriate corrective action is taken if he or she learns of any – misrepresentations being made in his or her support by third parties. (Cal. Code Jud. Ethics, canon 5B(2).)

A current judge who is a candidate for judicial office must not comment publicly on any case that is pending or impending before any court. (Cal. Code Jud. Ethics, canon 3B(9).)

Disqualification and Disclosure

A judge is disqualified if the judge has received a campaign contribution in excess of \$1,500 from a party or lawyer in the proceeding and the contribution was received in support of the judge's last election if the last election was within 6 years or it was received in anticipation of an upcoming election. (Code Civ. Proc., § 170.1(a)(9); Cal. Code Jud. Ethics, canon 3E(1).)

A judge may be disqualified for contributions of less than \$1,500 if Code of Civil Procedure section 170.1(a)(6)(A) applies.

A judge who is a candidate for judicial office must make disclosures on the record regarding campaign contributions from parties and lawyers appearing before the judge. The judge has discretion to select the manner of disclosure, but must avoid the appearance that the judge is soliciting campaign contributions. (Cal. Code Jud. Ethics, canon 3E(2).)

A judge shall disclose at the earliest reasonable opportunity after receiving each contribution or loan. This duty commences no later than one week after receipt of the contribution and for two years after taking office or receipt of the contribution or loan, whichever is later. (Cal. Code Jud. Ethics, canon 3E(2)(b)(iii).)