

Michigan Judicial Campaigns

Ethics Pocket Guide



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By the Honorable Thomas K. Byerley
Chief Judge
Eaton County, Michigan

Revised by Ms. Sarah Roth, J.D.
Publications Manager
Michigan Judicial Institute

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This revised edition was initially published in 2012, and the text has been revised, reordered, and updated through January 1, 2014. This benchbook is not intended to be an authoritative statement by the justices of the Michigan Supreme Court regarding any of the substantive issues discussed.

Acknowledgments

Judge Thomas K. Byerley authored the first edition of *Michigan Judicial Campaigns: Ethics Pocket Guide*. Judge Byerley was appointed to the office of Chief Probate Judge for Eaton County by Governor Jennifer Granholm in April 2010, and was elected to the position in November of that same year. Judge Byerley previously was employed as Regulation Counsel for the State Bar of Michigan, where he provided ethics counsel and advice to Michigan judges and lawyers for approximately ten years. He also has served as a private practitioner, county corporation counsel and assistant prosecuting attorney over his career. He would like to especially thank Evelyn Quiroga, Secretary of State Bureau of Elections Division Director, for her assistance in creating this publication.

The revised edition of this publication was the result of collaborative efforts between Judge Byerley and MJI. Judge Byerley authored the text, and Sarah Roth, MJI Publications Manager, served as editor.

Preface

All candidates running for judicial office in Michigan are required to follow the Michigan Code of Judicial Conduct for the election process, even if the candidate is not a sitting judge. See [MCJC 7\(B\)\(1\)](#). Because the “election season” is usually active and hectic, many candidates need a quick guide to help them navigate through the unique ethics dilemmas of a campaign.

This booklet is designed to provide quick guidance on the most prevalent ethical issues that arise during a judicial campaign. Please remember that this is a summary only, so when you are faced with a specific issue, go to the primary source cited in the applicable footnote. The references provided in this booklet include:

- ▶ Reported cases
- ▶ Statutes - The Michigan Compiled Laws “MCL”
- ▶ Ethics rules adopted by the Michigan Supreme Court - the Michigan Code of Judicial Conduct “MCJC” and the Michigan Rules of Professional Conduct “MRPC”
- ▶ Ethics opinions - issued by the State Bar of Michigan’s Ethics Committee (“JI” are informal judicial opinions, “RI” are informal Rules opinions, “CI” are informal opinions under the former Code of Professional Responsibility).¹

Also included are “**Author Tips**” that are purely editorial comments regarding practical issues that Judge Byerley has learned either during his own campaign or through talking with others who have gone through a judicial campaign. These tips are solely his personal opinion and advice and are not intended to be an authoritative statement by the justices of the Michigan Supreme Court.

¹ Ethics opinions are advisory only and do not have the force or effect of law. They may not be relied upon as an absolute defense to charges of misconduct. Two justices of the Michigan Supreme Court wrote: “[O]pinions [of the state bar committee on judicial ethics] are merely advisory, . . . are not binding on any court, and . . . are merely the opinions of volunteer lawyers of a state bar committee.” *Adair v Michigan*, 474 Mich 1027, 1039 (2006) (noting that the particular advisory opinion at issue was in direct conflict with a court rule and thus had no bearing on the analysis of the case). **Author rebuttal:** These “mere” opinions are drafted carefully after extensive study and debate by individuals who are well-studied in ethics law. Most judges and lawyers find the opinions, although advisory, to be extremely helpful in interpreting the ethics rules.

Michigan Judicial Campaigns: Ethics Pocket Guide

Updates: September 2, 2013–January 1, 2014

Updates have been issued for Michigan Judicial Campaigns: Ethics Pocket Guide. A summary of each update appears below. The updates have been integrated into the website version of this book. Clicking on the links below will take you to the page(s) in the book where the updates appear. The text added or changed in each update is underlined>.

1.3(B) Funding the Campaign

- ▶ Effective December 27, 2013, [2013 PA 252](#) amended Section 4(3)(b) of the Michigan Campaign Finance Act (MCFA), MCL 169.204(3)(b), to provide that *contribution* does not include “[f]ood and beverages, not to exceed \$1,000.00 in value during a calendar year, that are donated by an individual and for which reimbursement is not given[.]” increasing the limit of \$100.00 that was previously in place.
- ▶ Effective December 27, 2013, [2013 PA 252](#) amended Section 26(1)(e) of the MCFA, MCL 169.226(1)(e), to provide that “[f]or contributions of \$5.00 or less by an individual to a political committee or independent committee, the [S]ecretary of [S]tate shall accept for filing any written communication from the political committee or independent committee that contains the information otherwise required under [MCL 169.226(1)(e), and a]ny such written communication does not need to contain an original signature.”
- ▶ Effective December 27, 2013, [2013 PA 252](#) amended Section 52(1) of the MCFA, MCL 169.252(1), to double the maximum amount of money that an individual may contribute, per election cycle, to a campaign.

- ▶ Effective December 27, 2013, [2013 PA 252](#) added Section 46(2) to the MCFA, MCL 169.246(2), to require the Secretary of State to adjust the contribution limits set out in MCL 169.252 “[b]eginning January 1, 2019 and every 4 years thereafter[.]”

1.3(H) Funding the Campaign

- ▶ Effective December 27, 2013, [2013 PA 258](#) amended Section 18 of the Michigan Campaign Finance Act (MCFA), MCL 169.218, to require¹ a campaign committee to file campaign statements and reports electronically if it received or expended \$5,000.00 or more in the preceding calendar year, or expected to receive or expend \$5,000.00 or more in the current calendar year, rather than the \$20,000.00 threshold that was previously in place. MCL 169.218(3).
- ▶ Effective December 27, 2013, [2013 PA 259](#) added Section 18a to the Michigan Campaign Finance Act (MCFA), MCL 169.201 *et seq.*, to permit a county clerk to adopt an electronic filing and internet disclosure system, MCL 169.218a(1), and to permit the county clerk to require a campaign committee to file campaign statements or reports electronically, MCL 169.218a(2). The county clerk must “set the threshold [for filing under MCL 169.218a(2)] at \$5,000.00 or \$1,500.00[in funds received or expended in the preceding calendar year or in funds that are expected to be received or expended in the current calendar year].” MCL 169.218a(2).

1.4(D) Campaign Activities

- ▶ Under MCJC 2 and MCJC 4, a judge or judicial candidate should not serve as an officer, director, trustee, or nonlegal advisor of a charitable or nonprofit organization if that organization “is likely to provide testimony or documentary evidence to the court or to participate in case status conferences in certain types of cases on a regular basis,” or “where the sole purposes of the . . . organization is to raise money for [the] court’s own court-ordered programs[.]” such as specialty (“problem-solving”) courts. Ethics Opinion JI-139, issued October 21, 2013.

¹Beginning with the annual campaign statement due January 31, 2014.

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1.1 Qualifications for Candidacy or Appointment

A. Introduction

There are two ways to become a judge in the state of Michigan: by election or by appointment. In order to be eligible for either election or appointment, a candidate must:

- ▶ Be a registered and qualified voter of the jurisdiction (district, circuit, county, or other jurisdiction) in which the office is sought.¹
- ▶ Be less than 70 years of age at the time of the election or appointment.²
- ▶ Be licensed to practice law in this state.³
- ▶ Have been admitted to the practice of law for at least 5 years.⁴
- ▶ Not hold any office in a political party.⁵

B. Filing for Election

Incumbent judges seeking re-election may file an Affidavit of Candidacy⁶ with the appropriate entity.⁷ A nominating petition is not needed if the Affidavit of Candidacy is filed not less than 134 days prior to the date of the primary election.⁸ However, before December 31, 2013, if the incumbent judge was appointed to fill a vacancy and assumed judicial duties not less than 137 days prior to the date of the primary election but before the 14th Tuesday before the primary

¹ [MCL 168.409\(1\)](#), [MCL 168.411\(1\)](#), [MCL 168.426b\(1\)](#), [MCL 168.431\(1\)](#), [MCL 168.467\(1\)](#).

² [Const 1963, art 6, §19\(3\)](#). See also [MCL 168.409\(1\)](#), [MCL 168.411\(1\)](#), [MCL 168.426b\(1\)](#), [MCL 168.431\(1\)](#), [MCL 168.467\(1\)](#).

³ [MCL 168.409](#), [MCL 168.411](#), [MCL 168.426\(b\)](#), [MCL 168.431](#), [MCL 168.467](#). See also [Const 1963, art 6, §19\(2\)](#).

⁴ [Const 1963, art 6, §19\(2\)](#).

⁵ [MCJC 7A\(1\)\(a\)](#).

