

Inquirer Judicial Candidate Questionnaire

Kenneth J. Powell, Jr.

Court of Common Pleas

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1. Why are you qualified and well-suited to serve as a judge on the court for which you are running?

A perusal of my resume, attached hereto, will provide a professional and biographical history which is the best evidence of my being qualified and well-suited to serve as a judge in the Court of Common Pleas. However, there is more than what is reflected in the resume.

A Judge is a calling. It is not a job. It is not a promotion. It is not for the uninitiated. I believe wholeheartedly that for a candidate to be qualified to sit on the bench, he/she must have at least 20 years of diversified legal experience. That experience should be primarily in a courtroom. Trial lawyers internalize the rules of evidence and understand them in a fashion similar to others understanding of language itself. They also understand underpinnings of the legal system, constitutional and procedural issues and the Rules of Court. On the job training is not available to a judge. You must be ready to rule on constitutional and procedural issues the day that you take the bench.

We need only stop and think how powerful judges are to understand why only seasoned lawyers need apply. The Mayor, City Council, the Police Department, the Governor, other legislative bodies cannot take from you, your life, liberty, children, money, and home. A judge can take each of these. It is a serious position. It is not for men and women not looking for a salary increase, a promotion, or a "job." It is for men and women who are ready to place the capstone on their career. When I was a young lawyer, men and women who took the bench had practiced for a long period of time and garnered reputations of excellence in the courtroom. It was then they believed they were able to become judges. I used this model. I did well as a lawyer for 30 years. I believed it was time to do good for the citizens of Philadelphia and I pursued a Judgeship. Thankfully, I was Appointed to the Municipal Court by the Honorable Edward G. Rendell in June, 2009. Governor Rendell was a District Attorney when I was an Assistant District Attorney, and he was delighted to have the opportunity to appoint me to the bench.



I wish I could sit down and interview with your Editorial Staff. I wish even more that a debate among the Candidates was available. I further wish that you could discuss my courtroom demeanor and abilities with lawyers who have appeared before me, so my self reporting would not be your only source of information.

Prior to becoming a lawyer, I attended Graduate School for 5 years. During those five years, I studied Sociology, Criminology, Social Work, as well as Community Organization. While in Graduate School I was a Philadelphia School Teacher. After my first graduate degree, I was hired by the Department of Probation and Parole. Shortly after being hired, I began to rise up the ranks. Eventually, I was named Associate Director of the Probation Department. I also was Director of Drug Treatment for the entire Court System, and was the implementer of our present ARD System. I both staffed and supervised the ARD Unit. I also worked in the Philadelphia County Prisons for 2 years. All this experience was garnered between 1971 and 1978. I understand the Criminal Justice System from most perspectives because of this experience. I understand sentencing, the impact of jails, and the necessity for drug treatment in many cases. I also know treatment programs which have good results and long histories and those which don't. I have been on the boards of treatment centers during my legal career. However, the most important skill I acquired from my education, and on the job experience, was active listening. I describe this as the ability to listen, take notes, and interact with the parties and focus on argument in and direction of a trial. Listening, the most important quality a judge must possess, is something most are unable to do well. I always preach to counsel in the courtroom as well as children I coach on Mock Trial Teams that your ears are more important than your mouth when you are a lawyer. You must listen and that will always give you an upper hand because most people do not do this well. I do.

I also have 2 years of experience as a judge. I work in Criminal Courts and Civil Courts as well as Landlord/Tenant Courts. This experience is invaluable, and I hope I can take this experience with me to the next court and utilize it. In summary, I am highly qualified for this position because of my experience, my ability to listen, my knowledge of evidence, and the fact that I spent almost 30 years exclusively in a courtroom while I was a lawyer. I am also well suited because of my temperament. I am even tempered and have never lost my patience in a courtroom and this is sometimes difficult. I am also intelligent and almost always able to spot issues in cases quickly.

During the time I have been on the court, I have had several cases which gave me pause. I never hesitate to take those cases under advisement. I do personal research in the law on those cases. I order the notes of testimony and read them and I read the submissions of counsels. I never overstep myself and I always know when I do not know

something. I have no trepidation about telling the litigators that I don't know certain things and will have to take matters under advisement, allowing them to advise me on their positions. I am very secure in myself, my knowledge, and my ability. I believe I have been a highly successful lawyer and a very effective judge. I have experience from all perspectives. I was a prosecutor, a criminal defense attorney, a civil lawyer who represented both plaintiffs and defendants.

2. Did you receive a rating of “recommended” or higher from the state or local bar association? If not, why not?

I received a rating of Recommended.

3. If you are an incumbent judge, what's a recent instance in which you acted to preserve your judicial independence? If you are an aspiring judge, how do you plan to remain independent if elected to the bench?

