

IDAHO JUDICIAL COUNCIL

ELECTIONS: FREQUENTLY ASKED QUESTIONS

The following FAQ's may provide general information to persons interested in judicial candidacy. The questions and answers below are intended to give guidance pursuant to the Idaho Code of Judicial Conduct. The following FAQ's have been adapted from Pennsylvania's Judicial Ethics Committee to conform with Idaho Law. The Canons as discussed below are a part of the Idaho Code for Judicial Conduct, adopted November 30, 2012, effective January 1, 2013,

<http://www.judicialcouncil.idaho.gov/Idaho%20Code%20of%20Judicial%20Conduct.pdf>, accessed July 28, 2015.

1. What activities may I engage in prior to filing as a candidate?

You may gauge whether your campaign would be viable. Be aware that as soon as you publicly declare your candidacy or file a declaration of candidacy with the secretary of state, the judicial canons apply. (See Question 4.) Language such as "I am thinking of running for judicial office, do you think I would be a proper candidate?" would not invoke candidacy. However, language such as "I am running for judicial office," would invoke the judicial canons.

2. May I contact political officials before I declare my candidacy?

There is no specific restriction on meeting with political officials prior to declaring your candidacy; however, be aware that Canon 5A(4)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court - specifically a candidate shall not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office[.]"

3. When may I become a candidate?

i. Magistrate Judge: To be appointed to the office of magistrate judge a person must, at the time of such appointment, meet all of the following qualifications: (a) Be at least thirty (30) years of age; (b) Be a citizen of the United States; (c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such appointment; (d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such appointment; and (3) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least five (5) continuous years immediately preceding such appointment. Idaho Code § 1-2206.

ii. District Court Judge: To be elected to the office of district judge a person must, at the time of such election, meet all of the following qualifications: (a) Be at least thirty (30) years of age; (b) Be a citizen of the United States and an elector in the judicial district in which elected; (c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such election; (d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such election; and (3) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least two (10) continuous years immediately preceding such election. Idaho Code § 34-616.

Additionally, Article V, Section 12 of the Idaho Constitution requires that “[e]very judge of the district court shall reside in the district for which he is elected.”

iii. Supreme Court Justice and Judge of the Court of Appeals: To be elected or appointed to the office of justice of the supreme court or judge of the court of appeals a person must, at the time of such election or appointment, meet all of the following qualifications: (a) Be at least thirty (30) years of age; (b) Be a citizen of the United States and an elector of the state of Idaho; (c) Have been a legal resident of the state of Idaho for at least two (2) continuous years immediately preceding such election or appointment; (d) Have been in good standing as an active or judicial member of the Idaho state bar for at least two (2) continuous years immediately preceding such election or appointment; and (3) Have held a license to practice law or held a judicial office in one (1) or more jurisdictions for at least ten (10) continuous years immediately preceding such election or appointment. Idaho Code § 34-615 and § 1-2404.

There is no time restriction as to when a person may become a candidate. Canon 5C(2) provides that a candidate’s committees may solicit contributions and public support for the candidate’s campaign no earlier than one year before election and no later than [90] days after the last election in which the candidate participates during the election year.

4. When do I become a candidate?

According to the Terminology of the Code of Judicial Conduct, a person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support. For the purpose of defining candidacy, “an incumbent shall be presumed to be a candidate in the subsequent election for his or her office” until the deadline to file a declaration of candidacy has expired. Idaho Code § 67-6602(a)(3).

For all judicial candidates, pursuant to I.C. § 34-704, § 34-705 a declaration of candidacy must be filed with the Secretary of State within the time limits set. Withdrawal of candidacy is governed by Idaho Code § 34-717.

Pursuant to Idaho Code §§ 34-615(3)(4)-616(3)(4), every candidate for a district or appellate court position must file a declaration of candidacy with the secretary of state prior to the primary election. Additionally, each candidate for the Supreme Court or Court of Appeals who files a declaration of candidacy must pay a filing fee of three hundred dollars (\$300). A candidate for a District Court must pay a filing fee of one hundred and fifty dollars (\$150).