⁶ [MCL 168.409b\(6\)](#), [MCL 168.413a](#), [MCL 168.426d\(2\)](#), [MCL 168.433a](#), [MCL 168.467c\(1\)](#).

⁷ For most judicial offices, this is the Secretary of State. [MCL 168.409b\(6\)](#), [MCL 168.413a](#), [MCL 168.467c\(1\)](#). For probate court, this is the county clerk. [MCL 168.433a](#). Municipal court petitions are filed with the city clerk. [MCL 168.426d\(2\)](#).

⁸ See [MCL 168.409b](#), [MCL 168.413a](#), [MCL 168.426d](#), [MCL 168.433a](#), [MCL 168.467a](#).

election,⁹ he or she may file the Affidavit of Candidacy not more than three days after assuming judicial duties.¹⁰

Nonincumbents, or incumbent judges who do not file an Affidavit of Candidacy, are required to file a nominating petition¹¹ with the appropriate entity¹² in order to get the candidate's name placed on the ballot. The nominating petition must contain the signatures, addresses, and dates of signatures of qualified and registered voters residing in the applicable geographic area.¹³ The number of required signatures varies depending on the judicial office sought.¹⁴ Until December 31, 2013, nominating petitions may be filed with the appropriate entity until 4:00 p.m. of the fourteenth Tuesday preceding the primary.¹⁵ Beginning January 1, 2014, nominating petitions may be filed with the appropriate entity until 4:00 p.m. of the fifteenth Tuesday preceding the primary.¹⁶

In addition to the nominating petitions, the candidate must also file an Affidavit of Identity and an Affidavit of Constitutional Qualification.¹⁷

Author's Tip: *The Secretary of State's Bureau of Elections office publishes the list of critical dates for elections: www.michigan.gov/elections. Then click on "Information for Candidates"; then "Dates and Deadlines."*

C. Filling a Judicial Vacancy

If a judicial office becomes vacant *during* a judge's term, Michigan's constitution permits the governor to fill that vacancy by appointment.¹⁸ When vacancies exist, a notice is posted on the State

⁹ Beginning January 1, 2014, to take advantage of this provision, the incumbent judge must assume judicial duties not less than 137 days prior to the primary election but before the **15th Tuesday** before the primary election. See 2012 PA 276, effective August 16, 2012.

¹⁰ [MCL 168.409b\(6\)](#), [MCL 168.413a](#), [MCL 168.426d\(2\)](#), [MCL 168.433a](#), [MCL 168.467c\(1\)](#).

¹¹ [MCL 168.409b\(1\)](#), [MCL 168.413\(1\)](#), [MCL 168.426d\(1\)](#), [MCL 168.433](#), [MCL 168.467b\(1\)](#).

¹² For most judicial offices, this is the Secretary of State. [MCL 168.409b\(1\)](#), [MCL 168.413\(1\)](#), [MCL 168.467b\(1\)](#). For probate court, this is the county clerk. [MCL 168.433](#). Municipal court petitions are filed with the city clerk. [MCL 168.426b\(1\)](#).

¹³ [MCL 168.409b\(1\)](#), [MCL 168.413\(1\)](#), [MCL 168.426d\(1\)](#), [MCL 168.433](#), [MCL 168.467b\(1\)](#).

¹⁴ The Secretary of State publishes an extremely helpful chart of the number of signatures needed for petitions. See www.michigan.gov/elections. Then, click on "Information for Candidates", then "Filing for Office", and then "Petition Signature Requirement Chart".

¹⁵ [MCL 168.409b\(1\)](#), [MCL 168.413\(1\)](#), [MCL 168.426d\(1\)](#), [MCL 168.433](#), [MCL 168.467b\(1\)](#).

¹⁶ [MCL 168.409b\(1\)](#), [MCL 168.413\(1\)](#), [MCL 168.426d\(1\)](#), [MCL 168.433](#), [MCL 168.467b\(1\)](#).

¹⁷ These forms can be found on the Secretary of State's website at www.michigan.gov/elections. Then, click on "Information for Candidates"; then "Filing for office".

Bar of Michigan’s website, www.michbar.org. Individuals who meet the legal qualifications to serve as a judge and who are interested in receiving an appointment to judicial office, must:

- ▶ Obtain a judicial appointment questionnaire from the governor’s website, found at: www.michigan.gov/snyder. Then, click on “Appointments”; then “Judicial Appointments.”
- ▶ Submit two copies of the completed questionnaire to the governor’s legal division by the deadline displayed in the *News & Events* section of the State Bar of Michigan’s website.
- ▶ If requested, consent to be interviewed and rated by the State Bar’s Judicial Qualifications Committee, which will conduct a thorough background check of the applicant’s fitness to serve as a judge.
- ▶ Participate in any other conditions set forth by the governor.

In most situations, the person appointed by the governor holds office until 12 noon of the first day of January following the first general election held after the vacancy occurs.¹⁹

1.2 Preparing for a Judicial Campaign

A. Rules Applicable to Judicial Candidates Under the Michigan Code of Judicial Conduct and Michigan Rules of Professional Conduct

Under [Canon 5](#) of the Michigan Code of Judicial Conduct (MCJC), as amended effective August 1, 2013,²⁰ all judicial candidates are subject, “as applicable during a judicial campaign[,]” to [Canon 1](#) (requiring judges to uphold “the integrity and independence of the judiciary”), [Canon 2](#) (setting out guidelines that judges should follow in order to “avoid all impropriety and appearance of impropriety[.]”), [Canon 4A-4D](#) (setting out law-related, avocational, civic, charitable, and fundraising activities in which judges may and may not engage), and [Canon 7](#) (governing the political and campaign conduct of judges and judicial candidates). Additionally, [Rule 8.2\(b\)](#) of the Michigan Rules of Professional Conduct (MRPC) provides that “[a] lawyer who

¹⁸ [Const 1963, art 6, §23](#).

¹⁹ [Const 1963, art 6, §23](#). The length of appointment also depends on when the vacancy occurs. See, for example, [MCL 168.444](#).

²⁰ See ADM 2005-11, effective August 1, 2013.

is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct as provided under [Canon 5](#).” See [Appendix B](#) for the text of these provisions.

B. Establishing a Planning Committee

[MCJC 7B\(2\)\(b\)](#) provides that “[a] candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.”²¹ A “planning committee” is a group of individuals who gather to discuss and/or strategize the possibility of commencing a formal campaign that is not yet launched.

Even though no fundraising activities may begin before February 15 of the year of the election, a planning committee may be formed before that date.²² However, the *planning committee* must be separate and distinct from the candidate’s *campaign committee*, which is usually formed later.²³

A planning committee may send a letter to individuals asking whether they will support the candidacy, work on the campaign, display campaign signs, etc., as long as the letter does not solicit any funds (if it is sent before February 15).²⁴ A sitting judge may be a member of the planning committee.²⁵

A planning committee may not solicit, accept, or spend funds at any time. However, a candidate may contribute her or his own funds to the judicial campaign at any time, even before February 15.²⁶

The planning committee becomes extinct after the campaign committee is registered with the Secretary of State’s office (see below).²⁷

Author’s Tip: I recommend that a Candidate Campaign Committee be formed before a candidate spends any funds that are related to the campaign (see below). I strongly suggest that the formal campaign committee be formed very early in the planning process and that

²¹ [MCJC 7B\(2\)\(b\)](#). See also [Appendix B](#) for the complete language of [MCJC 7](#).

²² Ethics Opinion JI-081.

²³ Ethics Opinion JI-014.

²⁴ Ethics Opinion JI-081.

²⁵ Ethics Opinion JI-014.

²⁶ Ethics Opinion JI-081.

²⁷ See Ethics Opinion JI-081.

informal planning committees be used sparingly, if at all.

C. Establishing a Candidate Campaign Committee

Before *any* funds not supplied by the candidate are spent or received for a campaign, the judicial candidate should form a candidate campaign committee that includes a treasurer, and register the committee with the Secretary of State's ("SOS") office.²⁸ This is accomplished by preparing and filing the form entitled "Campaign Committee Statement of Organization Form." This form must be filed within 10 days of the committee's formation.²⁹ If this form is tardy, late filing fees are assessed.³⁰

Author's Tip: *I suggest that this form be filed before you spend or solicit funds for your campaign. You have now entered the world of campaign finance and the legal requirements are strict and unforgiving. I urge you to:*

1. First, go to the SOS Elections website: www.michigan.gov/elections. Click on "Information for Candidates."

2. **Save** this webpage on your "favorites" list. You will use this frequently during your campaign.

