Before the Trials, Overcoming the Tribulations: Judicial Candidate Campaign Fundraising

by Ross D. Secler

Among the many challenges that candidates seeking elected office face, candidates most often bemoan one painstaking process above all else: raising the necessary campaign funds. And while many judicial candidates in Illinois may want to avoid thinking of themselves as "political," judicial candidates, before making it to the bench, must still go through many of the same rigorous tribulations as candidates running for any other office. The caveat, of course, is that judicial candidates (whether already serving as judges or not) are subject to strict ethical and campaign finance rules beyond the "regular" rules for other candidates which, among other things, could put the judicial candidate's law license on the line if not followed.

Most of the judicial campaign rules are intended to ensure that the judiciary remains without the appearance of impropriety and to uphold the integrity of the third co-equal branch of government. Whether the rules and laws specifically applicable only to judicial candidates help meet those goals is a matter of continuing debate. However, with the costs of running for office ever increasing, and as the petition filing periods of the upcoming primary and general election approach, it is incumbent upon judicial candidates to understand all the relevant regulations that affect their candidacies and campaigns to avoid becoming a "test" case for a given rule or law's enforcement.

"Regular" Campaign Finance Rules

For most non-federal candidates running for office in Illinois, pursuant to Article 9 of the Illinois Election Code, 10 ILCS 5/1-1, *et seq.*, the rules regarding campaign finances are relatively basic at their core. Over a 12-month period, once you raise or spend more than $5,000 in aggregate on behalf of your candidacy, you must establish a campaign "political committee." 10 ILCS 5/9-1.8, 9-3. Once a political committee is established, it must file quarterly reports of all expenditures and contributions. 10 ILCS 5/9-10(b). Single contributions of $1,000 or more must be reported either within two or five business days after receipt. 10 ILCS 5/9-10(c). Additionally, political committees are subject to various contribution limits depending on the type of committee, with contributions from oneself or immediate family exempted from those limits, and a possible "lifting" of limits once certain thresholds are met. See 10 ILCS 5/9-8.5.

Of course, there are some other nuances and specifics, but these are the basic rules that apply to all candidates and campaign political committees based on the overall policy in favor of requiring transparency in campaign finances. While judicial candidates are technically subject to all these requirements and must work within the State's "normal" campaign finance reporting structure, there are special caveats that only judicial candidates must observe.

Judicial Canons

One such difference is that a judicial candidate is barred from directly soliciting funds or serving as an officer of their own campaign's political committee. *See* Ill. Sup. Ct. R. 67(B)(2) (Canon 7). Additionally, a judicial candidate's committee may only solicit contributions from, or public support for, a given candidate no earlier than one year before an election, and no later than 90 days after the last election in which the candidate participated. *Id.*

Illinois Supreme Court Rule 67 generally addresses inappropriate political activity by judges and judicial candidates, allowing them to speak at gatherings on their own behalf while a candidate for election, distribute pamphlets and other promotional campaign literature supporting their candidacies, and appear in newspaper, television and other media advertisements supporting their candidacies, while restricting various activities demonstrating allegiance to any specific political party (even when running in partisan primaries).

Illinois judicial candidates' campaigns must raise significant amounts of campaign cash to be successful while the judicial candidate cannot have personal involvement in that process. This restriction has long been in place and similar restrictions have been upheld as legitimate measures to protect the integrity of the judiciary. *See Williams-Yulee v. Florida Bar,* 575 U.S. 433, 437-38 (2015).

But, as of November 15, 2021, Illinois law does not end there.

Public Act 102-0668

Last November, Public Act 102-0668 became law and, among other things, made significant changes to judicial campaigns' ability to fundraise. In response to the amount of money spent on the 2020 Supreme Court of Illinois retention election, the relevant portion of the new law attempted to address the issue of so-called "dark money" and out-of-state donors.

The applicable part of the new law prohibits any political committee established to support a candidate for Supreme Court, Appellate Court, or Circuit Court from accepting contributions from **a***ny out-of-state person* or from *any group not required by law to disclose its identity of its contributors* (except for contributions that are not required to be itemized). *See* 10 ILCS 5/9-8.5(b-5). The key here is that *any* "out-of-state person" is prohibited from contributing directly to a judicial campaign committee; it does not matter if, for example, the person is a direct family member of the candidate. Curiously, the new law states that contributions are prohibited from an "out-of-state person, as defined in this Article," but there is no definition of an "out-of-state person" in Article 9 of the Illinois Election Code. Cf. 10 ILCS 5/9-1.6 (defining "person" as a natural person, trust, partnership, committee, association, corporation, or any other organization or group of persons).

The other key element of the new law prohibits judicial candidate campaign committees from accepting contributions from, for example, non-profit 501(c)(4) organizations that are not required to disclose their individual donors.

The new law also prohibits any contributions being made in another person's name, accepting reimbursements from another person for a contribution made in his or her own name, making anonymous contributions, and predicating contributions on future employment or certain other benefits – but these actions are all generally illegal or improper in any event.

Given the breadth of the new law's application, the new law, while well-intentioned, has caused significant headache and hardship with judicial candidates' campaigns being barred from tapping the potential contributions from the candidate's out-of-state family and friends who, ironically, would probably be the *least* likely to ever have a matter appear before the candidate after assuming the bench. There are other concerns with the constitutionality of these restrictions, but which candidate wants to be the test case?

Conclusion

The sanctity of the judiciary may never be completely insulated from the influence of partisan interests, and there are many other ways that a judicial candidate can run afoul of legal and ethical boundaries. Still, elections have long been established as the most universally fair means for determining public representatives and officials, and campaigning is a necessary function of the electoral process. This is especially true for judicial candidates whose elections often appear at the end of a long ballot. The challenge arises when attempting to maintain a neutral playing field for all candidates. Illinois voters have witnessed some of the effect of having large donors and "dark money" sources funding campaigns, potentially leaving voters misinformed and judicial candidates in an ethical minefield. Though the new legislation may aim to curb that influence, the fact remains that judges and judicial candidates are under enormous pressure to promote their name and message to the public so as to win an election while, at the same time, being required to ensure that they are prepared to enter office ready to fairly administer justice. With so much potentially on the line, and with so many changing requirements, any judicial candidate must become very aware of the laws and regulations (and moreover the practical, ethical concerns) surrounding judicial elections prior to joining the race.

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