

**NORTH DAKOTA JUDICIAL ETHICS ADVISORY COMMITTEE  
OPINION 2016-1**

**ISSUES**

- I. Whether a judicial candidate’s campaign committee may solicit contributions from a political action committee?
- II. Whether a distinction may be made, in terms of reasonableness, between a contribution from a political action committee and one from an individual?

**ANALYSIS**

- I. A judicial candidate’s campaign committee may solicit reasonable contributions from a political action committee.

Rule 4.6 of the North Dakota Code of Judicial Conduct does not prohibit a campaign committee from soliciting contributions from a political action committee.<sup>1</sup> It provides that “[s]uch committees may solicit and accept reasonable campaign contributions[.]” N.D. Code Jud. Conduct Canon 4.6. While the Rule restricts when a committee may solicit contributions, e.g., no earlier than one year before an election and no later than 90 days after the last election, it does not restrict from whom the committee may solicit contributions. See id.; see also 2003 NY Jud. Eth. 6 (concluding a campaign committee may accept contributions from an already existing political committee so long as the political committee does not use the candidate’s name to raise fund for other non-judicial candidate or for a political party); see generally OH Code of Jud. Conduct Canon 4.4(C)(3) (permitting a committee to accept a contribution from a political party if the contribution is made from a fund established by the party solely to receive donations for judicial candidates and the party meets reporting requirements).

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<sup>1</sup> The Code of Judicial Conduct uses the term “political organization,” which encompasses a “political action committee.” See N.D. Code Jud. Conduct Terminology (providing that “‘political organization’ denotes a political party or other group sponsored by or affiliated with a political party or candidate, a principal purpose of which is to further the election or appointment of candidates for legislative or executive office or to support or oppose the continuation, amendment, repeal, enactment, initiative, or referendum of any constitutional, statutory, or regulatory provision”); N.D.C.C. § 16.1-08.1-01(12)(a) (indicating that a “ ‘political committee’ means any committee, club, association, or other group of persons which receives contributions or makes expenditures for political purposes and includes ... [a] political action committee ... which solicits or receives contributions or makes expenditures for political purposes”). A political action committee thus would include a political committee connected solely with one party, e.g., Republican State Leadership Committee PAC and Individual Account.

The Rule's only restrictions involving from whom contributions may be solicited apply to the candidate – not the committee. See id. For instance, the candidate may not “directly and personally solicit or accept campaign contributions[.]” Id. Yet the candidate may “orally solicit contributions ...in front of large groups or organizations consisting, for example, of audiences of 25 or more people.” Id. In other words, the Rule prohibits the manner in which a candidate may solicit contributions but does not preclude the candidate from soliciting contributions from a political action committee. See id.

The Comment includes another distinction supporting a conclusion that a campaign committee is not precluded from soliciting contributions from political action committees. It contrasts a candidate's permissible act of soliciting a contribution from an organization (so long as it is made to a group of 25 or more people) with the impermissible act of soliciting an endorsement from a political organization: “While this rule allows a candidate to solicit contributions or publicly stated support from large groups or organizations under certain circumstances, Rule 4.2(A)(1)(d) continues to prohibit a candidate from seeking, accepting, or using an endorsement or letter of support from a political organization.” N.D. Code Jud. Conduct Canon 4.6 cmt. 1. Inherent in that distinction is a sole prohibition: the candidate must not solicit endorsements from a political organization. Id.; see also 2015 AR Jud. Eth. 3 (concluding that a judicial campaign committee's acceptance of a contribution from a political action committee is not an endorsement and is not prohibited conduct); 2010 NV JE10-001, 2010 WL 11064766 (NV Std. Comm. Jud. Eth.) (distinguishing a partisan political organization's contributions to a candidate from impermissible endorsements). But see 2010 OK Jud. Eth. 4 (emphasizing (a) prohibitions on a candidate's engaging in partisan political activities and divulging his political party of registration and (b) the mandate that a judge comply with the law in a manner that promotes public confidence in the judiciary's integrity and impartiality, and concluding that a campaign committee must not solicit a contribution from a political action committee). Put simply, the Comment and the plain language of Rule 4.6 do not prohibit a campaign committee from soliciting contributions from a political action committee.