3. From this webpage, click on "MERTS/Campaign Finance" link. Download and read the "Candidate Committee Manual" and keep it within arm's reach at all times during your campaign.

4. The person you select as your committee treasurer is the most important decision you will make. Choose wisely.

Once the campaign committee is formed, the committee may *expend* funds (but may not *solicit* funds) for planning even before the February 15 fundraising date.³¹ Funds may be solicited after February 15.³² A candidate may contribute his or her own funds to the judicial campaign at any time, even before February 15.³³

²⁸ [MCL 169.221\(8\)](#); [MCL 169.236\(1\)](#). Although the Michigan Campaign Finance Act (MCFA) does provide some time to file the Statement of Organization after the start of the campaign, a prompt filing will save potential MCFA violations. See [MCL 169.224\(1\)](#).

²⁹ [MCL 169.224\(1\)](#).

³⁰ [MCL 169.224\(1\)](#). The penalty is \$10 per each business day the report is late, up to 30 days. After that, violation is a misdemeanor and up to a \$1,000 fine.

³¹ Ethics Opinion JI-081.

³² [MCJC 7B\(2\)\(d\)](#). See [Section 1.3](#) for more information on funding a campaign.

³³ Ethics Opinion JI-017.

D. Selecting and Educating Your Team

After the nominating petitions (or Affidavit of Candidacy) are filed and the campaign committee has been established by registering it with the Secretary of State, the formal campaign begins. The first step is to select and educate the judicial campaign team. A judge may not serve as a member of the campaign team.³⁴

When the Campaign Committee Statement of Organization form is filed with the SOS, certain key individuals are designated, including a “record keeper” and a treasurer (the same person may serve both roles). The *record keeper* is the person other than the treasurer who has the responsibility of maintaining the committee’s records and campaign statement files.

The committee *treasurer* is the person who will keep track of all income and expenses for the campaign and has the duty to promptly file multiple financial reports with the SOS. The treasurer must be a qualified elector in Michigan.³⁵ In most cases, the treasurer will need to file these reports electronically through the state’s MERTS software.

Neither the candidate nor a member of the candidate’s immediate family may serve as the treasurer for the campaign, since the candidate must remain isolated from the direct solicitation of campaign dollars.³⁶ Similarly, another judge may not be designated as treasurer.³⁷

Author’s Tip: *Make sure that you carefully select your treasurer. The duties are many, and the reports are complicated (especially the state’s MERTS software). Penalties for late or incorrect financial filings are severe.³⁸ It is my recommendation that the person you select as treasurer should have no other duty during your campaign.*

The members of the campaign team must be made aware of the ethical requirements for a judicial campaign. Under the ethics rules, a candidate for judicial office should “encourage family members to adhere to the same standards of political conduct that apply to the

³⁴ Ethics opinion JI-014.

³⁵ [MCL 169.221\(2\)](#).

³⁶ Ethics Opinions JI-014 and JI-090, citing [MCJC 7B\(3\)](#). **Note** that these opinions are in conflict with [MCL 169.221\(2\)](#), which permits a candidate to appoint himself or herself as treasurer. However, the judicial canons dictate ethical issues and should be followed to avoid the appearance of any impropriety.

³⁷ Ethics opinion JI-014.

³⁸ See [Section 1.3\(H\)](#).

judge[.]”³⁹ A sitting judge also may not allow public employees subject to the judge’s direction or control to do things during the campaign that the judge is prohibited from doing directly.⁴⁰ This includes members of the judge’s staff.

Author’s Tip: *Although the above requirements apply specifically to “family members” of the candidate, it is suggested that similar “encouragement” be given to all members of the candidate’s campaign team. Nothing can derail a campaign more quickly than allegations of ethical violations during the campaign.*

1.3 Funding the Campaign

A candidate for judicial office may *spend* funds for campaigning (but not for soliciting donations) any time after a campaign committee is established. Funds for a campaign may not be *solicited* before February 15 of the year of the election.⁴¹ Fundraising events may be planned prior to February 15, but invitations that solicit contribution or require the purchase of tickets may not be disseminated prior to February 15.⁴² A judicial candidate may contribute her or his own funds to the campaign at any time, including during the pre-campaign “planning” time.⁴³

A judicial candidate may not personally solicit or accept funds but must instead receive contributions solely through the campaign committee established with the Secretary of State, Bureau of Elections.⁴⁴ If a campaign committee was formed before February 15, the campaign committee may accept unsolicited contributions received prior to that date.⁴⁵

Author’s Tip: *The surest way to ethical peril, in my opinion, is when the candidate directly solicits or accepts money for the campaign. My Rule #1 is “don’t touch or talk about money.” If a person attempts to give you a check, simply announce that you are not permitted to accept it directly and that contributions must be given to your treasurer.*

³⁹ MCJC 7B(1)(a).

⁴⁰ MCJC 7B(1)(b).

⁴¹ MCJC 7B(2)(d).

⁴² Ethics Opinion JI-078.

⁴³ See [Section 1.2](#) for more information on preparing for a judicial campaign.

⁴⁴ MCJC 7B(2)(a).

⁴⁵ Ethics Opinion JI-017.

A. General Information

A sitting judge may never solicit money for any purpose, except that a judge's campaign committee may solicit funds for a re-election campaign.⁴⁶ This fundraising must be done in accordance with [MCJC 2G](#), [MCJC 4D](#), and [MCJC 7B](#).⁴⁷ Stated another way, no candidate, campaign committee, or other group may accept any financial contribution except as provided in the campaign funding rules.⁴⁸ It is therefore important that the candidate, the candidate's committee, and the candidate's treasurer be well educated as to the MCJC and the Michigan Campaign Finance Act (MCFA).⁴⁹

B. Contributions

Under the MCFA, *contribution* means "a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, or donation of money or anything of ascertainable monetary value . . . made for the purpose of influencing the nomination or election of a candidate[.]"⁵⁰ "*Contribution* includes the full purchase price of tickets or payment of an attendance fee for events such as dinners, luncheons, rallies, testimonials, and other fundraising events[.]"⁵¹

Contributions do not include:

- ▶ "Volunteer personal services provided without compensation[.]" (If compensation is paid, it must be reported as an expense.)
- ▶ "[P]ayments of costs incurred of less than \$500.00 in a calendar year by an individual for personal travel expenses if the costs are voluntarily incurred without any understanding or agreement that the costs shall be, directly or indirectly, repaid."
- ▶ "Food and beverages, not to exceed \$1,000.00 in value during a calendar year, that are donated by an individual and for which reimbursement is not given."

⁴⁶ See [MCJC 7B\(2\)\(a\)](#).

⁴⁷ See [Appendix B](#) for the text of these provisions.

⁴⁸ See [MCJC 2G](#), [MCJC 4D](#), and [MCJC 7B](#).

⁴⁹ [MCL 169.201](#) *et seq.*

⁵⁰ [MCL 169.204\(1\)](#).

⁵¹ [MCL 169.204\(2\)](#). **Note** that [MCL 169.204\(2\)](#) contains other items constituting a *contribution*. However, these are rarely used by judicial candidates.

- ▶ An offer or tender of a contribution if expressly and unconditionally rejected, returned, or refunded in whole or in part within 30 business days after receipt.”⁵²

All contributions must be itemized on the financial reports that are submitted to the Secretary of State. Itemization includes the amount, date received, the type of contribution, the contributor’s name and address, and the contributor’s accumulated total for the fundraising period.⁵³

Author’s Tip: *Candidates tend to forget that contributions are not only cash. The non-cash contributions must be carefully recorded as well.*

If the contributor’s cumulative contributions are more than \$100.00 for the campaign cycle, the committee must record the contributor’s name, occupation, employer, and principal place of business.⁵⁴ Money, in-kind contributions, pledges and loans all count toward the cumulative contribution amount. “For contributions of \$5.00 or less by an individual to a political committee or independent committee, the [S]ecretary of [S]tate shall accept for filing any written communication from the political committee or independent committee that contains the information otherwise required under [MCL 169.226(1)(e), and a]ny such written communication does not need to contain an original signature.”⁵⁵

Cash contributions in excess of \$20.00 may not be accepted by the campaign committee. Contributions of more than \$20.00 must be made by written instrument (usually a check) containing the names of the payor and the payee.⁵⁶

All contributions other than money are considered to be in-kind contributions.⁵⁷ The value of an in-kind contribution is the fair market value of the goods or service provided, or the usual rental charge of the facility.⁵⁸

Loans to a campaign are considered to be contributions.⁵⁹

The Michigan Campaign Finance Act limits the amount of money that an individual may contribute to a campaign. Contributions are

⁵² MCL 169.204(3).