See http://www.sos.idaho.gov/elect/candidat/2016/2016_Statewide%20Judicial_Letter_Packet.pdf

Additionally, each judicial candidate must file with the Secretary of State an “Appointment and Certification of Political Treasurer for Candidates and Committees” (Form C-1) pursuant to Idaho Code section 67-6603(c)(1). By this form, the candidate provides the Secretary of State with information about the candidate’s committee and committee treasurer for the purposes of soliciting campaign contributions and endorsements.

See http://www.sos.idaho.gov/ELECT/Finance/acro4/C_1.pdf

Magistrate judges standing for retention must file a declaration of candidacy prior to the general election and a forty dollar (\$40) filing fee with the county clerk of his or her resident county. Idaho Code § 1-2220. Reporting requirements for magistrate retention elections are set out in Idaho Code § 1-2220A.

As to all judges see I.C. § 34-716, § 34-717 generally.

5. May I run for more than one position?

No. Under Idaho Code § 34-903(5), “[n]o candidate’s name may appear on a ballot for more than one” judicial office.

6. May I personally circulate my nominating petition?

Yes, pursuant to Idaho Code § 34-626, a candidate may personally circulate his or her petition in lieu of paying a filing fee. The candidate should be aware of the Canon 5C(2) limitation that a candidate’s committee may not solicit public support for the candidate’s campaign prior to one year before the election, and that the candidate may not personally solicit public statements of support.

7. May I circulate other candidates’ nominating petitions?

No. You may not publicly endorse or publicly oppose another candidate for public office pursuant to Canon 5A(1)(b).

8. When may I raise money for my campaign?

Canon 5C(2) provides that a candidate's committee may solicit contributions and public support for the candidate's campaign no earlier than one year before election and no later than 90 days after the last election in which the candidate participates during the election year. Such committees may solicit and accept reasonable campaign contributions.

9. May I personally solicit campaign contributions?

No. Pursuant to Canon 5C(2), a candidate may not solicit campaign contributions in person, but may establish a committee to solicit and accept reasonable campaign contributions and public support. The commentary of 5C(2) explains that a candidate must instruct his or her committee to only accept reasonable campaign contributions. Except as required by law, a candidate's judicial election committee should not disclose the names of contributors to judicial campaigns and judicial candidates.

10. What qualifies as a contribution?

A contribution includes any "advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution[.]" Idaho Code § 67-6602(3)(c).

11. Is it necessary to form a campaign committee?

Essentially, yes. Canon 5C(2) prohibits candidates from personally soliciting campaign contributions or public support. Arguably a candidate is not required to form a campaign committee in order to run; however, the candidate could not receive any form of financial support or endorsements without a committee.

12. May I run as a write-in candidate?

Yes, if at least twenty-eight (28) days before the election, you file a declaration of intent with the secretary of state indicating what office you want to run for and that you are "legally qualified to assume the duties of said office if elected." Idaho Code § 34-702A.

13. How do I form and organize a campaign committee?

Pursuant to Canon 5C(2), a candidate may establish committees of "responsible persons" to conduct campaigns for the candidate. All candidates must certify a political treasurer. Candidates must file an Appointment and Certification of Political Treasurer (C-1 form) prior to receiving any contributions or making any expenditures. The C-1 form is available from and must be filed with the Secretary of State's Office

14. What authority does my campaign committee have?

Canon 5C(2) provides that a candidate's committee may solicit contributions and public support for the candidate's campaign, and may accept reasonable campaign contributions and public support from lawyers. The committee may conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Pursuant to Canon 5A(4), a candidate is responsible for instructing his or her committee to comply with other sections on the Code that the candidate must comply with himself or herself, e.g., may not make pledges or promises of conduct in office or make statements that appear to commit the candidate to a particular result regarding issues that are likely to come before the court.

15. What is the committee treasurer responsible for?

The treasurer must keep detailed accounts of contributions and expenditures that are "current within not more than seven (7) days after the date" of receiving the contribution or making the expenditure. Idaho Code § 67-6604(a). The treasurer must retain these records for at least one (1) year after the election date or the date the last supplemental statement was filed under Idaho Code § 67-6609, whichever is later. Idaho Code § 67-6604(b), (c).

