

**SUPREME COURT OF PENNSYLVANIA  
Minor Court Rules Committee**

**NOTICE OF PROPOSED RULEMAKING**

**Proposed Amendment of Rule 4.2 of the Rules Governing Standards  
of Conduct of Magisterial District Judges**

The Minor Court Rules Committee is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges addressing political and campaign activities of judicial candidates in public elections for the reasons set forth in the accompanying Publication Report. Pursuant to Pa.R.J.A. No. 103(a)(1), the proposal is being published in the *Pennsylvania Bulletin* for comments, suggestions, or objections prior to submission to the Supreme Court.

Any reports, notes, or comments in the proposal have been inserted by the Committee for the convenience of those using the rules. They neither will constitute a part of the rules nor be officially adopted by the Supreme Court.

The Committee invites all interested persons to submit comments, suggestions, or objections in writing to:

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All communications in reference to the proposal should be received by **September 22, 2020**. E-mail is the preferred method for submitting comments, suggestions, or objections; any e-mailed submission need not be reproduced and resubmitted via mail. The Committee will acknowledge receipt of all submissions.

By the Minor Court Rules Committee,

Margaret A. Hunsicker  
Chair

Rule 4.2 Political and Campaign Activities of Judicial Candidates in Public Elections

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(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than immediately after the General Election in the year prior to the calendar year in which a person may become a candidate for such office:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly endorse or speak on behalf of, or publicly oppose or speak in opposition to, candidates for the same judicial office for which he or she is a judicial candidate, [or] publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot, **or publicly endorse or speak on behalf of candidates for the office of magisterial district judge within the same judicial district;**

(4) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(5) seek, accept, or use endorsements from any person or organization;

(6) contribute to a political organization or candidate for public office;

(7) identify himself or herself as a member or candidate of a political organization; and

(8) use court facilities for the purpose of taking photographs, videos, or other visuals for campaign purposes to the extent such facilities are available on an equal basis to other candidates for such office.

...

**Comment**

*General Considerations*

[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than immediately after the General

Election in the year prior to the calendar year in which a person may become a candidate for such office.

[2] Despite paragraph (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4) and (12), and Rule 4.2(C), paragraph (3).

[3] In public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[5] For purposes of paragraph (B)(3), candidates are considered to be a candidate for the same judicial office if they are competing for a single judgeship or for one of several judgeships on the same court to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign. **Additionally, the phrase "candidates for any other elective judicial office appearing on the same ballot" means candidates who appear together on the paper ballot or, in the case of electronic voting terminals, appear together on the electronic ballot. However, candidates for magisterial district judge may publicly endorse or speak on behalf of other candidates for magisterial district judge within the same judicial district, as defined by 42 Pa.C.S. § 901(a). Cf., Code of Judicial Conduct, Rule 4.2(B)(3).**

#### *Statements and Comments Made During a Campaign for Judicial Office*

[6] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (C)(3) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[7] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position,

experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (C)(3) or (C)(4), or Rule 4.1, paragraph (A)(12), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[8] Subject to paragraph (C)(4), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[9] Paragraph (C)(4) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

**SUPREME COURT OF PENNSYLVANIA  
Minor Court Rules Committee**

**PUBLICATION REPORT**

**Proposed Amendment of Rule 4.2 of the Rules Governing Standards  
of Conduct of Magisterial District Judges**

The Minor Court Rules Committee (“Committee”) is considering proposing to the Supreme Court of Pennsylvania the amendment of Rule 4.2 of the Rules Governing Standards of Conduct of Magisterial District Judges (“Conduct Rules”). The amendment of the Rule and Comment relates to political and campaign activities of candidates for magisterial district judge in public elections.

Currently, Conduct Rule 4.2(B)(3) provides, among other things, that a candidate for elective judicial office may, unless prohibited by law and under certain time parameters, “publicly endorse or speak on behalf of candidates for any other elective judicial office appearing on the same ballot.” The Committee received a request to examine the phrase “on the same ballot” in that Rule, and was advised that there were differing interpretations of the phrase. By one interpretation of the phrase, magisterial district judge candidates could endorse magisterial district judge candidates running in the same election cycle, *i.e.*, a candidate for magisterial district judge endorsing a candidate for magisterial district judge running in another magisterial district. Conversely, the competing interpretation is quite literal, meaning that the candidates must actually appear on the ballot together.

The Supreme Court recently adopted amendments to Rule 4.2 of the Code of Judicial Conduct (governing appellate court judges, common pleas court judges, judges of the Philadelphia Municipal Court except for the Traffic Division, and senior judges of those courts) that defines the phrase “candidates for any other elective judicial office appearing on the same ballot” to mean “candidates who appear together on the paper ballot or, in the case of electronic voting terminals, appear together on the electronic ballot.”<sup>1</sup> The Committee is considering recommending to the Supreme Court an amendment to Comment [5] of Conduct Rule 4.2 to add that language.

However, adoption of this new clarifying language means that candidates for magisterial district judge could never endorse each other since each magisterial district is served by one magisterial district judge. One would not expect a candidate for magisterial district judge to endorse his or her opponent – the only other person on the ballot for that position. In contrast, a candidate for magisterial district judge could appear on the same ballot as judicial candidates for the courts of common pleas and statewide

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<sup>1</sup> Order of December 20, 2019, No. 529, Judicial Administration Docket.

appellate courts. Under this new interpretation, a candidate for magisterial district judge could endorse candidates for the statewide appellate courts or for the courts of common pleas in his or her county, but could never endorse a candidate for magisterial district judge.

The Committee agrees that there are benefits to maintaining consistency between the two sets of rules governing judicial conduct. However, there are observable differences between the election process for magisterial district judges and judges of the statewide appellate courts and common pleas courts. Magisterial district judges run for election every six years, while statewide and common pleas court judges run for retention every ten years following their initial election. See Pa. Const., art. V, §§ 13, 15. Judicial candidates for statewide and common pleas courts are able to run as a slate of judicial candidates, while the literal interpretation of the Rule would appear to prohibit candidates for magisterial district judge from a similar approach.

Therefore, in addition to the proposed amendment relative to the “same ballot” language, the Committee is also considering proposing an amendment to Conduct Rule 4.2(B)(3) and Comment [5] to permit a candidate for magisterial district judge to publicly endorse or speak on behalf of candidates for the office of magisterial district judge within the same judicial district subject to the other provisions of the Rule. Judicial districts are defined by 42 Pa.C.S. § 901(a).

Permitting candidates for magisterial district judge to endorse other candidates for magisterial district judge within the same judicial district could have the effect of increasing the volume of political activity in elections for magisterial district judge; some may argue the case for less political activity in judicial elections. However, the Committee believes this proposal provides an adequate balancing of interests, as endorsement privileges are limited to the candidate’s judicial district. The Committee invites all comments, concerns, and suggestions regarding this proposal.