⁵³ MCL 169.226(1).

⁵⁴ MCL 169.226(1)(e), MCL 169.226(1)(f), and MCL 169.226(1)(h).

⁵⁵ MCL 169.226(1)(e).

⁵⁶ MCL 169.241(1).

⁵⁷ MCL 169.209(3).

⁵⁸ See MCL 169.226(1)(b).

capped at a level that varies depending on the type of state elective office or, for local elective office campaigns, the population of the election district involved.⁶⁰ A summary is:

<u>State Elective Office or Population of Local District</u> ⁶¹	<u>Contribution Limit</u> ⁶²
State Representative -or- Up to 85,000	\$1,000.00
State Senator -or- 85,001 - 250,000	\$2,000.00
Non-Legislator State Office -or- Over 250,000	\$6,800.00

The limits are ten times higher for certain Political Action Committee contributions.⁶³ A judicial candidate, the candidate's spouse, children residing in the candidate's household, and individuals claimed by the candidate or spouse as a dependent for federal income tax purposes, are exempt from the contribution limits.⁶⁴ Loans count toward the contribution limits set for candidates.⁶⁵

Author's Tip: The SOS office publishes a detailed listing of the contribution limits for each elective office in this state. That list may be found at: www.michigan.gov/elections. Click on "Information for Candidates"; then "MERTS/Campaign Finance"; then "Contribution Limits" document.

⁵⁹ See [MCL 169.204\(1\)](#). Note that [MCJC 4E\(4\)](#) imposes restrictions on the types of gifts, bequests, favors, and loans that may be accepted by a judge or a family member residing in a judge's household; however, [MCJC 4E](#) is not specified as applicable to judicial candidates under [MCJC 5](#).

⁶⁰ [MCL 169.252\(1\)](#). The Secretary of State must adjust these contribution limits "[b]eginning January 1, 2019 and every 4 years thereafter[.]" [MCL 169.246\(2\)](#). The adjustments will be announced by the Secretary of State by December 15 of each year. *Id.*

⁶¹ Population categories apply only to contributions to candidates for *local* elective office.

⁶² Per election cycle.

⁶³ [MCL 169.252\(2\)](#).

⁶⁴ [MCL 169.208\(2\)](#), [MCL 169.252\(5\)](#).

⁶⁵ See [MCL 169.204\(1\)](#).

C. Unsolicited Contributions

A campaign committee may accept unsolicited contributions at any time, even before February 15, if the contributions are less than the maximum amount allowed under the Michigan Campaign Finance Act.⁶⁶ Although a campaign may only *solicit* a maximum of \$100 from lawyers and judges,⁶⁷ a campaign committee may *accept* more than that amount (up to the maximum limit) if the amount in excess of \$100 was not solicited.⁶⁸

In short, as long as the contribution received is not solicited and is less than the statutory maximum amount, it may be accepted by the campaign committee at the time received.

D. Solicitation of Contributions

A judge or judicial candidate may not “personally solicit or accept campaign funds[.]”⁶⁹ For all campaigns *other than* judicial campaigns, a campaign committee and the candidate may solicit contributions from anyone up to the maximum level set by statute. For *judicial campaigns*, however, there are restrictive rules for the solicitation of contributions from lawyers and judges.

Under [MCJC 7B\(2\)\(c\)](#), a judicial campaign committee is prohibited from soliciting more than \$100 from a lawyer. This limit is for the entire election cycle; thus the committee is prohibited from soliciting a \$100 contribution for the primary election and then again for the general election.⁷⁰ A lawyer may *contribute* more than \$100, but may not be solicited to do so.

The lawyer solicitation rule, however, makes allowances for “general” solicitations that may include the names of lawyers. [MCJC 7B\(2\)\(c\)](#) states:

“It is not a violation of this provision [(the \$100 solicitation rule)] for a committee, in undertaking solicitations that are not directed exclusively to lawyers but may in fact go to lawyers who are members of a group or found on a mailing list, to solicit more than \$100 per person, provided that the following disclaimer appears on the letter or on a response card, in print that

⁶⁶ Ethics Opinion JI-017.

⁶⁷ See [Section 1.3\(D\)](#) for more information on solicitation of contributions.

⁶⁸ [MCJC 7B\(2\)\(c\)](#).

⁶⁹ [MCJC 7B\(2\)\(a\)](#).

⁷⁰ Ethics Opinion JI-001.

is at least the same size as the remainder of the print in the letter or the response card:

“[Canon 7](#) of the Michigan Code of Judicial Conduct prohibits a judicial campaign committee from soliciting more than \$100 per lawyer. If you are a lawyer, please regard this as informative and not a solicitation for more than \$100.”

Author’s Tip: *As easy as this rule seems, many judicial candidates violate it in one of two ways: either the “disclaimer” is not in the same font size as the rest of the solicitation writing, or the committee somehow modifies the required language of the disclaimer. Avoid these problems by following this rule exactly as written.*

The solicitation rule also allows a judicial candidate to send a thank-you note to any contributor.⁷¹

A sitting judge may personally contribute to another’s judicial campaign, but may not solicit contributions for the candidate.⁷²

Contrary to the rules for other elective offices, candidates for judicial office may not *solicit* or *accept* any funds after the date of the election,⁷³ including any contribution “for a campaign deficit or for expenses associated with judicial office.”⁷⁴ Contributions dated and post-marked during the fundraising period but received in the mail following the date of the general election may be retained to pay legitimate campaign expenses.⁷⁵

E. Prohibited Contributions

The following contributions are prohibited and must be immediately returned, if received:

- ▶ Cash contributions exceeding \$20.00.⁷⁶

⁷¹ [MCJC 7B\(2\)\(a\)](#).

⁷² See generally Ethics Opinion JI-095.

⁷³ [MCJC 7B\(2\)\(d\)](#).

⁷⁴ [MCJC 2G](#). However, “[r]equests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of [\[MCJC 2G\]](#).” [MCJC 2G](#). A judicial candidate is subject to [MCJC 2](#) “as applicable during a judicial campaign.” [MCJC 5](#).

⁷⁵ Ethics Opinion JI-005.

⁷⁶ [MCL 169.241\(1\)](#).

- ▶ An anonymous contribution.⁷⁷ Since the donor is unknown, an anonymous contribution must be donated to the client security fund of the State Bar of Michigan.⁷⁸
- ▶ A corporate or labor union contribution.⁷⁹ These entities, plus domestic dependent sovereigns, may not:
 - ▶ contribute funds from their treasury to the committee;
 - ▶ contribute goods or services to the committee;
 - ▶ provide the use of their facilities to the committee;
 - ▶ provide a discount to the committee that is unavailable to the general public;
 - ▶ pay off a debt for the committee; or
 - ▶ use funds from their treasury to reimburse a contributor.⁸⁰
- ▶ A contribution made by a person to another person with the understanding or agreement that the contribution will be passed on to a particular candidate campaign committee.⁸¹
- ▶ A contribution from any campaign committee that was established in connection with the candidate's attempt to secure any other judicial or nonjudicial office.⁸²
- ▶ A contribution of money "for a campaign deficit or for expenses associated with judicial office."⁸³

F. Other Fundraising Issues

There are other issues involving the raising of funds that affect a sitting judge or a judicial candidate. These include:

⁷⁷ [MCL 169.241\(2\)](#), [MCL 169.241\(3\)](#).

⁷⁸ [MCJC 7B\(2\)\(f\)](#).

⁷⁹ [MCL 169.254](#).

⁸⁰ Secretary of State, Bureau of Elections, *Candidate Manual*, Appendix O.

⁸¹ [MCL 169.244\(1\)](#).

⁸² [MCJC 7B\(2\)\(d\)](#).

⁸³ [MCJC 2G](#). However, "[r]equests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of [\[MCJC 2G\]](#)." [MCJC 2G](#). A judicial candidate is subject to [MCJC 2](#) "as applicable during a judicial campaign." [MCJC 5](#).

- ▶ A candidate may not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate's family.⁸⁴
- ▶ A judge may not personally sell or permit any court or public employee working for the court to sell fundraising tickets or accept contributions of any kind on the judge's behalf or on behalf of any other judicial candidate.⁸⁵
- ▶ "A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization or any organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or use or permit the use of the prestige of the office for that purpose."⁸⁶ However, a judge may:
 - ▶ "serve as a member of an honorary committee or [] join a general appeal on behalf of such an organization[,]"
 - ▶ "speak at or receive an award or other recognition in connection with an event of such an organization[,] or
 - ▶ "allow his or her name or title to be used in advertising [his or her] involvement in an event[,] so long as the judge does not individually solicit funds."⁸⁷

G. Campaign Expenditures

The Michigan Campaign Finance Act defines "expenditure" as a "payment, donation, loan, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate[.]"⁸⁸ All expenditures must be recorded on the campaign finance reports, and must show the amount, date paid, purpose, and name and address of the payee.⁸⁹

⁸⁴ MCJC 7B(2)(e).

