

**JUDICIAL CAMPAIGN ETHICS -- Frequently Asked Questions**

**TABLE OF CONTENTS**

**GENERAL INFORMATION** ..... 3

**What Canons apply to judicial campaigns?** ..... 3

**What are some of the resources regarding ethics and judicial campaigns?** ..... 3

**PLANNING COMMITTEE AND CAMPAIGN COMMITTEE** ..... 3

**What is a planning committee and when may it be established?**..... 3

**May a sitting judge be a member of the planning committee?** ..... 4

**May a planning committee send letters seeking support for the candidate?**..... 4

**What is the difference between a planning committee and a campaign committee?** ..... 4

**What should a candidate consider when establishing a campaign committee?** ..... 4

**May a sitting judge be a member of the campaign committee?**..... 4

**Where can I get information regarding filing for a judicial office?** ..... 4

**CAMPAIGN CONTRIBUTIONS** ..... 4

**When can the judicial campaign begin receiving or spending campaign contributions?** .. 4

**When may the candidate contribute his or her own funds for the judicial campaign?** .... 4

**May a candidate personally solicit or receive campaign contributions?** ..... 5

**May a judicial campaign accept unsolicited contributions before February 15?** ..... 5

**May the campaign committee accept contributions or in-kind donations valued over \$100.00 from a lawyer?**..... 5

**During what period of time is a campaign committee restricted to soliciting no more than \$100 from a lawyer?** ..... 5

**What precaution can the campaign committee take to ensure that it does not violate the prohibition on soliciting more than \$100 from a lawyer?** ..... 5

**May a sitting judge contribute to another candidate’s judicial campaign?** ..... 5

**May a judicial candidate send a thank you note to a contributor?** ..... 5

**May a judicial candidate use campaign contributions for the benefit of the candidate or the candidate’s family?** ..... 5

**May the campaign committee retain contributions dated and postmarked before the end of the election but not received in the mail until after the date of the general election?** .... 6

**What is considered a contribution?**..... 6

**When must excess funds remaining after payment of all campaign expenses and accounts be returned or donated?** ..... 6

May the campaign committee use contributions for post-election expenses? .....	6
May a campaign committee solicit or accept contributions after the election? .....	6
May a campaign committee accept a refund for a campaign overcharge remitted after the general election? .....	6
May the candidate pay for campaign debt if there are no contributions to pay the debt incurred during the campaign? .....	6
How must excess campaign contributions be handled?.....	6
<b>ADVERTISEMENT AND ENDORSEMENTS</b> .....	7
Which Canons apply to campaign advertising? .....	7
How should a candidate’s name be stated in advertising materials? .....	7
May a candidate personally solicit endorsements/public statements of support? .....	Error!
<b>Bookmark not defined.</b>	
May a campaign committee solicit endorsements/public statements of support? .....	7
May a sitting judge endorse/publicly support the candidacy of another judge? .....	7
May a candidate pay for an endorsement? .....	7
What ethical standards apply to the candidate’s staff? .....	7
What ethical standards apply to the candidate’s family? .....	7
May a judicial candidate’s spouse endorse a non-judicial candidate?.....	7
May a judicial candidate attend a fundraiser for a nonjudicial candidate? .....	7
May a judicial candidate’s campaign committee advertise in a political party’s ad book?	8
<b>EXTRAJUDICIAL ACTIVITIES</b> .....	8
May a candidate continue to participate in extrajudicial activities and organizations? ....	8
May a candidate serve “as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization?” .....	8
<b>DISQUALIFICATION FROM PENDING CASES</b> .....	8
Is a judge per se disqualified from presiding over a case where one of the lawyers is running against the sitting judge? .....	8
Is a judicial candidate per se prohibited from representing a client in a case pending before his or her judicial opponent?.....	8
Is a judge automatically disqualified from presiding over a matter where one of the attorneys is a member of the judge’s reelection campaign committee? .....	8

## GENERAL INFORMATION

### What Canons apply to judicial campaigns?

Per MRPC 8.2(b), “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,” which references the following Canons:

[Canon 1](#). A Judge Should Uphold the Integrity and Independence of the Judiciary.

[Canon 2](#). A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.

[Canon 4A-4D](#). A Judge May Engage in Extrajudicial Activities.

[Canon 7](#). A Judge or Judicial Candidate Should Refrain From Political Activity Inappropriate to Judicial Office.

See the [Michigan Code of Judicial Conduct](#). The online version posted on the Michigan Supreme Court’s website does not include comments available in the Michigan Rules of Court published by Thompson Reuters, Westlaw.

