

Eleanor Bush, Esq.
Candidate for Judge of the Court of Common Pleas

Responses to Democracy for Pittsburgh Endorsement Questions

Judicial / Magisterial offices:

- I. Privacy, openness, and accountability: Judicially, what tools are available to you to encourage a) greater openness in public information b) appropriate privacy of private information and c) professionalism and accountability of all city employees, most specifically police and emergency responders?***

As an attorney working on behalf of children and families for 22 years, I am quite familiar with the delicate balance that must be struck between the public's right to openness and transparency in our courts and the privacy rights of individual children and their families. The judge, who has the power to control access to her courtroom in individual cases, is the mediator of this balance.

The Pennsylvania Constitution includes a guarantee of public access to all judicial proceedings. The courts, however, have inherent power to control access to their records and proceedings and may deny access to protect the privacy rights of individuals. The recent judicial scandal in Luzerne County, in which the juvenile court judge routinely and systematically violated the rights of youth appearing before him, demonstrates the harm that can arise from closed court proceedings. If the Luzerne County courtroom had been open to the press and public, perhaps the judge's egregious conduct could have been prevented or at least could have come to light sooner. I am currently serving on a special task force of the Pennsylvania Bar Association that will soon issue recommendations for reforms to remedy flaws in the juvenile justice system that contributed to the Luzerne County debacle. I, along with several other task force members, have advocated that juvenile courtrooms should be open.

Appropriate protection for the privacy of the participants in these matters is a crucial component of openness. Confidential records, such as mental health evaluations that are submitted to the court, should not be available to the public. Portions of hearings that include discussion of sensitive personal information should be closed. The identities of youth involved in proceedings – whether as victim, witness, or defendant – should not be published. Such a protection would be similar to the media's longstanding policy not to identify victims of sexual offenses in their reporting. Allegheny County family court judges, including Judge Kim Clark and Judge Cheryl Allen (now on Superior Court), have provided this kind of openness in their courtrooms, and it has worked. As a judge, I would continue in this tradition.

As for the conduct of public employees who interact with citizens, the court again has an important role to play. The court must ensure that everyone who comes before it is treated with dignity, respect and fairness. This starts with the judge's own staff, who are responsible for daily operation of the courtroom and who must help to establish a professional, respectful environment in the courtroom. Judges also need to recognize their role as institutional leaders within the county, with a responsibility to ensure that all public systems serve the public well. For example, a judge presiding in Family Division over cases involving the county's Office of

Children, Youth and Families will see the same public employees participating in multiple individual cases. If the judge were to observe repeated failures in the response of those employees to the citizens involved in the proceedings, the judge might be able to sanction them in an individual proceeding, but should also seek to address the broader issues of professional conduct with the administration of the Office of Children, Youth and Families.

II. *Public-private partnerships: are there legal limits to a municipality or county's ability to sign away its public space via economic partnership agreements? How does one balance the legitimate desire of groups to protest and / or inform the public, vs. the public (or an individual's) right to not be bothered / harassed? Does it make sense to have a blanket ban on approaching people on the sidewalks in Schenley plaza, but not (e.g.) the sidewalks in the vicinity of certain medical providers?*

Judges have an obligation to be well-informed on the law that applies to any specific case before issuing an opinion, and they also have an obligation to apply the law fairly to the specific facts of the individual case before them. I think it is wise for attorneys, judges, and prospective judges to acknowledge the limits to their own expertise. No attorney is an expert on the full range of legal issues they might face once elected to a judicial position. While I studied the First Amendment in depth in law school and recognize the important First Amendment interests raised by this question, I am not well-informed enough on the competing interests and the existing body of appellate case law interpreting those interests to offer an opinion.

If I am elected to serve on the Court of Common Pleas, I hope to be assigned to the court's Family Division, where I think it unlikely that I would be faced with First Amendment issues to decide. However, were I called upon to decide a matter involving competing interests under the First Amendment, I would diligently digest the arguments presented by the parties, would do significant independent reading and research of the relevant law and would make decisions after thorough analysis of the relevant law and facts.