⁸⁵ MCJC 7B(3). A judicial candidate is subject to MCJC 7 "as applicable during a judicial campaign." MCJC 5.

⁸⁶ MCJC 4D. A judicial candidate is subject to MCJC 4D "as applicable during a judicial campaign." MCJC 5.

⁸⁷ MCJC 4D. A judicial candidate is subject to MCJC 4D "as applicable during a judicial campaign." MCJC 5.

⁸⁸ MCL 169.206(1).

⁸⁹ MCL 169.226(1)(j).

Expenditures over \$50, other than in-kind expenditures, must be made by a written instrument (usually a check) that contains the names of the payor and the payee.⁹⁰ Committees may establish a petty cash fund as allowed by the Secretary of State, and individual expenditures from petty cash may not exceed \$50.00 per occurrence.⁹¹

H. Campaign Finance Records

All campaign receipts and expenditures are disclosed on campaign finance statements, which must be filed before and after the primary election *and* before and after the general election.⁹² The first campaign statement covers the period between when the campaign committee is formed and extends through the closing date of the statement that is due.⁹³ A nonincumbant candidate must also file a year end campaign statement; it must be filed by January 31 of each year and have a closing date of December 31 of the previous year.⁹⁴ A candidate or other responsible individual must pay a late filing fee of up to \$1,000.00 for failing to timely file “complete campaign statements as required by [the Michigan Campaign Finance Act] and the rules promulgated under [the Act].”⁹⁵

In most cases, a committee’s financial statements must be filed via the SOS’s “MERTS” software.⁹⁶ A candidate who expects to receive and spend \$1,000 or less for any election may be eligible for a waiver of filing the campaign statements.⁹⁷

If the campaign receives a single contribution of \$200 or more before July 3, 2012, or \$500 or more on or after July 3, 2012, and the contribution is made after the closing date of the last campaign statement, a late contribution report must be filed within 48 hours of receipt of the contribution.⁹⁸ Late fees are assessed for each business day a late contribution report is not received.⁹⁹

⁹⁰ [MCL 169.241\(1\)](#).

⁹¹ [MCL 169.223](#).

⁹² See [MCL 169.233](#).

⁹³ [MCL 169.225](#).

⁹⁴ [MCL 169.235\(1\)](#). See also [MCL 169.235\(2\)](#), which excludes judges and Supreme Court Justices from this requirement.

⁹⁵ [MCL 169.233\(1\)](#); [MCL 169.233\(7\)](#).

⁹⁶ Generally, a campaign committee that receives, expends, or expects to receive or expend \$5,000 or more in a calendar year is required to file electronically. [MCL 169.218\(3\)](#). Additionally, a county clerk may adopt an electronic filing and internet disclosure system under [MCL 169.218a\(1\)](#) and may require a committee to file campaign statements or reports electronically under [MCL 169.218a\(2\)](#); the county clerk must “set the threshold [for filing under [MCL 169.218a\(2\)](#)] at \$5,000.00 or \$1,500.00[in funds received or expended in the preceding calendar year or in funds that are expected to be received or expended in the current calendar year].” [MCL 169.218a\(2\)](#).

⁹⁷ [MCL 169.224\(5\)](#), [MCL 169.235\(4\)](#).

In addition to late fees, civil and criminal penalties may be imposed for failing to comply with the campaign statement and reporting requirements of the Michigan Campaign Finance Act. These penalties include:

- ▶ For knowingly violating [MCL 169.222](#), which requires a committee treasurer or other responsible individual to “keep detailed accounts, records, bills, and receipts as required to substantiate the information contained in a statement or report[,]” to “record the name and address of a person from whom a contribution is received[,]” and to preserve such records for five years, a treasurer or other responsible individual “is subject to a civil fine of not more than \$1,000.00.”¹⁰⁰
- ▶ For failing to file two statements required under [MCL 169.233](#) or [MCL 169.235](#), if both statements remain unfiled for more than 30 days, a candidate or other responsible individual is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 90 days, or both.¹⁰¹
- ▶ For “knowingly fil[ing] an incomplete or inaccurate statement or report required by [[MCL 169.233](#)],” a candidate or other responsible individual “is subject to a civil fine of not more than \$1,000.00.”¹⁰²
- ▶ For “knowingly omit[ting] or underreport[ing] individual contributions or individual expenditures required to be disclosed by [the Michigan Campaign Finance Act],” a candidate or other responsible individual “is subject to a civil fine of not more than \$1,000.00 or the amount of the contributions and expenditures omitted or underreported, whichever is greater.”¹⁰³
- ▶ For failing to file required campaign statements for two consecutive years, “[i]f a candidate committee’s account has a balance of \$20,000.00 or more[,]” a candidate or other responsible individual “is guilty of a felony punishable by imprisonment for not more than [three] years or a fine of

⁹⁸ [MCL 169.232\(1\)](#), [MCL 169.232\(7\)](#).

⁹⁹ [MCL 169.232\(3\)](#).

¹⁰⁰ [MCL 169.222](#).

¹⁰¹ [MCL 169.233\(8\)](#); [MCL 169.235\(5\)](#).

¹⁰² [MCL 169.233\(10\)](#).

¹⁰³ [MCL 169.233\(11\)](#).

not more than \$5,000.00, or both[;]" additionally, any money in such an account "is subject to seizure by, and forfeiture to, [the] state[.]"¹⁰⁴

- ▶ For being found guilty of a violation of [MCL 169.233](#), "on application by the attorney general or the prosecuting attorney[,]" a candidate may be prohibited "from assuming the duties of a public office or from receiving compensation from public funds, or both."¹⁰⁵
- ▶ For knowingly filing an incomplete or inaccurate year end campaign statement or report required by [MCL 169.235](#), a candidate or other responsible individual "is subject to a civil fine of not more than \$1,000.00."¹⁰⁶

***Author's Tip:** This chapter is a short summary of the complexities of the Michigan Campaign Finance Act. Please refer directly to the MCFA for further details and for all questions on campaign financing.*

1.4 Campaign Activities

A. Endorsements

It is a common practice for candidates, including judicial candidates, to list "endorsements" in campaign literature. The Michigan Code of Judicial Conduct (MCJC) uses the phrase "public statements of support" for this concept.¹⁰⁷ Under the MCJC, a candidate for judicial office may not *personally* solicit "publicly stated support" by improper use of the judicial office,¹⁰⁸ including making "pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office."¹⁰⁹ A judicial candidate may use the campaign committee to obtain public statements of support for the candidacy.¹¹⁰

A sitting judge may publicly support (endorse) the candidacy of another sitting judge or an attorney running for judge, as long as the

¹⁰⁴ [MCL 169.233\(12\)](#); see also [MCL 169.233\(13\)](#) (governing forfeiture proceedings).

¹⁰⁵ [MCL 169.233\(9\)](#).

¹⁰⁶ [MCL 169.235\(6\)](#).

¹⁰⁷ See, for example, [MCJC 7B\(2\)\(a\)-\(b\)](#).

¹⁰⁸ [MCJC 7B\(2\)\(a\)](#).

¹⁰⁹ [MCJC 7B\(1\)\(c\)](#).

¹¹⁰ [MCJC 7B\(2\)\(b\)](#).

endorsement is not used for fundraising.¹¹¹ However, a sitting judge may not publicly endorse any candidate for nonjudicial office.¹¹² It is not considered a public endorsement for a judge to make a campaign contribution, to sign a nominating petition for nonjudicial office, or to purchase fundraising tickets for a partisan candidate's fundraising event.¹¹³

"A candidate for judicial office may not pay an endorsing organization for its ranking or endorsement."¹¹⁴ However, the candidate's committee may contribute campaign funds to pay some of the costs associated with the publication of the endorsement or ranking under certain conditions found in [MCJC 7B\(2\)\(g\)](#).

***Author's Tip:** It is not uncommon for judicial candidates in some areas of the state to be asked to "reimburse" an "endorsing body" such as a labor union or non-profit organization for publication costs that are at a level much above the reasonable costs of publication. Some of these organizations may also bargain to endorse or favorably rank the candidate if and only if a contribution is made to the organization. Please carefully read [MCJC 7B\(2\)\(g\)](#) before considering these "offers."*

The judicial campaign rules also apply to judges' associations or any other organization consisting exclusively of judges.¹¹⁵ Therefore, any endorsements by judges' associations must comply with all of the provisions of [MCJC 7](#).