I am an incumbent judge. I believe it is my sworn duty to be independent. I possess the maturity and gravitas to remain independent. I will not seek another term on the court and I am beholden to no one. It is clear that we are elected through a political system and outsiders question our independence from political parties. I believe that I am neither a Republican nor a Democrat, nor a member of any political party. I am a Judge. I am independent of political influence. I am always conscious of donors to my campaign and they are never given preferential treatment of any stripe. I am also not persuaded by or guided by a political or philosophic bent. I judge each case on its facts only.

Recently, I had a drunk driving case in which the defense questioned the accuracy of the breathalyzer. The Commonwealth presented evidence which was unconvincing apropos the proper calibration of the breathalyzer. I knew that a decision in favor of the defense would bring into question thousands of convictions and may spur thousands of civil suits in that almost all of the defendants have spent time in jail as a result of the drunk driving convictions which were based on an improperly calibrated breathalyzer. I knew the instant case was of moment and I did not want to be swayed by cost to the City or any particular viewpoints of drunk driving. I had to decide this case on its facts alone, no matter the impact. The Commonwealth argued impact and dismissed the apparent breathalyzer inaccuracy as negligible. I took the case under advisement for 24 hours. I asked the parties to do some “homework.” I read case law which was submitted and pored over my notes and actually did some math homework (something I hadn't done since college). The next day I found in favor of the Defendant. This was a case where I had to make a judgment independent of any possible impact the judgment would have had on either the legal system or the political system or my career. The case

had to be judged on its facts independently and I believe I did so with due circumspection.

4. A number of Pennsylvania judges have been sanctioned for campaign activities, ex parte dealings, and other alleged misconduct. How can the state's judiciary promote ethical behavior among judges and court staff?

This question begs my stating my position on merit selection. I believe judges should be appointed on merit. I do not believe they should be candidates in the political process and be forced to raise money in order to be elected to office. I favor the system in the state of New Jersey. Of course, I am not naive enough to believe that merit selection is devoid of politics, but it is a better alternative to our system. In a merit system, the issue of sanctions for campaign activities would probably be a nullity. In a merit based selection process, ex parte dealings would probably be impacted and certainly diminished and other types of misconduct based on cronyism or doing a good turn for someone responsible for your political victory would disappear. Over the years, I have witnessed judges being sanctioned, one was even denied retention by the citizens of Philadelphia, for ex parte dealings.

Once you take the bench, your life becomes much more isolated. Your socializing has to be limited. You are no longer permitted to discuss politics. Places you frequented where lawyers "hang out," are no longer places you can spend an hour or two chatting with friends. This is the one of the few ways to guard against ex parte discussions and or dealings. Also, your Judicial Chambers is off limits to anyone except your staff. Your robing room, attached to the courtroom, is for you and your staff. No one else may enter. The only time you can speak with an attorney, off the record, is when his opponent is a part of that conversation. This is not an easy transition, especially for someone social like I. However, once you don the robe you have to be on guard at all times about ex parte dealings. Most lawyers do not fully understand that issue and those who are glib will often raise topics which you must fend off by advising them that you cannot discuss issues ex parte.

Campaigns, by their very nature, are full of land mines. Judges, who are usually not professional politicians, are not as schooled and aware of what they can and cannot do. A judge cannot ask for money from a potential donor. A judge cannot talk about cases which appear before him but have not yet been completed.

The astounding misconduct of judges in Luzerne County is anomalous. What the judges allegedly did is more egregious than anything I have ever read on judicial misconduct. But their actions are calls for vigilance on the part of not only judges but

court staff and there should be no fear of reporting what one believes is potential misconduct.

If we do not move to merit selection, then education is the key to promoting ethical behavior among judges. Presently, judges attend a one week conference after being elected. That is the end of a judge's training. The rest is done on the job. Because there is limited contact between and among judges, there is no way to exchange ideas among each other. The State Judiciary should require CLE for judges. A judge would be required to attend at least 1 three hour session per year to discuss potential ethical pitfalls, how to report misconduct, and current examples of judicial misconduct.

Those running for judge should be required to take a 3 hour CLE course on the ethics of a campaign.

Also, methods available for reporting misconduct should be made known to staff as well as judges. Most staff are afraid to report conduct because of the fear repercussions.

All judicial staff should receive at least one hour per year, training about judicial conduct and misconduct and methods of reporting instances of same should be shared with them.

Much misconduct grows from ignorance. The conduct of the Luzerne County Judges stems from what is an apparent character disorder and there is actually no way to police that other than report it to the authorities as soon it is noticed. But like bad cops who take money or drugs or bad priests who abuse children their misdeeds of others in your profession impact the entire profession. The public paints with a broad brush. This begs for vigilance, training and discretion.