If the campaign receives no contributions or makes no expenditures, the treasurer or committee must file a statement to that effect with the secretary of state. Idaho Code § 67-6609. More information on a treasurer's key responsibilities is available on the Idaho Secretary of State's website at: <http://www.sos.idaho.gov/elect/finance/faq/treasurer.html>.

More information on campaign finance disclosure, including online reporting and forms, is available on the Idaho Secretary of State's website at: <http://www.sos.idaho.gov/elect/finance/index.html>.

16. May I serve as chair or treasurer of my committee?

No. Canon 5C(2) prohibits a judicial candidate from personally raising or soliciting funds. Although the Idaho Code allows a candidate to be his or her own treasurer, to do so would violate the Judicial Code.

17. May a spouse or family member serve as treasurer of my committee?

While there is no express prohibition against appointing a family member as treasurer on a campaign committee, a candidate should refer to Canon 5A(3), which provides that a candidate shall encourage members of his or her family to adhere to the same standards of political conduct as apply to the candidate. Additionally, Canon 5C(2) expressly prohibits the candidate or his or her committee from using campaign contributions for the private benefit of the candidate or others.

18. May I personally seek endorsements of my campaign?

This is an open question. Canon 5C(2) provides that a candidate for public election may establish a committee and such committee “may solicit and accept reasonable campaign contributions . . . and obtain public statements of support for his or her candidacy.” The provision specifically prohibits a candidate from personally seeking contributions, but does not similarly prohibit the candidate from obtaining public statements of support. A candidate seeking an appointment to judicial office may, pursuant to Canon 5B(2)(a)(ii), “seek support or endorsement for the appointment from organizations that regularly make recommendations for appointment to the office, and from individuals.” It would seem that a candidate seeking an elective position would have at least this same ability. Although the ABA Model Code of Judicial Conduct has not yet been adopted in Idaho, Rule 4.2B(5) of the Model Code allows a candidate for elective judicial office to “seek, accept, or use endorsements from any person or organization other than a partisan political organization.”

19. May my committee seek endorsements of my campaign?

Yes. Canon 5C(2) permits a candidate’s committee to solicit and accept public statements of support.

20. May I campaign or advertise with other judicial candidates?

No. Canon 5A(1)(a)(b) prohibits a judicial candidate from endorsing another candidate for public office. Although Canon 5C(1)(a)(iv) states that a judicial candidate may “publicly advocate or publicly endorse the election of his or her opponent(s),” the candidate may not endorse or advertise with other judicial candidates.

21. May I endorse, campaign, or advertise with non-judicial candidates?

No. Pursuant to Canon 5A(1)(a)(b), a judicial candidate shall not publically endorse or publically oppose another candidate for public office. In Idaho, this would be seen as an endorsement of those persons. A judicial candidate must not align himself or herself with a candidate for another public office, make pledges or promises of conduct in office or make statements that appear to commit the judicial candidate to a particular result regarding an issue likely to come before the court.

22. May I have a joint committee with other judicial candidates?

No. A judicial candidate may not have a joint committee with another judicial or other candidate. While the Idaho Code may allow a candidate to share a political treasurer with another candidate, having a joint committee with another candidate would violate Canon 5A(1)(a)(b), which provides that a judicial candidate may not publically endorse another candidate for public office.

23. May we file jointly?

No. Every candidate and his or her committee must file his or her own campaign finance reports. See Idaho Code § 67-6607.

24. May I wear a robe in any of my advertisements?

Only an incumbent judge may wear a robe in his or her political advertisements, all other candidates may not.

25. What if I have a question about a specific advertisement?

The Judicial Council may give guidance as to content of ads if asked. Candidates must conform to the canons in all advertising material. Remember that Canon 5A(4)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court—specifically a candidate shall not “make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office[.]”

26. What rules apply to advertising expenditures?

When a person makes expenditures to finance “communications expressly advocating the election, approval or defeat of a candidate . . . through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing, or any other type of general public political advertising, the person responsible for [the] communication shall be clearly indicated on [the] communication.” Idaho Code § 67-6614A.

Additionally, newspapers, periodicals, broadcasting stations, direct mailing companies, printers and advertising agencies that accept expenditures from political treasurers must keep current records of the amounts paid by each campaign, committee, candidate, or treasurer. Idaho Code § 67-6613.