B. Advertising

As a general rule, advertising rules for judicial candidates are consistent with the rules for other candidates. Most written campaign advertising materials,¹¹⁶ including campaign signs, must "bear . . . the name and address of the person paying for the matter."¹¹⁷ Because the "person paying for the matter" is almost always the campaign committee, the normal label on campaign literature is in the form:

¹¹¹ Ethics Opinion JI-095.

¹¹² [MCJC 7A\(1\)\(b\)](#).

¹¹³ Ethics Opinions JI-030 (discussing endorsement of nonjudicial candidates), JI-105.

¹¹⁴ [MCJC 7B\(2\)\(g\)](#).

¹¹⁵ [MCJC 8](#).

¹¹⁶ Campaign advertising materials include billboards, placards, posters, pamphlets, or "other printed matter." [MCL 169.247\(1\)](#). However, [MCL 169.247\(1\)](#) "does not apply to communications between a separate segregated fund established under [[MCL 169.255](#)] and individuals who can be solicited for contributions to that separate segregated fund[.]" [MCL 169.247\(1\)](#).

“Paid for by the Committee to [Re-]Elect [Candidate], P.O. Box 123, Anytown, MI 12345.”¹¹⁸

Author’s Tip: *The SOS office publishes a list of campaign material (such as pencils, buttons, etc.) that does not require the name and address of the entity paying for the material. The list is found in Appendix J of the Candidate Committee Manual, found at www.michigan.gov/elections. Click on “Information for Candidates”, then “MERTS/Campaign Finance”; then “Appendices” documents under the Candidate Committee Manual.*

All advertising materials must “maintain the dignity appropriate to judicial office”¹¹⁹ and may not include information that is false.¹²⁰ Campaign advertising may not create the impression of incumbency when the candidate is not in fact the incumbent.¹²¹

Candidates, either through printed advertising or through public speaking, “should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.”¹²²

C. Campaign Speech

Special note: *Volumes have been written on judicial campaign speech, and there are many significant reported cases dealing with the First Amendment right of speech during a campaign. This booklet contains an extremely short summary of campaign speech issues. For further information, please refer to primary sources, including those found in the footnotes.*

The Michigan Supreme Court has noted that “[t]here is a tension that exists between the regulation of judges as officers of the court, and the regulation of judges as candidates in the political process.”¹²³ To that end, Michigan has adopted an “objective person” standard for

¹¹⁷ [MCL 169.247\(1\)](#). However, [MCL 169.247\(1\)](#) “does not apply to communications between a separate segregated fund established under [[MCL 169.255](#)] and individuals who can be solicited for contributions to that separate segregated fund[.]” [MCL 169.247\(1\)](#).

¹¹⁸ See [MCL 169.247](#) for additional rules concerning non-print advertisements, such as radio, television, or prerecorded telephone communications.[UNTRACK]

¹¹⁹ [MCJC 7B\(1\)\(a\)](#).

¹²⁰ [MCJC 7B\(1\)\(d\)](#).

¹²¹ Ethics Opinions C-206 and CI-556; [MCL 168.944](#).

¹²² [MCJC 7B\(1\)\(c\)](#).

¹²³ *In Re Chmura (II)*, 464 Mich 58, 66 (2001).

protected speech during judicial campaigns.¹²⁴ The rule provides that a candidate for judicial office may not “knowingly, or with reckless disregard, use or participate in the use of any form of public communication [(which includes campaign material)] that is false.”¹²⁵

The Michigan Supreme Court has stated that “we believe that a rule, such as [MCJC 7B(1)(d)], prohibiting a judicial candidate from only knowingly or recklessly making a false communication, strikes a reasonable constitutional balance between the candidate’s First Amendment rights and the state’s interest in preserving the integrity of the judicial system.”¹²⁶ The Court also noted that “[u]nder an ‘objective person’ standard, a judicial candidate may make ‘statements that are supported by a reasonable factual basis, even if the candidate turns out to be mistaken.’”¹²⁷

A candidate “should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.”¹²⁸ Further, MCJC 2B states, in part:

“A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary.”¹²⁹

The Michigan Rules of Professional Conduct also provide some ethical guidance for lawyers who run for judicial office. MRPC 6.5(a) states, in part, that “[a] lawyer shall treat with courtesy and respect all persons involved in the legal process.” The United States Supreme Court has held that attorneys are under an implied “obligation . . . to maintain at all times the respect due to courts of justice and judicial officers. This obligation . . . includes abstaining out of court from all insulting language and offensive conduct toward the judges personally for their judicial acts.”¹³⁰

Additionally, MRPC 8.2(b) provides that “[a] lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct as provided under Canon 5.” See Appendix B for the text of these provisions.

¹²⁴ See *In Re Chmura (I)*, 461 Mich 517, 544 (2000).

¹²⁵ MCJC 7B(1)(d).

¹²⁶ *In Re Chmura (II)*, 464 Mich 58, 67 (2001).

¹²⁷ *In Re Chmura (II)*, 464 Mich 58, 68 (2001), quoting *In Re Chmura (I)*, 461 Mich at 544.

¹²⁸ MCJC 7B(1)(c).

¹²⁹ A judicial candidate is subject to MCJC 2 “as applicable during a judicial campaign.” MCJC 5.

¹³⁰ *Bradley v Fisher*, 80 US 335, 355 (1872).

Note: Prior to 2000,¹³¹ Michigan followed the “subjective rule” for campaign speech (former [MCJC 7B\(1\)\(d\)](#)). That rule prohibited any public communication “that the candidate knows or reasonably should know is false, fraudulent, misleading, deceptive, or which contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as whole not materially misleading, or which is likely to create an unjustified expectation about results the candidate may achieve.” Therefore, any ethics opinions issued before 2000 regarding campaign speech may not be consistent with the revised rules and should be viewed accordingly.

D. Extrajudicial Activities and Organizations

A sitting judge or judicial candidate may continue to engage in ordinary social contacts, as long as the candidate does not allow family, social, or other relationships to influence judicial conduct or judgment.¹³² For example, a judicial candidate may attend political gatherings¹³³ and may speak to such gatherings on the judge’s own behalf or on behalf of other judicial candidates.¹³⁴

“A judge should not use the prestige of office to advance personal business interests or those of others, but participation in activities allowed in [Canon 4](#) is not a violation of this principle.”¹³⁵ Under [MCJC 4A-4D](#), a judge or judicial candidate may engage in specified law-related, avocational, civic, charitable, and fundraising activities.¹³⁶ For example, a judge may serve as a member, officer, or director of an organization devoted to the improvement of the law, the legal system, or the administration of justice and may participate in the management and investment of such an organization’s funds,¹³⁷ but may not individually solicit funds for the organization “or permit the use of the prestige of the office for that purpose.”¹³⁸ A judge may also participate in civic and charitable activities that do not

¹³¹ When *Chmura (I)*, 461 Mich at 517, was decided.

¹³² [MCJC 2C](#). A judicial candidate is subject to [MCJC 2](#) “as applicable during a judicial campaign.” [MCJC 5](#).

¹³³ [MCJC 7A\(2\)\(a\)](#).

¹³⁴ [MCJC 7A\(2\)\(b\)](#).

¹³⁵ [MCJC 2C](#). A judicial candidate is subject to [MCJC 2](#) “as applicable during a judicial campaign.” [MCJC 5](#).

¹³⁶ A judicial candidate is subject to [MCJC 4A-4D](#) “as applicable during a judicial campaign.” [MCJC 5](#).

¹³⁷ [MCJC 4A\(3\)](#) and [MCJC 4D](#). A judicial candidate is subject to [MCJC 4A](#) and [MCJC 4D](#) “as applicable during a judicial campaign.” [MCJC 5](#).

reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties.¹³⁹

Further, “[a] judge may serve and be listed as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization[,]” unless “it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.”¹⁴⁰ “[A] judge’s use of the prestige of the office to the benefit of [an] organization in this manner does not create an appearance of impropriety under [MCJC 2], so long as engaging in these activities does not reflect adversely upon the judge’s impartiality or interfere with the performance of judicial duties and so long as it is not likely that the organization will regularly appear before the judge or be regularly engaged in adversary proceedings in *any* court.”¹⁴¹ Accordingly, a judge or judicial candidate should not serve as an officer, director, trustee, or nonlegal advisor of a charitable or nonprofit organization if that organization “is likely to provide testimony or documentary evidence to the court or to participate in case status conferences in certain types of cases on a regular basis,” or “where the sole purposes of the . . . organization is to raise money for [the] court’s own court-ordered programs[,]” such as specialty (“problem-solving”) courts.¹⁴²

1.5 Disqualification Issues During Campaign

A judge is disqualified if she or he is “biased or prejudiced for or against a party or attorney.”¹⁴³

A judge is not automatically disqualified from presiding over a case or proceeding in which one of the lawyers is an announced candidate for that judge’s position in a forthcoming election.¹⁴⁴ If the judge makes a determination that he or she is not biased or prejudiced in this circumstance and that there is no basis requiring disqualification, the

¹³⁸ MCJC 4D. A judicial candidate is subject to MCJC 4D “as applicable during a judicial campaign.” MCJC 5.