Finally, nothing is too small to ignore. If you or a member of your staff commit small transgressions, they are sure to "move up."

If a staff member takes a Phillies ticket in return for putting a lawyer's case ahead of others, it must be dealt with immediately and the ticket returned.

5. If you believe that gender, racial, ethnic, class or other forms of bias can infect the justice system, how will you work to keep your courtroom as bias-free as possible?

Gender, racial, ethnic, and class bias can affect the justice system, and, as a judge, I am aware of this possibility and I do all I can to guard against it. The process begins

with hiring your staff. The issue of bias must be discussed with them during an interview. You must have a frank talk about ethnic, gender, racial and class bias with them and determine whether you believe they can be free of same. Because judges in the Municipal Court do not select the courtroom staff, we have to be ever more vigilant there. The courtroom is the Judge's domain. He /she is responsible for what goes on there and how people are treated therein.

I have witnessed bias in the courtroom several times over the last 2 years and I have had to admonish people because of it.

The bias you see most often is bias against Transgenders. This usually involves men who appear in the courtroom as women. As soon as a name is called, which is inconsistent with the gender of the person, you hear a ripple of laughter through the courtroom. Many of the court staff roll their eyes. I have had to handle this problem head on, on several occasions. I talked to the court staff, and on one occasion I had to admonish the "audience." I have discussed the type of bias transgender individuals experience daily in general and even in the LGBT community. I had to discuss that this a choice and it is should not be a cause for laughter or ridicule. I have told them that transgender people have very difficult times getting jobs, housing, and being accepted socially and I will not tolerate bias against them in my courtroom. I want my courtroom to be a safe haven for everyone.

Invariably the homeless are treated with bias. Whether that is because of their clothing, their odor or their general disorientation, comments are often made about these apparent "down and outers." This comes from court staff on occasion but more often from others in the courtroom. I have had to address this as a "there but for fortune" teaching moment.

I am the in favor of seminars for court staff on a yearly basis to discuss the various differences among people and biases which may creep into the courtroom. I believe if people in the system are more aware of the impact of speech and bias on the system of justice, they will be more circumspect. Judges must be aware at all times of the conduct of their staff and ensure that if any bias is seen in a staff member, that it is dealt with appropriately and immediately.

I view all cases as only being about justice and do not allow bias to seep into my decision making process. I must judge all cases on only the facts presented by evidence.

Distinctions, not bias, can be a part of sentencing. Race, sex, ethnicity, or class are often considered during sentencing to assist me in sentencing but not to engender bias.

BIOGRAPHICAL SKETCH OF THE
HONORABLE KENNETH J. POWELL, JR.
CANDIDATE FOR COURT OF COMMON PLEAS

FAMILY

I am the oldest of seven children born and raised in South Philadelphia. My father was a police officer and my mother a full time mom. I am married and the father of two children. One is a college senior and the other a Philadelphia Public School teacher.

EDUCATION

I attended Grammar school, High School and College in the City. I later attended five years of Graduate School. I am a trained Social worker. After Graduate School, I attended law school at night at Temple University.

CAREER

I was a Philadelphia Public School teacher before I did active social work. I was Director of Drug Treatment for the City. I worked in the Philadelphia prisons as a Social Worker. I was the implementer and first Director of the ARD Program in 1972. It lives on to today and is probably one of the finest diversionary programs in the United States. After attending law school, I was a prosecutor, a criminal defense attorney, and a lawyer representing injured parties in civil cases especially toxic tort cases. I did a variety of other civil work as well. I represented several unions and did more than my share of pro bono work. I was a lawyer for 30 years before Governor Rendell appointed me to the bench in 2009. I presently sit in the Municipal court. My term expires in January, 2012. I must run in the May 17, 2011 primary to retain a judgeship.

COMMUNITY INVOLVEMENT

I am presently President of The Orpheus Club of Philadelphia and in my role as President, I created the Community Outreach program. The Club is the oldest singing group of its kind in the U.S. Through our Outreach we entertain the homeless, the terminally ill, incarcerated youth and incurable adults and children throughout the City. I also am a volunteer for Project H.O.M.E. Project H.O.M.E. is an agency which provides services to the homeless in Philadelphia. At Project H.O.M.E., I mentor high school age

children who are interested in careers in the law I spend 12 hours a week working with them at 23rd and Norris Sts. at the Honickmann Center there. I am also providing Summer Internships for 3 students from the Center. I also created the Mock trial team at Honickmann and this year in our first competition we were honored with an award for participation and skill. I am very proud of the students who participated. I am a cancer survivor and have been involved in cancer survivor networking for decades.

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