

INTRODUCTION

The Minor Court Rules Committee is planning to recommend that the Supreme Court of Pennsylvania revise Rule 15 of the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges. The Committee has not yet submitted this proposal for review by the Supreme Court of Pennsylvania.

The following explanatory Report highlights the Committee's considerations in formulating this proposal. The Committee's Report should not be confused with the Committee's Notes to the rules. The Supreme Court does not adopt the Committee's Notes or the contents of the explanatory reports.

We request that interested persons submit written suggestions, comments, or objections concerning this proposal to the Committee through counsel,

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no later than November 5, 2010.

October 2, 2010

BY THE MINOR COURT RULES COMMITTEE:

Mark A. Bruno, Chair

*Pamela S. Walker
Counsel*

REPORT

Proposed Amendments to the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges

GENERAL PROHIBITION ON PARTISAN POLITICAL ACTIVITY AND PERMITTED POLITICAL ACTIVITY PRIOR TO INITIATION OF CAMPAIGN

I. Background

The Minor Court Rules Committee (“the Committee”) was contacted by the chair and vice-chair of the Ethics and Professionalism Committee of the Special Court Judges Association of Pennsylvania with a request to discuss possible amendments to Rule 15 of the Pennsylvania Rules Governing Standards of Conduct for Magisterial District Judges (“Rule 15”) to clarify the point in time at which magisterial district judges and candidates for such office may begin undertaking otherwise prohibited political activity prior to the formal start of campaign activities. While considering those amendments, the Committee also examined the undefined term “partisan political activity,” and drafted a non-inclusive definition to clarify the prohibition on such activity.

II. Discussion

The Committee reviewed Rule 15C, which provides that “[m]agisterial district judges or candidates for such offices may *in the year they run for office*” engage in otherwise prohibited political activities. (Emphasis added.) The Committee found the phrase “in the year they run” ambiguous, and agreed that setting a date certain for the permissible initiation of political activities would clarify the matter for both incumbents and candidates.

During its discussion of Rule 15, the Committee examined the term “partisan political activity” as used in Rule 15B(2), and noted that it was not a defined term. Accordingly, the Committee endeavored to draft a non-inclusive definition of “partisan political activity” to aid magisterial district judges in identifying proscribed conduct.

III. Proposed Rule Changes

To address the issues discussed above, the Committee proposes adding a definition of “partisan political activity” to Rule 15, and amending the permitted period for engaging in political activities to “immediately following the General Election in the year prior to the calendar year in which they may become a candidate for such office.” However, the Committee does not intend for these changes to promote the ability of a magisterial district judge or candidate to announce candidacy for office, to form a committee, or to

raise funds prior to the date prescribed by law.

Rule 15. Public Office and Political Activity

A. Magisterial district judges shall not hold another office or position of profit in the government of the United States, the Commonwealth or any political subdivision thereof, except in the armed services of the United States or the Commonwealth.

B. (1) **As used in this paragraph, “partisan political activity” includes, but is not limited to, serving as a committee-person, working at a polling place on Election Day, performing volunteer work in a political campaign, making political speeches, making or soliciting contributions for a political campaigns, political action committee or organization, attending political gatherings, dinners or other functions, but shall not include involvement in non-partisan or public community organizations or professional groups.**

(2) Magisterial district judges or a candidate for such office shall not:

(a) hold office in a political party or political organization or publicly endorse candidates for political office.

(b) engage in partisan political activity ~~or deliver political speeches, make or solicit political contributions (including purchasing tickets for political party dinners or other functions) or attend political or party conventions or gatherings,~~ except as authorized in subdivision C of this rule. Nothing herein shall prevent magisterial district judges or candidates for such offices from making political contributions to a campaign of a member of their immediate family.

C. Magisterial district judges or candidates for such offices may ~~in the year they run for office,~~ attend political or party conventions or gatherings, speak to such gatherings or conventions on their own behalf, identify themselves as members of a political party, and contribute to ~~their own campaign,~~ a political party or political organization (including purchasing tickets with their own personal funds for political party dinners or other functions) **beginning immediately following the General Election in the year prior to the calendar year in which they may become a candidate for such office. Magisterial district judges or candidates for such offices may contribute to their own campaigns at such time as permitted by law.**

D. With respect to their campaign conduct, magisterial district judges or candidates for such office shall:

(1) maintain the dignity appropriate to judicial office, and shall encourage members of their family to adhere to the same standards of political conduct that apply to them.

(2) prohibit public officials or employes subject to their direction or control from doing for them what they are prohibited from doing under this rule; and except to the extent authorized under subdivision D(4) of this rule shall not allow any other person to do for them what they are prohibited from doing under this rule.

(3) not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; make statements that commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or misrepresent their identity, qualifications, present position, or other fact.

Commentary: The United States Supreme Court in *Republican Party of Minnesota v. White*, 122 S.Ct. 2528 (2002) concluded that a canon of judicial conduct prohibiting judicial candidates from “announcing their views on disputed legal or political issues” is violative of the First Amendment of the United States Constitution.

(4) not themselves solicit or accept campaign funds, or solicit publicly stated support, but they may establish committees of responsible persons to secure and manage the expenditure of funds for their campaign, **including the purchase of tickets for political party dinners or other functions**, and to obtain public statements of support for their candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from lawyers. Candidates' committees may solicit funds for their campaign no earlier than thirty (30) days prior to the first day for filing nominating petitions, and all fundraising activities in connection with such campaign shall terminate no later than the last calendar day of the year in which the election is held. Candidates should not use or permit the use of a campaign contribution for the private benefit of themselves or members of their family.

E. Magisterial district judges shall resign their office when they become candidates either in a party primary or in a general election for a non-judicial office.

Note: This rule is derived from former Rule 15 and from Canon 7 of the American Bar Association and Pennsylvania Supreme Court Code of Judicial Conduct, **as well as Guidelines Regarding Political Activity By Court-Appointed Employees, see 204 Pa. Code 29.471 -.474**. This rule prohibits only political activity that is partisan in nature and consequently there is no objection to magisterial district judges becoming engaged in political activity of a public service nature, such as, for example, political activity in behalf of measures to improve the law, the legal system or the administration of justice.

Nothing in paragraph C is intended to promote the ability of a magisterial district judge or candidate for such office to announce candidacy for office, form a committee or raise funds prior to the date prescribed by law.