27. May I be on a slate card that lists all candidates of my party?

No. The Idaho State Constitution Article VI, section 7 provides that the selection of justices of the Supreme Court and district judges shall be nonpartisan, and that “candidates for the offices of justice of the Supreme Court and district judge shall not be nominated nor endorsed by any political party and their names shall not appear on any political party ticket, nor be accompanied on the ballot by any political party designation.” Furthermore, Canon 5A(1) provides that a judicial candidate shall not publically endorse or publicly oppose another candidate for public office or publicly oppose another candidate for public office or publically endorse or seek the endorsement of a political organization.

28. May I purchase tickets to political events?

Canon 5A(2) provides that a judge may attend political gatherings as long as the judge is not attending to endorse or seek endorsement of the political organization, and 5A(4) provides that a candidate for judicial office shall similarly act in a manner consistent with the integrity and independence of the judiciary. The best practice in paying for tickets to a political event or fundraiser is for a third party to pay for the tickets and then list as a campaign donation.

29. May I hold a fundraiser at my house?

No, but your campaign committee may. A candidate may be present at the fundraiser, however, he or she should not be present for any solicitation for financial contributions. Be aware that pursuant to Canon 5C(2), a candidate may not personally solicit or accept campaign funds, and must avoid obtaining the names of contributors.

30. May I accept donations from attorneys?

No, but your committee may. Commentary under Canon 5C(2) provides that campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge may be relevant to disqualification under Canon 3E.

31. What can individuals do to help my campaign?

Individuals as well as corporations and political committees may financially contribute to your campaign. Limitations on contributions are outlined in Idaho Code § 67-6610A:

Statewide Elections: individuals, corporations, and political committees may contribute up to \$5,000 per candidate per election, and state political parties may contribute up to \$10,000 per candidate per election.

District Court Elections: individuals, corporations, and political committees may contribute up to \$1,000 per candidate per election, and state political parties may contribute up to \$2,000 per candidate per election.

Pursuant to Idaho Code § 67-6610, any person who contributes a total of more than fifty dollars (\$50) to a political committee or candidate must include his full name and address with the contribution. If a treasurer receives such a contribution without this information, he or she must return the contribution if he or she can determine the donor’s identity, or else forward it to the state controller for deposit in the public school fund. No contributions may be made anonymously or under a false name. Idaho Code § 67-6614.

32. How may my campaign use contributions?

Under Idaho Code § 67-6610C, contributions may be used for “expenditures in connection with the campaign,” “ordinary and necessary expenses incurred in connection with duties of

the individual as a holder of public office,” transfers or donations to other candidates or committees, or any lawful purpose not prohibited under section 67-6610C(2) (generally, personal expenses).

Contributions may not be converted to personal use to “fulfill any commitment, obligation or expense of a person that would exist irrespective of the candidate’s election campaign or individual’s duties as a holder of public office.” Idaho Code § 67-6610C(2)(b).

33. Must campaign expenditures be reported?

Yes. Idaho Code § 67-6611 provides that any person who makes a total of more than one hundred dollars (\$100) in independent expenditures must file a statement to that effect with the secretary of state. The statement must include (1) the name and address of any person to whom an expenditure of more than fifty dollars (\$50) was made, (2) the date, purpose, and amount of each expenditure, and (3) the total sum of all expenditures made. No expenditures may be made anonymously under a false name. Idaho Code § 67-6614.

Additionally, any person who makes independent expenditures totaling at least one thousand dollars (\$1,000) between sixteen days and forty-eight (48) hours prior to the election must file a written statement with the secretary of state not more than forty-eight (48) hours from the time the expenditure was made. Idaho Code § 66-6611(4).

34. May I contribute to the party organization?

No. Pursuant to Canon 5(A)(1)(d), a judge or candidate for election or appointment may not publicly endorse or seek the endorsement of a political organization. Furthermore, the Idaho State Constitution Article VI, provides that the selection of justices of the Supreme Court and district judges shall be nonpartisan, and that “candidates for the offices of justice of the Supreme Court and district judge shall not be nominated nor endorsed by any political party.”