¹³⁹ MCJC 4C. A judicial candidate is subject to MCJC 4C “as applicable during a judicial campaign.” MCJC 5.

¹⁴⁰ MCJC 4C. A judicial candidate is subject to MCJC 4C “as applicable during a judicial campaign.” MCJC 5.

¹⁴¹ Ethics Opinion JI-139.

¹⁴² Ethics Opinion JI-139.

¹⁴³ MCR 2.003(C)(1)(a).

¹⁴⁴ Ethics Opinion JI-138, replacing prior Ethics Opinion JI-023; see also Ethics Opinion RI-361 (providing that a lawyer who is a candidate for judicial office is not automatically prohibited from representing a client in a matter pending before his or her judicial opponent).

judge nevertheless has a duty to disclose the fact of candidacy to the parties and to allow any party to file a timely motion for disqualification under [MCR 2.003\(B\)](#).¹⁴⁵

Likewise, a judge is not disqualified from hearing a case conducted by a lawyer who is “rumored” to be candidate for that judge’s position.¹⁴⁶ Also, a judge has no duty to recuse himself or herself in *uncontested* proceedings in which one of the lawyers is an announced candidate for that judge’s position in an upcoming judicial election.¹⁴⁷

A judge is not disqualified from hearing a matter based solely upon protected campaign speech¹⁴⁸ “so long as such speech does not demonstrate bias or prejudice or an appearance of bias or prejudice for or against a party or an attorney involved in the action.”¹⁴⁹

1.6 Winding Down the Campaign

A. Campaign Finances

Unlike other campaigns, a judicial campaign committee may not accept any contributions after the date of the election,¹⁵⁰ including any contribution “for a campaign deficit or for expenses associated with judicial office.”¹⁵¹ However, a contribution postmarked and mailed prior to the close of the general election but received after the date of the general election may be retained by the campaign committee.¹⁵² All campaign expenses and accounts must be settled promptly, but no later than January 1 following the general election.¹⁵³

A candidate may not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate’s family.¹⁵⁴ A

¹⁴⁵ Ethics Opinion JI-138, replacing prior Ethics Opinion JI-023.

¹⁴⁶ Ethics Opinion JI-138.

¹⁴⁷ Ethics Opinion JI-096 (noting, however, that the judge should disclose the judicial contest to the parties).

¹⁴⁸ See [Section 1.4\(C\)](#) for more information on campaign speech.

¹⁴⁹ [MCR 2.003\(C\)\(2\)\(b\)](#).

¹⁵⁰ [MCJC 7B\(2\)\(d\)](#).

¹⁵¹ [MCJC 2G](#). However, “[r]equests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of [\[MCJC 2G\]](#).” [MCJC 2G](#). A judicial candidate is subject to [MCJC 2](#) “as applicable during a judicial campaign.” [MCJC 5](#).

¹⁵² Ethics Opinion JI-005.

¹⁵³ [MCJC 7B\(2\)\(f\)](#).

¹⁵⁴ [MCJC 7B\(2\)\(e\)](#).

judicial campaign committee may not expend funds for new expenses after the date of the election, such as for a post-election party or investiture celebration.¹⁵⁵

If there is a campaign debt at the end of the campaign and no available funds to pay the debt, a candidate may contribute his/her own funds to the campaign to satisfy the debt incurred during the campaign, including the payment of late filing fees to the Secretary of State.¹⁵⁶

In the event there are campaign funds remaining after the payment of all campaign debts, these funds must be fully disbursed before January 1 following the general election.¹⁵⁷ Usually, the remaining funds are disbursed in the following order: (1) retire any loans to the campaign (including loans made by the candidate to his/her campaign); (2) return unused contributions to the contributor; and (3) if the contributor cannot be located or declines the return of the funds, all remaining funds must be transferred to the State Bar's client security fund no later than January 1.¹⁵⁸

Author's Tip: IMPORTANT: Be sure to disregard the SOS "Dissolution of a Committee" instructions (Appendix W) in the Candidate Committee Manual that instructs a candidate to disburse excess campaign funds to a "political party committee," "tax-exempt charitable organization," or other campaign committees. Excess judicial campaign funds may NOT pass to these organizations. The only three options available to judicial campaign committees are as outlined in the preceding paragraph.

Records of the committee's financial transactions must be kept for five years if the filing official is not the Secretary of State (SOS) and the committee received \$50,000 or less. These records must be kept for 15 years if the filing official is the SOS or if the filing official is not the SOS, and the committee received more than \$50,000.¹⁵⁹

¹⁵⁵ Ethics Opinion JI-060.

¹⁵⁶ Ethics Opinion CI-386.

¹⁵⁷ [MCJC 7B\(2\)\(f\)](#).

¹⁵⁸ See [MCJC 7B\(2\)\(f\)](#).

¹⁵⁹ [MCL 169.216\(4\)](#).

B. Post-Election Reports

Once the campaign treasurer has paid all debts of the campaign and has reduced the campaign funds on hand to zero, the post-election campaign reports must be filed with the Secretary of State's office.¹⁶⁰

First, the post-general campaign financial statement must be filed.¹⁶¹ This report must show a zero balance and must be filed in a timely manner. Note that the penalties for late filing are substantial.¹⁶² After the post-general campaign financial statement, the unsuccessful candidate should file a *Dissolution of a Committee* form seeking to dissolve the campaign committee.¹⁶³ At that point, the campaign is officially completed. Successful candidates leave their committee active, but should file a report showing that the committee has fully disposed of all remaining funds. Successful candidates also need to file a financial report with the State Court Administrator's Office in April the year following the election.¹⁶⁴

C. Closing a Law Practice

Successful judicial candidates who are practicing lawyers have an obligation to close their law practice before taking judicial office¹⁶⁵ – which is not an easy task, given the short period of time between the general election and December 31, the deadline for winding up a law practice after winning a judicial election. Closing a law practice must be accomplished in such a way as to protect the rights of the lawyer's clients or affected third persons.¹⁶⁶

Clients need to be notified that it is the *client's* right to have a lawyer of the client's choice. A lawyer may, however, suggest a successor lawyer or even sell the lawyer's practice to another lawyer or law firm.¹⁶⁷ The withdrawing lawyer must make sure that all confidences and secrets of the client are maintained during the transition period.¹⁶⁸

¹⁶⁰ See Secretary of State, Bureau of Elections, *Candidate Manual*.

¹⁶¹ See Secretary of State, Bureau of Elections, *Candidate Manual*.

¹⁶² See Secretary of State, Bureau of Elections, *Candidate Manual*, Appendix E.

¹⁶³ Secretary of State, Bureau of Elections, *Candidate Manual*, Appendix W.

¹⁶⁴ See [MCJC 6C](#).

¹⁶⁵ [MCJC 7C\(1\)](#). Similar requirements apply to a candidate who is appointed to judicial office. See [MCJC 7C\(2\)](#).

¹⁶⁶ See generally *In re Ryman*, 394 Mich 637 (1975).

¹⁶⁷ See [MRPC 1.17\(a\)](#).

¹⁶⁸ See [MRPC 1.6](#).

Cases taken on a contingency fee basis that are not completed before January 1 must be transferred to another lawyer for completion and the sharing of the contingency fee must be negotiated between the lawyers, with the full knowledge and consent of the client.¹⁶⁹ Without an agreement, the contingent fee shall be divided on a *quantum meruit* basis.¹⁷⁰ Similarly, a case taken on a flat fee basis is compensated proportionally for the work done.¹⁷¹

A judge is disqualified from hearing a case in which the judge has a financial interest, including when a judge will share a future contingent fee with a lawyer appearing before the judge on that matter.¹⁷² Therefore, the issue of disqualification should be carefully considered before a fee-sharing arrangement is made with another lawyer.

