

**AFSCME DISTRICT COUNCIL 47**  
**2023 CANDIDATE QUESTIONNAIRE**  
**(Common Pleas Court Judges)**

**CANDIDATE INFORMATION**

**Candidate Personal Contact Information (Fields marked with asterisks are required)**

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**Campaign Contact Information**

Full Name of Campaign Committee: Kay for Judge  
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**Candidacy Information**

What office are you seeking? Philadelphia Court of Common Pleas Judge  
Are you the incumbent? No  
With which party are you registered? Democratic

**Please list union leaders you seek input from when developing your legislative agenda:**

As a judicial candidate, I have not developed a legislative agenda. However, I have sought input from Mungu Sanchez, Lou Agre, and Ryan Boyer.

**Who are your opponents?**

Although the full field is yet to be determined, a listing of potential judicial candidates can be found at <http://www.phillyjudges.com/candidates>.

**AFSCME DISTRICT COUNCIL 47  
2023 Candidate Questionnaire  
(Common Pleas Court Judges)**

If there is not sufficient space to respond to the following questions, please attach additional sheets to the questionnaire.

**1. What in your background qualifies you to be a judge of the Court of Common Pleas? Why do you want to be a judge?**

I was born in Seoul, Korea, but I have lived in the United States since I was a small child. My mom had to bring us all over without a plan on how to feed the family and we struggled to make ends meet. Thankfully, she found a good, union job working as a secretary, and she showed me what it looks like to be resilient.

When I was ten, I found deportation notices for my entire family. By the time I was in college, I was working hard to navigate the new immigration laws. This gave me the opportunity to become my own first client. I went to the law library to research the immigration laws, started gathering evidence, and ultimately submitted my application for permanent residency.

Although I wish I could have done the same for my mom, by then, she had already passed away. But this was the journey that inspired me to study law. In 1993, the same year that I graduated from law school, I became a naturalized citizen of these United States of America.

It has been thirty years since I started my legal career, and I have discovered that helping people resolve their conflicts is core to who I am.

During the time I chaired the Philadelphia Commission on Human Relations, in addition to conducting adjudicatory hearings to decide claims of discrimination, I led a year-long series of eleven public hearings where we gathered testimony from hundreds of Philadelphians who shared their experiences around intergroup conflicts in our public schools.

In 2019, I ran for the Court of Common Pleas for the first time. I am tremendously proud of the grass-roots campaign my team ran and we worked hard to reach voters, one voter at a time. Although I did not win, another opportunity definitely arose.

In 2020, I had the privilege to serve as the Voter Protection Director for the PA Dems, and ultimately for the Biden-Harris Campaign throughout the Commonwealth of Pennsylvania. After the Presidential Election and, indeed, after all of the votes were counted and certified, I set out to start a new endeavor.

I am now out on my own working as a neutral arbitrator and mediator. Essentially, I work as a private judge, helping people resolve their conflicts. As an arbitrator, I decide cases that come before me, and as a mediator, I help parties get to a negotiated settlement. I absolutely love this work, but I am a public servant at heart, which is why I am running once again for the Philadelphia Court of Common Pleas this year.

**AFSCME DISTRICT COUNCIL 47  
2023 Candidate Questionnaire  
(Common Pleas Court Judges)**

**2. How would you describe your judicial philosophy if you are a sitting Common Pleas judge?**

As Socrates taught, “Four things belong to a judge: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.” I pledge to all Philadelphians that, if elected to the bench, I will listen intently, consider wisely, and decide fairly.