35. May I loan money to my campaign?

A candidate may contribute as much as he or she would like to for his or her own campaign. Contribution limits set forth in section 67-6610A do not apply to Candidates. Loans to candidates or political committees are reported on the Campaign Financial Disclosure Report on Schedule D- Loans. For more information on campaign financing visit:

http://www.sos.idaho.gov/elect/finance_faq5.htm

36. What may I say or not say during my campaign?

Canon 5A(4)(d) provides that a candidate may not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office. A candidate may not make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court. The Canon commentary provides that a candidate should emphasize in any public statement his or her duty to uphold the law regardless of his or her personal views.

Canon 5C(1) provides that a candidate may speak at gatherings on his or her own behalf; may appear in newspaper, television and other media advertisements supporting his or her candidacy; distribute pamphlets and other promotional campaign literature supporting his or her candidacy that do not otherwise violate the provisions of the Judicial Code.

Although a candidate may not speak on behalf of a political organization, Canon 5 “does not prohibit a . . . candidate from privately expressing his views on . . . other candidates for public office.” Furthermore, when false information about a candidate is made public, a judge or candidate with the requisite knowledge is not prohibited from publicly correcting the misinformation.

Regardless, candidates “shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary[.]” Canon 5A(4)(a).

37. May I comment on hot button issues such as abortion, gun rights and death penalty issues?

An appropriate response would be to show both sides of the argument. Canon 5A(4)(d) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. A candidate should emphasize in any public statement the candidate’s duty to uphold the law regardless of his or her own personal views.

38. May I make any promises or pledges if elected?

No. A candidate may not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office pursuant to Canon 5(4)(d)(i).

39. May I respond to questionnaires?

Yes, but be mindful of Canon 5A(4)(d) requirements to not make pledges or promises of conduct in office, to not make statements that appear to commit you to a particular result regarding an issue that is likely to come before the court, and to not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

40. Is there a time limit on ending my campaign once the election is over?

Yes, pursuant to Canon 5C(2) a candidates' campaign committee must terminate fundraising activities no later than ninety (90) days after the last election. The political treasurer for a candidate who was defeated in the primary election and whose post-primary report shows an surplus balance of contributions or a campaign debt, shall continue to file annual reports until there is no unexpended balance of contributions or no campaign expenditure deficit. Idaho Code § 67-6608.

41. When are written thank-you letters to contributors permitted?

A candidate's treasurer or campaign staff may thank contributors at any time before or after the election. Pursuant to Canon 5C(2), a candidate should avoid learning who gave contributions or donations.

42. May I hold a post-election fundraiser to retire my debt; and if so may I attend?

Idaho Code § 67-6610B provides that a political committee organized on behalf of a candidate may accept additional contributions to retire unpaid debt. The additional contributions may not exceed the contributions limits prescribed, and must end by the 90th day after the last election the candidate participated in. A candidate may attend a post-election fundraiser, however, Canon 5C(2) provides that a candidate shall not solicit campaign contributions in person and avoid obtaining names of contributors.

43. What may I do if my campaign committee has a debt (or a surplus) after the election?

Idaho Code § 67-6610B provides that a political committee organized on behalf of a candidate may accept additional contributions to retire unpaid debt. However, the additional contributions may not exceed the contributions limits prescribed.

44. May I keep working as an attorney after the election?

You may continue to work until you assume office by taking the oath of office. Pursuant to the Code of Judicial Conduct, the judicial canons do not apply to judges elect after the election but before the date of taking office.

45. How must I withdraw from being a candidate for an election?

Pursuant to Idaho Code section 34-1405A, a candidate for nomination or candidate for election to an office may withdraw from the election by filing a notarized statement of withdrawal with the officer with whom his declaration of candidacy was filed. The statement must contain all information necessary to identify the candidate and the office sought and the reason for withdrawal. A candidate may not withdraw later than forty-five (45) days before an election.

46. Does a judge have an obligation to have his or her name removed from their former firm's listing upon taking office?

Yes. Rule 7.5(c) of the Idaho Rules for Professional Conduct states that the name of a lawyer holding public office shall not be used in the name of the law firm.