A law firm must promptly remove the name of a successful judicial candidate from its letterhead and other firm communications.¹⁷³

D. Resignation from Non-Qualifying Organizations and Activities and Divestment of Non-Qualifying Interests

A successful judicial candidate “has until June 30 following the election to resign from organizations and activities, and divest interests that do not qualify under [Canon 4](#).”¹⁷⁴ See [Section 1.4\(D\)](#) for discussion of extrajudicial activities permitted and restricted under [MCJC 4A-4D](#).

1.7 Disciplinary Action for Campaign Misconduct

“A successful candidate, whether or not an incumbent, and an unsuccessful candidate who is a judge, are subject to judicial discipline for campaign misconduct.”¹⁷⁵

“An unsuccessful candidate who is a lawyer is subject to lawyer discipline for judicial campaign misconduct.”¹⁷⁶

¹⁶⁹ See [MRPC 1.5\(e\)](#).

¹⁷⁰ Ethics opinion RI-069.

¹⁷¹ Ethics opinion RI-069.

¹⁷² [MCR 2.003\(C\)\(1\)\(f\)](#).

¹⁷³ See [MRPC 7.5\(c\)](#).

¹⁷⁴ [MCJC 7C\(1\)](#). Similar requirements apply to a candidate who is appointed to judicial office. See [MCJC 7C\(2\)](#).

¹⁷⁵ [MCJC 5](#).

¹⁷⁶ [MCJC 5](#).

Appendix A: Further Assistance

Further assistance on issues presented in this booklet may be obtained from the following agencies.

Questions on election laws and campaign finance reporting:

Bureau of Elections
Michigan Department of State
Richard H. Austin Building, 1st Floor
430 W. Allegan Street
Lansing, MI 48918
(517) 373-2540

Questions on the ethical propriety of the prospective conduct of the inquirer:

State Bar of Michigan
Committee on Professional and Judicial Ethics
306 Townsend Street
Lansing, MI 48933
(800) 968-1442

Violations of the Michigan Code of Judicial Conduct and campaign misconduct of an incumbent judge should be reported to:

Judicial Tenure Commission
3034 W. Grand Blvd.
Suite 8-450
Detroit, MI 48202
(313) 875-5110

Violations of the Michigan Rules of Professional Conduct, campaign misconduct by a lawyer or by an unsuccessful candidate should be reported to:

Attorney Grievance Commission
256 Marquette Building
243 W. Congress St.
Detroit, MI 48826
(313) 961-6585

Appendix B: Michigan Code of Judicial Conduct—Provisions Applicable to Judicial Candidates

Under [Canon 5](#) of the Michigan Code of Judicial Conduct (MCJC), “[a]ll judicial candidates are subject to [Canon 1](#), [Canon 2](#), [Canon 4A-4D](#) and [Canon 7](#) of the Code of Judicial Conduct as applicable during a judicial campaign.” These provisions are set out below.

“CANON 1.

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. The provisions of this code should be construed and applied to further those objectives.”

“CANON 2.

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities

A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the

integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

C. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not use the prestige of office to advance personal business interests or those of others, but participation in activities allowed in [Canon 4](#) is not a violation of this principle.

D. A judge should not appear as a witness in a court proceeding unless subpoenaed.

E. A judge may respond to requests for personal references.

F. A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions. A judge should be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic. Nothing in this paragraph should be interpreted to diminish a judge's right to the free exercise of religion.

G. No judge may accept any contribution of money, directly or indirectly, for a campaign deficit or for expenses associated with judicial office. Requests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of this provision."

"CANON 4.

A Judge May Engage in Extrajudicial Activities

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge may engage in the following activities:

A. Law-Related Activities.

(1) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(2) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with such executive or legislative body or official on such matters.

(3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may participate in the management and investment of such an organization's funds.

(4) A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

B. Avocational Activities. A judge may write, lecture, teach, speak, and consult on nonlegal subjects, appear before public nonlegal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

C. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve and be listed as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

D. Fundraising Activities. A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization or any organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or use or permit the use of the prestige of the office for that purpose. A judge may, however, serve as a member of an honorary committee or may join a general appeal on behalf of such an organization. A judge may speak at or receive an award or other recognition in connection with an event of such an organization. A

judge may allow his or her name or title to be used in advertising the judge's involvement in an event so long as the judge does not individually solicit funds.

* * *'

"CANON 5.

Applicability of the Code of Judicial Conduct to Judicial Candidates

All judicial candidates are subject to [Canon 1](#), [Canon 2](#), [Canon 4A-4D](#) and [Canon 7](#) of the Code of Judicial Conduct as applicable during a judicial campaign. A successful candidate, whether or not an incumbent, and an unsuccessful candidate who is a judge, are subject to discipline for campaign misconduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for judicial campaign misconduct."

"CANON 7.

A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office

A. Political Conduct in General.

- (1) A judge or a candidate for judicial office should not:
 - (a) hold any office in a political party;
 - (b) make speeches on behalf of a political party or nonjudicial candidate or publicly endorse a candidate for nonjudicial office.
- (2) A judge or candidate for judicial office may:
 - (a) attend political gatherings;
 - (b) speak to such gatherings on the judge's own behalf or on behalf of other judicial candidates;
 - (c) contribute to a political party.

(3) A judge should resign the judicial office before becoming a candidate either in a party primary or in a general election for non-judicial office.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office:

(a) should maintain the dignity appropriate to judicial office, and should encourage family members to adhere to the same standards of political conduct that apply to the judge;

(b) should prohibit public employees subject to the judge's direction or control from doing for the judge what the judge is prohibited from doing under this canon;

(c) should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(d) should not knowingly, or with reckless disregard, use or participate in the use of any form of public communication that is false.

(2) These provisions govern a candidate, including an incumbent judge, for a judicial office:

(a) A candidate should not personally solicit or accept campaign funds, or solicit publicly stated support by improper use of the judicial office in violation of [\[MCJC 7\]B\(1\)\(c\)](#). A candidate may send a thank-you note to a contributor.

(b) A candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.

(c) Such committees are prohibited from soliciting campaign contributions from lawyers in excess of \$100 per lawyer, but may solicit public support from lawyers. It is not a violation of this provision for a committee, in undertaking solicitations that are not directed exclusively to lawyers but may in fact go to lawyers who are members of a group or found on a mailing list, to solicit more than \$100 per person, provided that the following disclaimer appears on the letter or on a response card, in

print that is at least the same size as the remainder of the print in the letter or the response card:

‘[Canon 7](#) of the Michigan Code of Judicial Conduct prohibits a judicial campaign committee from soliciting more than \$100 per lawyer. If you are a lawyer, please regard this as informative and not a solicitation for more than \$100.’

(d) A candidate’s committee may not directly or indirectly accept funds from any committee that was established in connection with the candidate’s attempt to secure any other judicial or nonjudicial office. The committee may solicit funds for the campaign no earlier than February 15 of the year of the election, and may not solicit or accept funds after the date of the general election.

(e) A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate’s family.

(f) If a candidate is not opposed for such judicial office, the candidate or the candidate’s committee shall return to the contributors funds raised in excess of the actual costs incurred or contribute such funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election. Likewise, any candidate or committee having funds remaining after payment of all campaign expenses shall either return such funds to the contributors thereof or donate the funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election.

(g) A candidate for judicial office may not pay an endorsing organization for its ranking or endorsement. However, a candidate for judicial office may contribute campaign funds to pay some of the costs associated with the publication of the endorsement or ranking of the candidate, provided the candidate secures from the endorsing organization an assurance, before the endorsement or ranking is made, that the endorsing organization will not:

(i) demand payment from the candidate or the candidate’s agent as a condition of the endorsement or favorable ranking,

(ii) seek any assurance from the candidate before the endorsement or ranking is made that it will be paid if it endorses or ranks the candidate favorably,

(iii) add an endorsement or favorable ranking of a different candidate in the event that the initially supported candidate decides not to pay the endorsing organization for publicizing its endorsement and favorable ranking,

(iv) prevent the candidate from publicizing the endorsement or favorable ranking independent of the endorsing organization, regardless of whether the endorsing organization itself publicizes its endorsement or favorable ranking.

(3) No judge should personally sell or permit any court or public employee working for or assigned to any court to sell fund-raising tickets or accept contributions of any kind on the judge's behalf or on behalf of any other judicial candidate.

C. Wind up of Law Practice.

(1) A successful elected candidate who was not an incumbent has until midnight December 31 following the election to wind up the candidate's law practice, and has until June 30 following the election to resign from organizations and activities, and divest interests that do not qualify under [Canon 4](#).

(2) Upon notice of appointment to judicial office, a candidate shall wind up the candidate's law practice prior to taking office, and has six months from the date of taking office to resign from organizations and activities and divest interests that do not qualify under [Canon 4](#)."

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