### What are some of the resources regarding ethics and judicial campaigns?

The [Michigan Code of Judicial Conduct](#). The online version posted on the Michigan Supreme Court’s website does not include comments available in the Michigan Rules of Court published by Thompson Reuters, Westlaw.

The [State Bar of Michigan Ethics Opinions](#), interpreting the Michigan Code of Judicial Conduct.

The [Michigan Judicial Campaigns Ethics Pocket Guide](#), prepared by Judge Thomas K. Byerley in collaboration with the Michigan Judicial Institute.

The [Michigan Campaign Finance Act](#).

[Information for Candidates](#) published by the Secretary of State.

## PLANNING COMMITTEE AND CAMPAIGN COMMITTEE

### What is a planning committee and when may it be established?

- The planning committee must be separate and distinct from the candidate’s campaign committee, and “must only be involved in planning strategies for a proposed campaign.” Ethics Opinion [JI-014](#).

“It follows that the work of a planning committee ceases when a campaign committee is established, since the campaign committee is the only entity authorized to conduct campaign activities and accept and spend campaign funds.” Ethics Opinion [JI-081](#).

A planning committee may be formed prior to February 15th of the year of the election. Ethics Opinion [JI-081](#).

**May a sitting judge be a member of the planning committee?**

Yes, a sitting judge may be a member of the planning committee, but the judge may not be a member of the campaign committee. Ethics Opinion [JI-014](#).

**May a planning committee send letters seeking support for the candidate?**

Yes. The planning committee may send letters asking if the recipient will support the candidacy, volunteer to work on the campaign, display signs, distribute literature and engage in other similar activities, but it must not solicit contributions. Ethics Opinion [JI-081](#).

**What is the difference between a planning committee and a campaign committee?**

A planning committee, which may be formed before February 15 of the year of the election, may plan strategies for a proposed campaign, inquire about support for the candidate, and ask for volunteers but cannot solicit or receive campaign contributions. Judges may serve on a planning committee. Ethics Opinions [JI-014](#) and [JI-081](#).

The campaign committee may solicit, receive, and spend contributions. However, the campaign committee may only solicit contributions after February 15 of the year of the election, and may not solicit or accept funds after the date of the general election. [MCJC 7B\(2\)\(d\)](#). Judges may not serve on a campaign committee. Ethics Opinions [JI-014](#) and [JI-081](#).

**What should a candidate consider when establishing a campaign committee?**

A candidate should ensure that members of the campaign committee will abide by the ethical requirements contained in the Michigan Code of Judicial Conduct for judicial candidates as provided in [MCJC 5](#). The candidate should only select members who are willing to learn and abide by the Canons applicable to the judicial candidate, as well as the legal requirements.

Additionally, the treasurer must be a qualified elector in Michigan, [MCL 169.221\(2\)](#), but may not be the candidate, a member of the candidate’s immediately family, or another judge. See Ethics Opinion [JI-014](#) and [JI-090](#). See also [MCJC 7B\(3\)](#).

**May a sitting judge be a member of the campaign committee?**

No. Ethics opinion [JI-014](#).

**Where can I get information regarding filing for a judicial office?**

[State of Michigan, Secretary of State, Elections in Michigan, Information for Candidates.](#)

**CAMPAIGN CONTRIBUTIONS**

**When can the judicial campaign begin receiving or spending campaign contributions?**

After the campaign committee is formed, it may begin receiving and expending contributions. Ethics Opinion [JI-081](#). However, it may not solicit contributions until after February 15 of the year in which the election will occur. [MCJC 7B\(2\)\(d\)](#).

**When may the candidate contribute his or her own funds for the judicial campaign?**

At any time. Ethics Opinion [JI-017](#), see also [CI-987](#) regarding loaning funds to the committee.

**May a candidate personally solicit or receive campaign contributions?**

No, it is unethical for a judicial candidate to solicit or receive campaign contributions. [MCJC 7B\(2\)\(a\)](#). Only a campaign committee may receive or solicit contributions. [MCJC 7B\(2\)\(b\)](#) and [\(d\)](#).

**May a judicial campaign accept unsolicited contributions before February 15?**

Yes. Ethics Opinion [JI-017](#). Expenditure of unsolicited funds by the campaign committee before February 15 is not expressly answered by MCJC 7. Canon 7 “does not bar formation of a committee at any time, bar use of a candidate’s own funds or use by the committee of a candidates own funds, or bar campaigning outside the 180 day period. Candidates should certainly be discreet in what they do at any time; they should recognize the implication of the 180 day limit in the Canon and restrain their campaign efforts at other times.” [CI-987](#); see also [MCJC 7B\(2\)\(b\)](#) and [\(d\)](#).