Regarding the specific scenarios above, the 2009 decision by the Third Circuit Court of Appeals in Brown v. City of Pittsburgh demonstrates how fact-specific these sorts of issues become. In that case the city passed an ordinance limiting protesters' ability to approach people in the vicinity of health clinics. The city's ordinance combined two different types of provisions, each of which had been found constitutional in previous court decisions. However, in this case the court found that while either provision standing alone would be constitutional, the combination of the two created an unconstitutional violation of protesters' rights to freedom of speech. Thus, the city had to select one or the other of the two provisions for enforcement. It seems very likely to me that the First Amendment implications of any public-private economic partnership agreements would similarly be very much driven by specific facts of the situation.

III. *"Freedom from" vs. "freedom to": what legal issues do you expect to address in terms of Marcellus shale or other extractive industries? Are certain of these conflicting freedoms / protections more nearly absolute than others?*

Marcellus Shale drilling may give rise to numerous legal issues. Examples may include:

- Disputes between property owners and gas companies over the terms of leases or whether parties are in compliance with those terms
- Challenges to state or local governments' authority to impose restrictions on location of drilling
- Claims alleging that environmental harms have resulted from drilling activity (e.g., chemical spills, improper disposal of drilling wastewater, inadequate treatment of wastewater, interference with water withdrawal rights of others)
- Interpretation of the Pennsylvania Constitutional provision guaranteeing to the people the right to clean air, pure water, and preservation of natural resources

While these issues, as well as others, may be likely to arise, I would anticipate that much of the litigation surrounding these sorts of issues would occur either in the federal courts in some instances or in Pennsylvania's Commonwealth Court, which has jurisdiction over most matters involving administrative agencies like zoning hearing boards and the Environmental Hearing Board as well as over matters involving state government agencies like the Department of Environmental Protection. Since I am seeking a position on the Court of Common Pleas, I think it less likely that I would preside over matters raising these sorts of issues.

If I were called upon to preside over a matter involving claims related to Marcellus Shale drilling, I would proceed as described in the question above – do the necessary research to become well-grounded in the applicable law. I also think my background from my five years as an attorney for the Pennsylvania Department of Education would prove useful. Representing a state government agency that had some oversight authority over local agencies (i.e., school districts) gave me lots of experience analyzing regulations, interpreting provisions of state statutes and understanding the interplay between state government authority, local government authority, and individual rights to education. These skills acquired in one area of expertise would transfer to the environmental/drilling area, where I do not have particular expertise.

IV. *Magistrates, common pleas judges and commonwealth court judges may all deal with family law issues. Insofar as it applies to your office, please address any / all of the following: a) What is your position on rights for minors with regard to issues like abuse, reproductive issues, and emancipation? b) What are your views on the court precedent of preferentially awarding majority custody to the mother? c) Do you feel step-parents should have any legal rights with regard to the step children they parent? Does this apply equally regardless of the gender of either / both parents?*

I have devoted my 22-year career as an attorney to helping families and children in need. It is essential for judges of the Court of Common Pleas, who make thousands of life-altering decisions every year, to do so in a way that respects the rights of all participants and that reflects the realities of children's and families' lives. On most of the issues mentioned in this question,

Pennsylvania laws and appellate court decisions applying those laws provide the courts with the structure and support necessary to fulfill this obligation. Specifically,

- (a) I have held several positions in which my work involved ensuring that individual children and youth were informed of their legal rights and had the opportunity to exercise them. Throughout my legal career I have educated adults who interact with children, including social workers, health care professionals, and school personnel, as to the rights of children. It is essential that judges of the Courts of Common Pleas be well-informed as to children's rights and hold all parties accountable for respecting and protecting those rights.

I wholeheartedly support the mission statement published by Pennsylvania's Office of Children and Families in the Courts, which states, among other things, that "all children have the right to be protected from physical neglect and abuse, including sexual victimization, and from emotional neglect and abuse."

Pennsylvania's Minors' Consent Act, along with a number of other provisions appearing in various statutes, give minors in designated circumstances considerable authority over their own health care, including reproductive health care and reproductive choices. While I might wish for youth to postpone sexual activity and to postpone pregnancy and parenthood, I support ensuring that youth have meaningful opportunities to exercise the rights they have. This includes supporting and respecting a teen parent's choice to parent her child, to make an adoption plan for her child, or to terminate a pregnancy, following the Pennsylvania law that governs that choice. This also includes support for teen fathers, a group too often ignored, who wish to exercise their right to participate in custody and parenting of a child.