Besides Rule 4.6, the restrictions applicable to candidates in Rule 4.2 should be considered. Indeed, Rule 4.3(A)(3) provides that a candidate “shall take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.6, that the candidate is prohibited from doing by Rule 4.2.” Rule 4.2 includes restrictions relating to acts involving a “political organization,” see N.D. Code Jud. Conduct Canon 4.2(A)(1)(a), (c), (d), (e), (f), & (g), and to acts involving campaign contributions, see N.D. Code Jud. Conduct Canon 4.2(A)(1)(j). But none of those preclude a candidate from soliciting contributions from a political action committee. See N.D. Code Jud. Conduct Canon 4.2(A)(1).

In light of the applicable authorities, we conclude that nothing prohibits a campaign committee from soliciting contributions from a political action committee. Yet the candidate and his committee must, of course, abide by all the Code's provisions. In the context of political activities, the candidate should be mindful of the various prohibited acts set out in Rule 4.2 and of Rule 4.3's mandate to “act at all times in a manner consistent with the impartiality, integrity, and independence\* of the judiciary[.]” See N.D. Code Jud. Conduct Canon 4.2(A)(1); N.D. Code Jud. Conduct Canon 4.3(A)(1).

- II. Without knowledge of specific circumstances, no distinction may be made, in terms of reasonableness, between a contribution from a political action committee and one from an individual.

As noted, Rule 4.6 permits a campaign committee to solicit and accept “reasonable campaign contributions.” See N.D. Code Jud. Conduct Canon 4.6. Neither Rule 4.6 nor any other rule in the Code provides a distinction – in terms of reasonableness – between the contributions of a political action committee and those of an individual. Statutes likewise set forth no distinction between a contribution from a political action committee and one from an individual. No limit is placed on the amount of a contribution that can be made to a judicial candidate. See N.D.C.C. title 16.1.<sup>2</sup> Moreover, a campaign committee’s duty to report a donor does not change based on the identity of the donor, i.e., whether the donor is a political action committee or an individual. See N.D.C.C. § 16.1-08.1-03.9 (requiring candidates to report the names of all “contributors” who gave more than \$200.00); N.D.C.C. § 16.1-08.1-01(5) (providing no distinction between the “contribution” of a political action committee and that of an individual).

Reasonableness thus must be determined by the specific circumstances. See N.D. Code Jud. Conduct Canon 4.6 cmt. 1 (explaining that “[a]t the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances”); see also Nev. Code Jud. Conduct Rule 4.4 cmt. 3 (indicating that “[a] candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law”). Avoiding the appearance of impropriety would be an important premise in assessing reasonableness. See, e.g., NM Code Jud. Conduct Rule 21-402(B) (providing that judicial candidates “shall not accept any contribution that creates an appearance of impropriety”). Indeed, “[e]ven if judges were able to refrain from favoring donors, the mere possibility that judges' decisions may be motivated by the desire to repay campaign contributions is likely to undermine the public's confidence in the judiciary.” See Williams-Yulee v. Florida Bar, 135 S. Ct. 1656, 1667 (2015) (upholding a state’s ability to prohibit judicial candidates from personally soliciting funds).

Here, the specific circumstances about the potential contributions are unknown. The relative reasonableness of contributions by political action committees and individuals thus cannot be assessed.

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Some other jurisdictions set different limits on the amounts that political parties and individuals may contribute to a judicial candidate’s campaign. See, e.g., Minn. Stat. § 10A.27(1) & (2) (indicating “[a] candidate must not permit the candidate's principal campaign committee to accept contributions from any political party units ... in aggregate in excess of ten times the amount that may be contributed to that candidate as set forth in subdivision 1, which provides the same amount for individuals and political committees); OH Code of Jud. Conduct Rule 4.4 (I)(1) & (3) (providing a significantly greater cap for contributions made by a political party).

## CONCLUSION

The Committee is of the opinion that:

(1) A judicial candidate's campaign committee may solicit reasonable contributions from a political action committee. The judicial candidate and the candidate's committee must abide by all the provisions of the Code of Judicial Conduct when soliciting such contributions.

(2) Without knowledge of specific circumstances, no distinction may be made, in terms of reasonableness, between a contribution from a political action committee and one from an individual.