**May the campaign committee accept contributions or in-kind donations valued over \$100.00 from a lawyer?**

Yes, but only if the contribution is unsolicited. Ethics Opinion [CI-531](#).

**During what period of time is a campaign committee restricted to soliciting no more than \$100 from a lawyer?**

The prohibition against soliciting more than \$100 from a lawyer applies to the entire election cycle, which includes the primary and the general election. Ethics Opinion [JI-001](#).

**What precaution can the campaign committee take to ensure that it does not violate the prohibition on soliciting more than \$100 from a lawyer?**

The campaign committee should cite the exact language as set forth in [MCJC 7B\(2\)\(c\)](#) in solicitations that are not directed exclusively to lawyers and ensure that the disclaimer is printed in at least the same size as the remainder of the document. See text below:

“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.” [MCJC 7B\(2\)\(c\)](#).

**May a sitting judge contribute to another candidate’s judicial campaign?**

Yes. [MCJC 7A\(1\)\(b\)](#); Ethics Opinion [JI-095](#).

**May a judicial candidate send a thank you note to a contributor?**

Yes. [MCJC 7B\(2\)\(a\)](#).

**May a judicial candidate use campaign contributions for the benefit of the candidate or the candidate’s family?**

No. [MCJC 7B\(2\)\(e\)](#) states that “A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate’s family.” Remember, contributions include more than just funds contributed to the campaign, see [MCL 169.204\(1\)](#).

**May the campaign committee retain contributions dated and postmarked before the end of the election but not received in the mail until after the date of the general election?**

Yes. “A candidate for judicial office may retain and use a contribution to retire campaign expenses under circumstances where a check was mailed prior to the close of the general election, but received after the date of the general election.” Ethics Opinion [JI-005](#).

**What is considered a contribution?**

[MCL 169.204\(1\)](#) defines contributions to include more than just funds contributed to the campaign.

**When must excess funds remaining after payment of all campaign expenses and accounts be returned or donated?**

As soon as practicable, but not later than January 1 following the general election. [MCJC 7B\(2\)\(f\)](#).

**May the campaign committee use contributions for post-election expenses?**

No. This prohibition includes post-election parties and investiture celebrations. Ethics Opinion [JI-060](#).

**May a campaign committee solicit or accept contributions after the election?**

No, even if the contributions are requested for a campaign deficit. [MCJC 7B\(2\)\(d\)](#) and [MCJC 2G](#).

“A candidate for judicial office may retain and use a contribution to retire campaign expenses under circumstances where a check was mailed prior to the close of the general election, but received after the date of the general election.” Ethics Opinion [JI-005](#).

**May a campaign committee accept a refund for a campaign overcharge remitted after the general election?**

Yes. “A judicial candidate who receives a refund due to an overcharge for campaign services, which refund arrives after accounts for the judicial campaign have been closed, may apply the late-arriving refund to any unsatisfied campaign debts.” Ethics Opinion [JI-063](#).

**May the candidate pay for campaign debt if there are no contributions to pay the debt incurred during the campaign?**

Yes, any outstanding campaign debts that are not covered by timely campaign contributions become the personal obligation of the candidate. Ethics Opinion [JI-063](#).

**How must excess campaign contributions be handled?**

All campaign contributions must be disbursed before January 1 following the election. The contributions may be used to pay any loans to the campaign, including loans from the candidate or returned to the contributor. If the contributor cannot be located or refuses to accept the return of contributions, then the excess contributions must be remitted to the State Bar of Michigan Client Protection Fund. [MCJC 7B\(2\)\(f\)](#).

## **ADVERTISEMENT AND ENDORSEMENTS**

### **Which Canons apply to campaign advertising?**

[MCJC 7B\(1\)\(a\)](#) states that candidates “should maintain the dignity appropriate to judicial office.”

[MCJC 7B\(1\)\(c\)](#) states that candidates “should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.”

[MCJC 7B\(1\)\(d\)](#) states that candidates “should not knowingly, or with reckless disregard, use or participate in the use of any form of public communication that is false.”

Advertising must not create the impression of incumbency, unless the candidate is an incumbent. Ethics Opinions [CI-556](#); [MCL 168.944](#).

### **How should a candidate’s name be stated in advertising materials?**

A judicial candidate should campaign under the candidate’s full name to avoid any mistaken identity. Ethics Opinion [JI-074](#).

### **May a campaign committee solicit endorsements/public statements of support?**

Yes. [MCJC 7B\(2\)\(b\)](#).