**3. Common Pleas Judges are sometimes asked by employers to set aside or vacate arbitration awards. What considerations, if any, would compel you to set aside or modify an arbitration award pursuant to a collective bargaining agreement? Are there any circumstances under which you believe you would set aside an arbitration award?**

With regard to the standard of review applicable to Act 195 arbitration awards, the Pennsylvania Supreme Court has explained that:

It is axiomatic that the arbitration of labor disputes is highly valued and greatly favored in our Commonwealth. The benefits of arbitration are many. Arbitration is swifter, less formal, and less expensive than traditional dispute resolution by courts. Arbitration has been described as more responsive to individual needs and preferential in light of the ongoing relationship between employer and union. Perhaps most importantly, arbitration has been seen as a prime force in the policy of reducing industrial strife. Indeed, the Legislature recognized the value of informal dispute resolution as arbitration of grievances is mandated under the PERA. 43 P.S. § 1101.903. Under Act 195, it is for the parties to agree upon the arbitration procedure to be used. 43 P.S. § 1101.903. It is critical to note that the only caveat mentioned by the General Assembly with respect to the arbitration process is that the final step of the arbitration process shall provide for a binding decision. *Id.* It is in the light of these factors that the role of the judiciary in labor arbitration has been considered.

*State Sys. of Higher Ed. (Cheyney Univ.) v. State College Univ. (PSEA-NEA)*, 560 Pa. 135, 142-143 (1999).

Generally speaking, Pennsylvania law allows for a court to vacate an arbitration award only under limited circumstances.

The review of a common law arbitration award is narrowly circumscribed. This is because the law favors non-judicial dispute resolution that the parties have agreed to. Alternate dispute resolution is economical in terms of time, expenditure of judicial resources and transactional costs. Limited judicial review also imposes finality in a contested matter. To permit anything but limited judicial review defeats the purpose of arbitration.

**AFSCME DISTRICT COUNCIL 47  
2023 Candidate Questionnaire  
(Common Pleas Court Judges)**

The award of an arbitrator in a nonjudicial arbitration is binding and may not be vacated or modified unless it is clearly shown that a party was denied a hearing or that fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award.

*F.J. Busse Co. v. Zipporah, L.P.*, 879 A.2d 809, 811 (Pa. Super. 2005).

If elected, I will listen with an open mind to the evidence presented and carefully follow the law in making any determination with respect to arbitration awards.

**4. Common Pleas Judges are often asked to issue injunctions in connection with labor disputes. What considerations would compel you in judging whether it is appropriate to issue an injunction in a labor dispute?**

A Court of Common Pleas judge who is asked to issue an injunction in a labor dispute must first consider whether the activities underlying the request for injunction fall within the Pennsylvania Labor Anti-Injunction Act, 43 P.S. §§ 206a – 206n. If the Act applies, an injunction may only be issued after the trial court makes specific enumerated factual findings, per Section 206i, including that unlawful acts (e.g., criminal trespass) have been threatened or occurred, and that substantial and irreparable injury to property would occur absent an injunction.

The Act embodies strong public policy against court intervention in labor disputes, favoring an employee's right to “exercise actual liberty of contract and to protect his [or her] freedom of labor.” 43 P.S. § 206a. *See PHK-P, Inc. v. United Food & Commercial Workers Union, Local 23*, 554 A.2d 519, 521 (Pa. Super. 1989), citing *Locust Club v. Hotel & Club Employees Union*, 155 A.2d 27, 29 (Pa. 1959).

Judges faced with a request for injunction in a labor dispute must adhere to the Act, which expressly restricts a trial court’s jurisdiction to issue injunctions during labor disputes unless a specific statutory exception applies. 43 P.S. 206d; *Turner Const. v. Plumbers Local 690*, 130 A.3d 47, 59 (Pa. Super. 2015).

**5. Have you performed any pro bono work in your career within the last 2 years and if so, what was it?**

I am the Vice Chair of the Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board of the Pennsylvania Supreme Court and have served on the IOLTA Board since Nov. 2019. The IOLTA Board’s mission is to support the delivery of free civil legal aid to low-income and disadvantaged Pennsylvanians and is the largest funder of free civil legal aid in the Commonwealth.

**6. What would you consider in deciding to limit picketing in a labor dispute?**

Labor picketing, as long as it is not coercive, intimidating, or violent, is recognized as a protected form of assembly and free speech under both the U.S. and Pennsylvania Constitutions. *Giant*

**AFSCME DISTRICT COUNCIL 47**  
**2023 Candidate Questionnaire**  
**(Common Pleas Court Judges)**

*Eagle Markets v. United Food and Commercial Workers Union Local 23*, 652 A.2d 1286, 1292 (Pa. 1995).

