



Information Concerning the Formation of a New Jersey State Bar Association Political Action Committee

The NJSBA Ad Hoc PAC Committee was appointed in June 2014 to examine whether the NJSBA should form an NJSBA Political Action Committee to support the Association's legislative advocacy program.

Committee

The members of the Ad Hoc Committee are NJSBA Second Vice President John E. Keefe Jr. (chair), President-Elect Thomas H. Prol, Past President Ralph J. Lamparello, and Board Trustees members Linda W. Eynon, Craig J. Hubert, William A. Kraus, and Jeralyn L. Lawrence. The focus of the committee's study was on:

- The impact of the formation of the PAC on NJSBA (the Association) legislative initiatives;
- Implementation of a PAC to take into account the various interests of the Association;
- The legal parameters within which the PAC would work relative to the Association;
- Funding mechanisms of the PAC;
- The impact of the PAC on the reputation of the Association.

This Committee gathered information from a variety of sources and conducted extensive outreach to gain a comprehensive perspective on the issue of whether to recommend the formation of a PAC. Specifically, the Committee consulted with the Association's outside lobbyist, with representatives from other state bars and other professional associations in New Jersey that currently administer a PAC, with representatives from county and specialty bar associations within New Jersey, and with various section and committee members active in the Association's advocacy program. The Committee also examined the impact of the Association's advocacy program to date, regulations relating to the formation and operation of a PAC, regulations governing pay-to-play restrictions, various ELEC filings and bylaws from other association PACs. Finally, the Committee was guided by the expertise of retained outside counsel specializing in election law.

Committee Recommendation

After considering the issues raised and participating in numerous spirited debates, the PAC Committee unanimously recommends that the NJSBA create a Continuing Political Committee (CPC)¹. The CPC would provide a structured way for the Association to harness its members' willingness to support the Association's legislative priorities and to ensure the Association receives the maximum benefit in return to advance its priorities for the betterment of its members and the legal profession.

Considerations/Key Questions and Answers

What are NJSBA's top priorities?

The Association is guided by its sections, committees and divisions, and ultimately the Association Board, in advancing legislation. The top priorities are dependent upon a number of factors, and change and evolve over time. The highest priority of the Association at this moment is the Professional Liability bill (A1254), which would reduce the statute of limitations from six years to two years for malpractice claims against New Jersey professionals - in line with medical doctors. Other high priority bills include the Uniform Trust Code (A2915), a bill establishing uniform timeframes for adverse possession (S1364/A1682), a bill establishing uniform criteria to be considered by courts in determining the payment of college expenses for children of both intact and divorced parents (S3124/A4514), the Uniform Fiduciary Access to Digital Assets Act (A4666), and a bill that addresses the double taxation of awards in employment matters (S2943).

What would the PAC look like structurally and how would it operate?

The CPC Board would be an independent, but related entity of the Association. The Association Board would appoint a seven-member PAC Board within certain parameters established in the PAC's bylaws. The structure would ensure the CPC remains party-neutral in its application. Contribution determinations would be dependent upon a number of factors including which candidates support the mission of the PAC and legislative initiatives of the Association, or whether a proposed recipient is in leadership in the Legislature or on a committee that would further the goals of the PAC.

What are the pay-to-play considerations and how will they be addressed?

The PAC Committee recognized that many law firms will be concerned with pay-to-play implications in connection with any contributions they may make to the PAC. The Committee recommends various ways that those concerns can be addressed in the PAC's bylaws to minimize the impact of a contribution in light of New Jersey's pay-to-play laws. For example, contributions would be limited to state legislators, and therefore no contributions would be made to local candidates, candidates for statewide office, or federal candidates.

¹ A continuing political committee is New Jersey's equivalent of a PAC. PAC and CPC are used interchangeably throughout this memo.

Will the NJSBA be giving up its objectivity by forming a PAC?

No. The purpose of the CPC is to support the Association's legislative initiatives. The Association is already an advocate in Trenton through its government affairs program. Objectivity is held intact because of the CPC Board's independence. As the PAC will not itself lobby, the Association will retain its stature in the Legislature and will continue to provide expertise on the impact of legislation.

How can we support legislative initiatives without endorsing candidates?

CPC contributions are contributions in support of a legislator who the PAC Board has identified as important to furthering key legislative initiatives. While the PAC will make contributions to various candidates, neither the NJSBA nor the PAC will endorse a candidate for office. It is important to recognize and acknowledge that nothing will ensure a legislator who supports one of the Association's initiatives will support all of the Association's initiatives. Regardless of PAC contributions, the Association will continue its lobbying efforts independent of the PAC to provide substantive expertise and support to sponsors of the Association's legislative initiatives, including testifying when appropriate.

By starting a PAC, aren't we admitting it is about money?

No. NJSBA's legislative initiatives will exist with or without a PAC. As noted above, even with a PAC, the NJSBA's substantive advocacy role will continue, with NJSBA members being able to offer their expertise on matters that impact the practice of law. A PAC contribution will be only one aspect of the Association's advocacy efforts. But, like it or not, money plays a role in advocacy and can be the extra tool that is needed to achieve our goals in Trenton.

Don't individual members make political contributions now, and isn't that enough?

Yes and no. We know that individual members make individual donations and are individually supportive of various candidates. If those donors are not recognized as being affiliated with NJSBA, though, their efforts are not attributable to the NJSBA, and the NJSBA's message is not effectively conveyed on behalf of our members. By combining all of the individual member donations and making contributions based on consistent principles, the donations will be much more effective and result in a unified voice for the legal profession in New Jersey.

How do we handle competing section interests?