### **May a sitting judge endorse/publicly support the candidacy of another judge?**

Yes. “A judge may allow the judge’s name and judicial title to be used in a campaign brochure and a radio ad in which the judge is quoted as supporting a judicial candidate judge, as long as the endorsement is not used for fundraising.” Ethics Opinion [JI-095](#).

### **May a candidate pay for an endorsement?**

No. [MCJC 7B\(2\)\(g\)](#). However, it may pay some of the costs “associated with the publication of the endorsement or ranking of the candidate” in accordance with the parameters set forth in [MCJC 7\(B\)\(2\)\(g\)](#).

### **What ethical standards apply to the candidate’s staff?**

The candidate “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.” [MCJC 7B\(1\)\(b\)](#). Best practice: Proceed as though this provision applies to all staff members, regardless of whether or not they are public employees.

### **What ethical standards apply to the candidate’s family?**

The candidate for judicial office “should encourage family members to adhere to the same standards of political conduct that apply to the judge”. [MCJC 7B\(1\)\(a\)](#).

### **May a judicial candidate’s spouse endorse a non-judicial candidate?**

“A judge’s spouse is not prohibited from serving on the campaign committee of a nonjudicial candidate or appearing on the campaign committee letterhead.” Ethics Opinion [JI-047](#).

### **May a judicial candidate attend a fundraiser for a nonjudicial candidate?**

“[A] judge may attend a fundraiser held for a nonjudicial candidate, and may participate in campaign activities which do not constitute a public endorsement of the nonjudicial candidate.

The same rules apply to a judge’s participation in a campaign for a nonjudicial candidate who is a relative of the judge or a member of the judge’s household.” Ethics Opinion [JI-030](#). See also [MCJC 7A\(1\)\(b\)](#).

**May a judicial candidate’s campaign committee advertise in a political party’s ad book?**

Yes. “A judge or candidate may place an advertisement in a political party’s ad book so long as the content of the advertisement does not constitute a speech on behalf of a political party or nonjudicial candidate or an endorsement of a candidate for nonjudicial office.” Ethics Opinion [JI-036](#).

**EXTRAJUDICIAL ACTIVITIES**

**May a candidate continue to participate in extrajudicial activities and organizations?**

Yes, as long as participation does not influence judicial conduct or judgment, or involve the personal solicitation of funds. [MCJC 2C](#), [MCJC 7A\(2\)\(a\) and \(b\)](#), and [MCJC 4A–D](#).

**May a candidate serve “as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization?”**

Yes, 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.” [MCJC 4C](#); Ethics Opinion [JI-139](#).

**DISQUALIFICATION FROM PENDING CASES**

**Is a judge per se disqualified from presiding over a case where one of the lawyers is running against the sitting judge?**

No. “A judge assigned to preside over a case in which one of the advocates is an announced candidate for that judge’s seat in the upcoming election is not per se disqualified from presiding over the case. Assuming that the judge ethically can discharge the duties required by the applicable Canons and finds no basis that requires disqualification, the judge should nonetheless disclose to the parties that the advocate is a candidate for the judge’s seat, and proceed, unless a timely motion to disqualify is granted.” Ethics Opinion [JI-138](#).

**Is a judicial candidate per se prohibited from representing a client in a case pending before his or her judicial opponent?**

No. “A lawyer who is a candidate for judicial office and is simultaneously representing a client in a matter pending before his or her judicial opponent must disclose this fact to his or her client at the earliest opportunity, including prior to retention, if possible. [MRPC 1.4\(b\)](#). In order to continue the representation, the lawyer must determine whether his or her candidacy for his or her judicial opponent’s seat triggers any obligation under [MRPC 1.7\(b\)](#) and proceed accordingly.” Ethics Opinion [RI-361](#).

**Is a judge automatically disqualified from presiding over a matter where one of the attorneys is a member of the judge’s reelection campaign committee?**

No. “An incumbent judge is not automatically disqualified from presiding in a matter in which a member of the judge’s reelection campaign committee appears as an advocate for a party. The judge has an affirmative duty to disclose the relationship to opposing counsel and all parties. The

lawyer has an affirmative duty to disclose the relationship to the client, and, if the judge fails to make timely disclosure, to the opposing counsel.” Ethics Opinion [JI-079](#).

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**These FAQs are neither legal advice nor an ethics opinion, and are not a substitute for your obligation to review and adhere to the requirements of the [Michigan Code of Judicial Conduct \(MCJC\)](#), ethics opinions, statutes, court rules, and/or case law.**