A court is without jurisdiction to enjoin labor dispute picketing under Labor Anti-Injunction Act, unless the court finds that unlawful acts have been threatened or committed or will be committed, the employer's property will sustain substantial and irreparable injury, greater injury will be inflicted upon employer by denial of relief than will be inflicted upon labor by granting relief, adequate police protection is unavailable, and there exists no adequate remedy at law. *PHK-P, Inc. v. United Food & Commercial Workers Union, Local 23*, 554 A.2d 519 (Pa. Super. 1989).

Factors for consideration include: Number of picketers; whether the location is on public or private property; location of picketing activity in relation to access or obstruction of property entrances/exits; the presence or lack of violence, intimidation and coercion, or unlawful acts. For example, if the property is open to public use, even if privately owned, the owner is not entitled to injunction unless it has established unambiguous, specific prohibitions against picketing. *Coatesville Development Co. v. United Food and Commercial Workers AFL-CIO*, 542 A.2d 1380 (Pa. Super. 1988).

**7. Under what circumstances do you believe alternatives to incarceration are appropriate? What do you believe are the most effective programs for preventing recidivism?**

Full utilization of the First Judicial District Mental Health Court, Drug Treatment Court, Veterans' Court, in addition to other diversionary programs, as alternatives to incarceration is essential in balancing justice, treatment, and public safety. I would also consider: probation, including, where appropriate, non-reporting probation, where individuals are not required to report to a probation officer during the period of probation; community service; and referral to treatment for addiction. Finally, I would welcome the opportunity to further utilize restorative justice programs that serve both as an alternative to incarceration and as a victim service program. Under such programs, appropriate cases would be diverted to a process designed to recognize the harm done, address the needs and interests of those harmed, and identify appropriate responses to hold responsible parties accountable.

**8. How many and what types of cases have you handled in the last several years?**

I have been a full-time neutral arbitrator and mediator since 2021, working essentially as a private judge, in the areas of employment law, labor law, commercial law, consumer law, and tort law. Since 2018, I have handled over fifty cases as a neutral. From November 2019, through December 2020, I served as the Voter Protection Director for the Pennsylvania Democratic Party and the Biden-Harris Coordinated Campaign in the Commonwealth of Pennsylvania. My full professional resume can be found at <https://www.kayforjudge.com/resume>.

**AFSCME DISTRICT COUNCIL 47  
2023 Candidate Questionnaire  
(Common Pleas Court Judges)**

- 9. With an Adult Probation/Parole Department and a Prison Department so severely understaffed and underfunded, including the Options program and psychological services, what will you do to make sure that your judicial orders don't turn into a series of "unfunded mandates," without any real force of law?**

As discussed in my response to Question Number 6, in addition to referral to diversionary programs, for non-violent crimes, I will consider where appropriate mail-in probation as well as non-reporting probation.

- 10. What is your position on mandatory sentences?**

Prior to imposing any mandatory sentence, a judge must consider whether the mandatory sentence is constitutionally valid, as many in Pennsylvania have been struck down. For example, applying the principles of *Allegheny v. United States*, 570 U.S. 99 (2013), the Pennsylvania Superior Court found that 42 Pa.C.S.A. § 9712.1, setting forth sentences for certain drug offenses committed with firearms, to be unconstitutional and the Court vacated appellant's judgment of sentence and remanded for the re-imposition of sentence without consideration of any mandatory minimum sentence provided by Section 9712.1. *Commonwealth v. Newman*, 99 A.3d 86, 103 (Pa. Super. Ct. 2014).

- 11. Would you be in favor of a liaison from the probation department to discuss court problems with court administrative judges? Why or why not?**

In working toward the goal of equal access to justice, I believe in keeping open lines of communication. It is important that the courts have as much information as possible about the population that they are serving. Having a liaison from the probation department that shares insights regarding the administration of probation across all demographics with the Administrative Judge would serve to promote more effective sentencing and enhance efficiencies.