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**Pennsylvania Coalition for Civil Justice Reform Judicial Candidate Questionnaire – 2023**

Harry F. Smail, Jr

2-28-23

Candidate Name (Print)

Date

A handwritten signature in blue ink, appearing to read "Harry F. Smail, Jr.", written over a horizontal line.

Candidate Signature

Superior Court  
Position Sought

1. Please describe your background and experiences that qualify you for this office. Please list all membership organizations such as bar associations, legal associations, professional associations, civic, community, charitable, religious, educational, social, political, and labor organizations to which you belong or have provided pro bono work. Please include any leadership positions held.

**1. List each college and law school you have attended, degrees received and scholastic honors awarded.**

Grove City College Class of 1988

Bachelor of Arts Dual Degree- Business Administration- Marketing, Political Science-Pre-Law  
Honors Graduate;

Duquesne University, School of Law Class of 1997

Juris Doctorate

**Admissions:**

Commonwealth of Pennsylvania- Admitted November 1997

Federal Western District Court of Pennsylvania- Admitted December 1997

US Supreme Court- Admitted March 2005

Federal US 3<sup>rd</sup> Court of Appeals, June 2005

**Please see my attached resume for my career history and social & political affiliations.**

2. In matters of constitutional interpretation, would you describe yourself as an originalist, textualist, pragmatist, or some other term that indicates how you approach constitutional interpretation?

I would consider myself an Originalist and a strict constructionist.

3. Please identify the current U.S. Supreme Court Justice or Pennsylvania Supreme Court Justice that you believe most closely reflects your judicial philosophy and explain why.

I would select Justice Gorsuch. He has a very reasoned review of facts. He is not afraid to make a decision that will make for a more efficient the adjudication of the law with a correct outcome.

4. Venue:

In 2022, the Supreme Court rescinded the medical liability venue rules contained in Pa.R.C.P. Nos. 1006, 2130, 2156 and 2179. These rules were the product of legislative, executive, and judicial cooperation during the early 2000s to help end a medical liability crisis through the prevention of forum shopping.

- a. Do you believe that a medical liability crisis existed in the late 1990s through early 2000s?

Yes. As a practicing attorney during that time I saw it in action

- b. Do you support or oppose the 2022 rescission of the medical liability venue rules?

As a prospective Superior Court Judge and in my current position I may be asked to weigh this matter.

As such, I'll limit my response to my abiding belief in the principle that people deserve to be judged by a jury of their peers which was happening prior to the 2022 rescission.

- c. Do you believe Pennsylvania should have a single venue rule for all civil cases similar to the rescinded medical malpractice venue rule which required that cases be brought in the county in which the cause of action arose?

Please see my answer to question 4b which covers my belief on this matter.

5. Would you support limits on personal injury lawyer advertising such as the prohibitions on unfair and deceptive practices set forth in the Pennsylvania Unfair Trade Practices and Consumer Protection Act.

This is an area of law that as a jurist I may have to rule on with regards to civil suits.

I will not legislate from the bench and will follow the rules set forth by the legislature and signed by the governor.

6. What is the proper role of stare decisis when deciding cases in the appellate courts? Do you agree that predictability in the law is important to maintain a healthy business and medical climate in Pennsylvania?

Stare Decisis is critical in providing predictability and stability to the courts. I leave open the

possibility that a court must at times correct previous encroachments by the judiciary relative to constitutional review and deviation of the facts. I believe it is a heavy burden to demonstrate such encroachments when weighing prior precedents.

7. Recent appellate decisions have weakened protections provided by the Peer Review Protection Act (PRPA) which was intended to provide an absolute privilege for certain designated health care providers to discuss negative patient events to ensure that they do not occur again. As a jurist, would you support the PRPA's intent and allow health care providers to police themselves without fear that their findings will be used against them in a subsequent malpractice case?

This issue is under active litigation and may come before me in civil litigation. It would therefore be inappropriate for me to answer hypothetically. I do think this area of the law would be ideal for the legislature to step in and clarify their intent in this issue.

8. A panel of the Superior Court in Spencer v. Johnson stated, in an alternative to its main holding, that the Fair Share act only applies when the plaintiff is comparatively negligent. Do you view this part of the Spencer v Johnson decision as dicta or a holding of the case?

I view it as dicta as it merely provides the judge another remedy but does not bind them to it.

In Spencer the prior status of fair share correctly allowed the analysis of fault that each defendant may have with relation to the subject event of each case. That outcome may result in one defendant being 100% at fault within the prior existing standard that did not change.

I think this is another area ripe for legislative statutory clarification.

9. Has your campaign committee received contributions from any political action committee (PAC), PAC Board, or other entity affiliated with Pennsylvania's plaintiffs' lawyer community, including but not limited to:
  - a. LawPac, Fund for Change, the Committee for a Better Tomorrow, Pennsylvanians for the Disabled, Fairness PA, PA Alliance Action, or DT Pac?
  - b. If your answer is "Yes", please list the PAC(s).
  - c. Is your campaign planning on soliciting or accepting any funding from PACs listed in (a) between now and Election Day in November?

No

10. Should Pennsylvania appellate court judges be appointed or elected?
  - a. If you believe they should be appointed, what system should be implemented to accomplish this?
  - b. If you believe they should be elected, do you prefer the current state-wide election system, a system that would divide the Commonwealth into appellate judicial districts, or something else

I am comfortable with the current system of elections.

11. Please list the endorsements your campaign has received to date.

Senate President Pro Tempore, Kim Ward

PAGOP

PA Pro-Life Federation

FOAC