- (b) There is no preference in Pennsylvania law for primary custody to be awarded to a child's mother. Pennsylvania's child custody law explicitly prohibits preferring one party over another based on gender. Similarly, the law explicitly provides that there is no presumption that custody should be awarded to a particular parent. These provisions are included in Act 112 of 2010, which re-wrote Pennsylvania's child custody statute. The new law went into effect in January of this year. The law appropriately puts parents on an equal footing in custody disputes.

Equally important, though, is the list of specific factors a court must consider in reaching a determination as to an individual child's best interests. It is in applying this list of factors that the court will take into consideration the specific facts of a child's relationships with each of her parents. For example, the court is to consider both the parental duties that have been performed by each parent and which parent is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child. Such factors may appropriately lead a court in a specific case to choose one parent over another for an award of primary custody.

- (c) Children's connections to their parents, extended family, and other caring, loving adults are important to them. When a child and step-parent have developed a healthy, loving

relationship because of the role the step-parent has played in the child's daily life, the law should acknowledge, respect, and preserve that relationship, even if the relationship between the step-parent and the child's birth parent has ended. Pennsylvania custody law and court decisions support this principle, which can and should apply to parents of either gender.

For example, in 2000 Pennsylvania's Supreme Court decided a case in which custody of a child was awarded to the child's step-father rather than his father, following the death of the child's birth mother. In 2001 in another Pennsylvania Supreme Court case, the court stressed that a birth parent does not have the right to "erase" a relationship between her co-parenting partner and the child. Decisions like these appropriately recognize and value the relationships that are important to children and to making custody decisions that serve children's best interests.

- V. ***Since 2007, we have been asking candidates whether the "for profit" incarceration model suffers from an intrinsic conflict of interest. (That is, the prison will do better, financially, by increasing sentence lengths and by increasing recidivism, rather than by rehabilitating inmates.) Given the highly publicized kickback scandal involving for-profit youth prisons, we are instead stating that this is an actual, not a potential problem. What do you pledge to do about it, both in office if elected, and personally? Also, are mandatory sentencing guidelines part of the solution, or part of the problem?***

The profit motive introduces one set of inappropriate incentives into administration and operation of prisons and youth facilities. Publicly administered facilities, unfortunately, are vulnerable to other bad incentives and potential for abuse. Recent litigation in New York state over the dismal conditions within its youth prisons stands as one example. Whatever the model, I think that transparency – in contracting, in oversight, in reporting on performance – helps to provide safeguards against potential abuse.

I and other members of the Pennsylvania Bar Association's task force that is recommending juvenile justice system reforms in the wake of the Luzerne County scandal, are advocating for creation of a "Children's Ombudsman" office in Pennsylvania with authority to investigate complaints involving operation and administration of that system. One of the many problems that arose in Luzerne County was that the youth and families so tragically affected by the judge's misconduct had nowhere to turn. An independent office, with staff and subpoena power, would be a powerful addition to Pennsylvania's juvenile justice system.

The issue of sentencing guidelines relates to another of the problems that infected Luzerne County's court. The judge there used a "one size fits all" approach to the youth who appeared before him. Practically every youth, no matter what his age, history, severity of his alleged offense, received an incarcerative disposition. ("Disposition" is the juvenile justice equivalent of a sentence.) Guidelines to structure and inform an individual judge's use of his discretion might not have prevented the misconduct of the corrupt judge in Luzerne County, but they could benefit courts seeking to administer justice consistently.

Although I have not practiced criminal law as an attorney, I had the privilege in law school to study sentencing policy with Daniel Freed, one of the nation's foremost experts on criminal sentencing. I remember well from that time that sentencing guidelines can provide great benefit to the justice system, by preventing wild disparities in sentences for similar offenses that regularly occurred within one courthouse or across jurisdictions in a single state. I also remember well that for guidelines to work well, judges must have the flexibility to depart from them based on the individual circumstances of a particular defendant or crime.