

**South Dakota
Special Committee
on Judicial Election
Campaign
Intervention**

500 East Capitol Avenue
Pierre, SD 57501-5070



Committee Members:

Retired Chief Justice
David Gilbertson (Chair)
Brookings, South Dakota
Governor Dennis Daugaard
Garretson, South Dakota
Honorable Kathleen Trandahl
Winner, South Dakota
J. Crisman Palmer
Rapid City, South Dakota
Richard Casey
Sioux Falls, South Dakota
Mark Roby
Watertown, South Dakota
Bernie Hunhoff
Yankton, South Dakota
Spencer Hawley
Brookings, South Dakota
Jacqueline Sly
Rapid City, South Dakota

General Legal Counsel:

Greg Sattizahn, Esq.
Pierre, South Dakota

August 11, 2022

Opinion #22-01

[REDACTED]
RE: Campaign Finance Disclosure Reports

Dear [REDACTED]:

You have requested an advisory opinion from the Special Committee on Judicial Election Campaign Intervention as follows:

How does a judicial candidate comply with the requirement that contributions to their campaign are not known to them in light of the reporting requirements for a campaign to the Secretary of State's Office?

Canon 5C(2) provides that a judicial candidate subject to public election may establish a campaign committee to manage and conduct the campaign for judicial office. The candidate is ultimately responsible for ensuring the campaign committee complies with the law surrounding the judicial campaign which would include fundraising. Canon 5(C)(2)(a). As it relates to fundraising, Canon 5(2)(C)(2) further provides in relevant part:

(b) A judicial candidate subject to public election shall direct his or her campaign committee:

(i) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed one-thousand dollars (\$1,000) in the election year per individual or organization;

(iii) that in addition to complying with all applicable statutory requirements for disclosure of campaign contributions, candidates * or candidates' campaign committees shall comply with all applicable statutory campaign reporting requirements;

The Committee is a non-partisan group dedicated to preserving the dignity and integrity of this state's judicial system. We believe judicial candidates should aspire to the highest ethical standards to promote public trust and confidence in the fairness and impartiality of this state's courts. We do not endorse candidates, and this opinion is not intended to announce support for, or opposition to, any candidate. Instead, we strive to educate the candidates, the media, and the public about judicial campaign conduct.

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(v) not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused such solicitation. The candidate may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions.

(c) A judicial candidate subject to public election may 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.

COMMENTARY

Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions except to the extent allowed by Section 5C(2)(c). See Section 5A(1)(e). Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees. For instance, under current law candidates should advise their campaign committee to follow the reporting requirements contained in SDCL §12-27-22 and SDCL 12-27-24 thru 28. Such reports must be filed with the Secretary of State on the dates specified. The candidates* or candidates' campaign committees shall also comply with SDCL §12-27-15. At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, but not to exceed one-thousand dollars in the election year per individual or organization. The candidate must also instruct the campaign committee to comply with all applicable requirements of Section 5C(2).

Candidates' campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Contributions for a campaign for judicial office should not be knowingly solicited or accepted from a party, or one employed by, affiliated with or a member of the immediate family of a party, to litigation that (a) is before the candidate, (b) may reasonably be expected to come before the candidate if elected, or (c) has come before the candidate so recently that the knowing solicitation or acceptance of funds may give the appearance of improper use of the power or prestige of judicial office. Similarly, contributions may not be knowingly solicited or

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accepted from any firm, corporation or other organization that has as one of its purposes the promotion of one side of a legal issue which may reasonably be expected to come before the candidate if elected. Contributions may be solicited and accepted from lawyers (including lawyers having cases before, or which may come before, the candidate), provided that the solicitation makes no reference, direct or indirect, to any particular pending or potential litigation.

As a result of the foregoing, it is the Committee's opinion that a candidate is required to take all reasonable measures to ensure that information concerning campaign contributions required to be reported to the Secretary of State's Office is not disclosed to the candidate and the candidate is also ethically bound not to seek out that information despite the fact it is publicly available through the Secretary of State's public information system. See Matter of Discipline of Hopewell, 507 NW2d 911, 915 (SD 1993). A candidate should ensure their campaign committee is aware of this prohibition and institute steps to screen the candidate from any information that the candidate should not become aware of pursuant to Canon 5 of the Code of Judicial Conduct.

While judicial candidates have the ultimate responsibility to ensure judicial ethics and rules are undertaken within the bounds of these rules not only by the candidate but also by the candidate's committee, it has to be done with the valid limitation that the candidate shall not know who and the amount of individual contributions. Even if that information is available to the public, the candidate has an ethical obligation not to access it to avoid an indirect violation of Canon 5(2).

With this letter, the Committee considers this matter concluded and has elected to treat this as a formal opinion. This opinion, however, is advisory in nature and should be regarded as such.

Sincerely,

David Gilbertson, Retired Chief Justice
For the Committee