



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 465

*November 2, 2005*

*Whether a non-judicial officeholder who is seeking a judicial office is required to file a single campaign finance report combining both non-judicial and judicial activity. (AOR-527)*

The Texas Ethics Commission has been asked whether a non-judicial officeholder who becomes a candidate for a judicial office that is subject to the Judicial Campaign Fairness Act is required to file a single campaign finance report combining both non-judicial and judicial activity.

In 1995, the legislature adopted the Judicial Campaign Fairness Act (hereafter, JCFA), which imposes campaign finance restrictions and reporting requirements on certain judicial candidates and officeholders<sup>1</sup> that do not apply to non-judicial candidates and officeholders. Elec. Code ch. 253, subch. F.

Under the JCFA, an individual who accepts political contributions in connection with an office other than a judicial office may not use those contributions for political expenditures in connection with a judicial office. *Id.* § 253.161(a). Similarly, an individual who is a candidate may not use a political contribution accepted as a judicial candidate or officeholder to make a political expenditure in connection with an office other than a judicial office. *Id.* § 253.161(b).

The Texas Ethics Commission has adopted reporting forms to implement the provisions of the campaign finance law. Because the JCFA provisions are specific to judicial candidates and officeholders, the Ethics Commission has adopted separate reporting forms for those filers.

Under title 15 of the Election Code, an officeholder who becomes a candidate is subject to the reporting requirements of a candidate. Elec. Code § 254.096. A campaign finance report is required to be filed with the authority with which the candidate's campaign treasurer appointment is required to be filed. Elec. Code § 254.066. The long-standing interpretation of those provisions, both of which pre-date the JCFA, has been that an officeholder who becomes a candidate files a single report and that report includes both candidate and officeholder activity. Under this interpretation, a single campaign finance report filed by a non-judicial officeholder who becomes a judicial candidate must include both non-judicial and judicial activity and must be filed with the authority with which the candidate's campaign treasurer appointment is required to be filed. In this context, the long-standing interpretation of the general reporting requirements is problematic both because judicial candidates are required to report different information from other candidates and also because such reporting makes it difficult to demonstrate compliance with section 253.161 of the Election Code.

Because the JCFA introduced concepts that were not part of the law when the general reporting scheme was established, it is reasonable to interpret the law now to require a non-judicial officeholder who becomes a judicial candidate to file two reports, one reporting non-judicial activity and the other reporting judicial activity.<sup>2</sup> A candidate who files two reports must file both reports with the filing authority with which the candidate's current campaign treasurer appointment is required to be filed. Additionally, each report is subject to the filing deadlines and filing penalties applicable to a candidate.

The requirement to file a report disclosing non-judicial activity continues until the judicial candidate files an affidavit with the proper filing authority stating that he or she: (1) does not maintain unexpended political contributions raised as a non-judicial candidate or officeholder, (2) does not maintain unexpended interest or income earned from political contributions raised as a non-judicial candidate or officeholder, (3) does not retain assets purchased with political contributions raised as a non-judicial candidate or officeholder, and (4) does not retain assets purchased with interest or other income from political contributions raised as a non-judicial candidate or officeholder.

Alternatively, a non-judicial officeholder who becomes a judicial candidate may elect to file a single report that includes both candidate and officeholder activity. A candidate who selects the single report method of reporting must however: (1) in the description of an expenditure, indicate whether the expenditure is for non-judicial activity, and (2) in the total contributions maintained at the end of the reporting period, indicate the amount raised as a non-judicial candidate or officeholder and the amount raised as a judicial candidate or officeholder.<sup>3</sup> This method of reporting allows for clarity that political funds are used in accordance with the JCFA. A filer who files two reports and later decides to instead file one report combining judicial and non-judicial activity must submit written notice of that decision to the filing authority with which the candidate's current campaign treasurer appointment is required to be filed before the next applicable deadline.

### SUMMARY

A non-judicial officeholder who becomes a judicial candidate is required to file two campaign finance reports, one reporting non-judicial activity and the other reporting judicial activity. Alternatively, a non-judicial officeholder who becomes a judicial candidate may select to file one report if: (1) in the description of an expenditure states whether an expenditure is for non-judicial activity, and (2) the total contributions maintained at the end of the reporting period states the amount attributed to non-judicial contributions and the amount attributed to judicial contributions.

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<sup>1</sup> The act applies to holders of or candidates for the following offices: chief justice or justice of the Supreme Court; presiding judge or judge of the court of criminal appeals; chief justice or justice of a court of appeals; district judge; judge of a statutory county court; and judge of a statutory probate court. Elec. Code § 253.151.

<sup>2</sup> This method of reporting is also required of the following: (1) a judicial officeholder who becomes a non-judicial candidate, (2) a non-judicial candidate who becomes a judicial candidate, and (3) a judicial candidate who becomes a non-judicial candidate.

<sup>3</sup> This method of reporting may also be selected by the following: (1) a judicial officeholder who becomes a non-judicial candidate, (2) a non-judicial candidate who becomes a judicial candidate, and (3) a judicial candidate who becomes a non-judicial candidate.

A filer who files electronically must provide the combined judicial and non-judicial total contributions maintained as of the last day of the reporting period in the software field created for contribution balance. The filer must then provide in the memo field the amount attributed to judicial contributions and the amount attributed to non-judicial contributions.