This is not a new problem unique to having a CPC. Decisions of the CPC Board will not be made on the basis of only one section's or committee's position. Similar to the Association Board of Trustees' deliberation of competing interests when deciding what position to take on legislation, the CPC Board will carefully weigh these decisions with the mission of the CPC in mind. This is why the composition of the CPC Board will be carefully balanced to ensure Board members represent a diverse array of views and no one group has an undue amount of influence.

How will the CPC be administered?

Steps will be put into place by the Association to manage the flow of contributions or any issues related to oversight of the PAC thus ensuring compliance with federal and state election laws and regulations. Membership dues will not support the PAC.

How many other state bar associations have PACs and are they successful?

It is important to note that there are two types of bar associations – voluntary and involuntary. Involuntary (mandatory, integrated or unified) bar associations that operate as an arm of the government do not have political action committees. Of the 18 voluntary state bar associations, eight have political action committees – Arkansas, Illinois, Indiana, Iowa, Kansas, Ohio, Pennsylvania, and Tennessee. Minnesota dissolved its political action committee in 2014.

It is difficult to evaluate the effectiveness of bar associations that have political action committees. Anecdotal information obtained from the directors of government affairs in Ohio, Illinois and Iowa supports the notion that in order to be effective, they must be able to make contributions to legislative candidates. In Pennsylvania, a former PAC president stressed the importance of contributions, underscoring the importance of supporting legislators by offering them longevity in their appointed positions to support the legislative initiatives of the bar association.² Even in Minnesota, where the PAC was dissolved, the bar president acknowledged that a PAC “can play a significant role in helping an association advance a political agenda by being able to offer appropriate support for legislative allies.”³ In states where PAC fundraising is more successful, they appear to give money to lawyer-legislators as well as non-lawyers.

New Jersey's legislative makeup is manageable at 120 legislators. It is not the recommendation of the PAC Committee to institute a proposal to give every legislator money, but to wisely allocate funds to those who support the NJSBA's initiatives. The PAC Committee's recommendations were made with the parameters of proposed bylaws in mind. It looked at other organizations that have PACs and concluded a PAC could realistically succeed in achieving its mission to effectuate our legislative initiatives through thoughtful contributions.

² Carlucci, William P., Where Does our PABAR-PAC Money Go, Anyway?, <https://www.pabar.org/BLIResourceGuide/WhereDoesOurPABAR-PACMoneyGo.pdf>.

³ Duran, Phil, An Effective Policy Advocate, <http://mnbenchbar.com/2014/01/an-effective-policy-advocate/>.

Examples of professional associations in New Jersey that operate PACs:

New Jersey Business and Industry Association

The NJBIA is a business-friendly organization with a legislative policy that advocates for a business-friendly New Jersey. That is not always a unified mission as small businesses do not always support the same initiatives that help large businesses and industries are often at odds with each other.

New Jersey Realtors Association

The NJ Realtors Association has a PAC and four-in house lobbyists. They work at the national, state, county and local levels, thus their advocacy is more aggressive than the NJSBA's.

New Jersey Society of Certified Public Accountants

The NJ CPA PAC provides support in a non-partisan way to protect their profession and fight unfair legislation.

New Jersey Hospital Association

NJHA's PAC, HealthPAC, raises funds used to support lawmakers and candidates who understand and are influential in matters significant to New Jersey's healthcare providers and their patients.

New Jersey Association for Justice

NJAJ represents the plaintiff's bar and represents a small segment of New Jersey's attorneys - just over 2,500 members.

Will the formation of the PAC preclude public employees – particularly prosecutors and public defenders – from taking positions on legislation in their sections in the Association?

Concerns were raised regarding the issue of public employees taking positions on legislation, which – upon adoption by the NJSBA Board – the PAC Board then considers in determining which candidates to support.

The formation of the PAC will not affect the ability of a public employee to participate as he/she now does in the Association's legislative process. The following information has been provided with the assistance of Steve Sholk, Esq., special counsel to the NJSBA Board of Trustees to address legal questions regarding a PAC.

As stated, the PAC would be independent of the Association, and it must be for legal reasons. The PAC Committee has proposed that the majority of the PAC Board would be different than the majority of the Association Board. The Association Board would only provide the PAC

Board recommendations on contributions to candidates based on the Association Board's overall review of the legislative program so that the PAC Board can then review which legislative candidates have demonstrated support for the NJSBA's initiatives.

More importantly, contributions to the PAC would be voluntary and anyone – public employee or not – may opt out of contributing to the PAC. However, it should be noted that there is no statutory prohibition against a public employee making a contribution to a political campaign or a PAC. There may be other considerations such as ethical guidelines and departmental directives, that a public employee would need to consider. The ability to opt out gives the employee the ability to comply with the guidelines and directives.

It is also important to reiterate the Association's process with respect to taking legislative positions. A legislative position taken by the Board is not a position by a single section. A position by the Board is the position of the NJSBA. Individual Board members, sections, or individual members of the NJSBA are precluded by the bylaws from speaking on behalf of the NJSBA to take a position contrary to that of the Board. Thus, a Criminal Law Section's decision to support legislation that is ultimately adopted by the Board is no longer the section's position – it is the official position of the Board. If the Board opted not to adopt the section's position, the section could not independently lobby for the section's position. Conversely, if the Board adopts the recommendation of the Criminal Law Section on a legislative position, the section could not independently lobby for this position on behalf of the NJSBA. For this reason, public employees need not be concerned with whether their position on legislation will be conveyed to the PAC because at no time would an individual section's position be taken into consideration by the PAC Board. The only recommendation that the PAC Board would consider is that of the Association Board based on a review of its overall legislative initiatives.