

A GUIDEBOOK TO ETHICAL CONDUCT FOR JUDICIAL LAW CLERKS



TABLE OF CONTENTS

- I. INTRODUCTION3
 - A. PURPOSE OF THE GUIDEBOOK.....3
 - B. GLOSSARY OF TERMS.....3
 - C. THE ROLE OF A JUDICIAL LAW CLERK.....3
- II. CORE ETHICAL DUTIES4
 - A. IMPARTIALITY AND INTEGRITY4
 - B. CONFIDENTIALITY AND PRIVILEGED INFORMATION6
 - C. REPORTING MISCONDUCT.....6
- III. CONFLICTS8
 - A. INTRODUCTION TO CONFLICTS OF INTEREST8
 - B. RULES AND PROCEDURES FOR RECUSAL.....8
- IV. PROFESSIONAL CONDUCT.....8
 - A. INTERACTING WITH JUDGES, ATTORNEYS, AND THE PUBLIC.....8
 - B. SOCIAL MEDIA AND PUBLIC STATEMENTS9
- V. ACCEPTING GIFTS AND HOSPITALITY10
- VI. TRANSITIONING TO PRACTICE10
 - A. EMPLOYMENT AND OUTSIDE ACTIVITY WHILE WITH THE COURT.....10
 - B. ETHICAL CONSIDERATIONS WHEN TRANSITIONING FROM JUDICIAL LAW CLERKSHIP TO LEGAL PRACTICE11
 - C. CONFIDENTIALITY AND USE OF INFORMATION11
 - D. CONFLICTS OF INTEREST AND SCREENING.....11
- VII. THE JUDICIAL PERSPECTIVE.....12
- VIII. CONCLUSION13

I. INTRODUCTION

A. PURPOSE OF THE GUIDEBOOK

This guidebook serves as a resource for judicial law clerks regarding the unique responsibilities and expectations of their role. It outlines the ethical responsibilities and considerations that are critical to supporting the work of a judge and helping law clerks transition smoothly into their roles, contribute meaningfully to the work of the judges they serve, and transition to practice when their clerkships end.

This guidebook is designed primarily for current and prospective law clerks serving in Michigan courts at all levels. It is also a valuable resource for judges, court administrators, and legal educators who seek to understand the ethical framework governing law clerks.

In addition to this guidebook, the Ethics Helpline serves as a confidential resource through which attorneys and judges may receive verbal, nonbinding ethics advice from a staff attorney.

- **A note to non-barred court staff:** The State Court Administrative Office, or SCAO, is responsible for the conduct of non-barred court staff. Please review SCAO resources for additional guidance regarding the conduct of non-barred court staff, as this guidebook is primarily designed to address the ethical duties of law clerks licensed to practice law in Michigan.

B. GLOSSARY OF TERMS

- **Judicial Law Clerk** – A judicial law clerk (sometimes referred to as a law clerk, staff attorney, elbow clerk, or research attorney) is typically a lawyer who provides direct assistance to a judge in carrying out the judge's official duties. Lawyers serving as law clerks are subject to the Michigan Rules of Professional Conduct (MRPC). Law clerks must be residents of Michigan and must either be licensed to practice law or be a graduate of or a student at a qualified law school.¹ Law clerks are tasked with conducting legal research, preparing memoranda, and performing other duties prescribed by the court through local rule.²
- **Judge** – A judge is a public official appointed or elected to preside over court proceedings. Judges interpret and apply the law, oversee trials and hearings, rule on motions, instruct juries, and issue legal decisions and judgments. They are responsible for ensuring that legal proceedings are conducted fairly and in accordance with the law. Judges are subject to the Michigan Rules of Professional Conduct and the Michigan Code of Judicial Conduct.³
- **Court Clerk** – A court clerk is a professional who provides administrative and clerical support for judges and attorneys in both criminal and civil matters. Their duties may include recording and maintaining court proceedings, managing case files, preparing and distributing court orders, collecting court fees and fines, and ensuring all legal documents follow court procedures.
- **Court Staff** – Court staff refers collectively to all employees who support the functioning of the court. This includes court clerks, bailiffs, court reporters, case managers, and administrative personnel. Court staff handles a variety of administrative, clerical, and operational tasks necessary for the effective administration of justice.

C. THE ROLE OF A JUDICIAL LAW CLERK

Law clerks are tasked with carrying out responsibilities at the direction of the judge they serve. Because each judge has unique preferences and professional routines, no two judges utilize their clerks in exactly the same manner. Law clerks must understand the judge's working style and collaborate closely with other court staff to support the judge in carrying out judicial responsibilities.

In most chambers, law clerks focus heavily on legal research and writing. Many judges actively engage their clerks in discussions about pending cases and seek their input on decisions. Law clerks for trial court judges in both state

1. MCL 600.1471.

2. *Id.*

3. See also Michigan Court Rules 9.201 for the definition of "Judge."

and federal courts tend to have more direct interaction with attorneys, parties, and witnesses than appellate clerks, whose primary role typically centers on analyzing and writing about legal issues raised on appeal.

II. CORE ETHICAL DUTIES

A. IMPARTIALITY AND INTEGRITY

Lady Justice wears a blindfold for a reason. In his Note for Destutt de Tracy's *Treatise on Political Economy*, [ca. 6 April 1816], Thomas Jefferson wrote that "the most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens." Jefferson was speaking specifically about taxation, but his sentiment holds true for all aspects of governance, particularly within the judiciary.

All attorneys licensed in Michigan, including law clerks, are subject to the Michigan Rules of Professional Conduct.⁴ The Michigan Code of Judicial Conduct (MCJC) does not directly regulate the activities of individuals who are not judicial officers.⁵ Ethics Opinion JI-66 explains that MCJC 3B(2) requires a judge to ensure that staff and court officials under the judge's supervision maintain high standards of loyalty, diligence, and courtesy when interacting with litigants, jurors, witnesses, and others in their official duties.⁶ Judges are not responsible for controlling employees' conduct outside the scope of their court duties. However, because law clerks work closely with and represent judges in performing judicial functions, any violation of the MCJC by a law clerk may indirectly affect a judge's obligation to comply with the code. Additionally, MRPC 8.4 states that assisting another person in violating professional rules is itself unethical conduct. For these reasons, law clerks should follow the standards of the MCJC and conduct themselves as extensions of the judges they serve. Law clerks should maintain strict confidentiality regarding all matters before the court and remain impartial in the performance of their duties. Law clerks must avoid conflicts of interest, misuse of privileged information, and engaging in *ex parte* communications. Their actions must reflect a commitment to fairness, impartiality, integrity, and the proper administration of justice. The close working relationship between a clerk and a judge, together with the judge's reliance on the clerk's work, means that the clerk's conduct is just as important as the judge's conduct in maintaining the integrity and impartiality of the judiciary. Many of the characteristics of integrity and impartiality overlap; however, to the extent possible, they will be addressed separately.

1. MICHIGAN CODE OF JUDICIAL CONDUCT

Integrity is addressed in Canon 1 of the Michigan Code of Judicial Conduct (MCJC):

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.

Impartiality as it pertains to law clerks is discussed in Canon 3(A) and (B) of the MCJC:

A Judge Should Perform the Duties of Office Impartially and Diligently.

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:

4. See Michigan Ethics Opinion JI-066 ("If the law clerk is a licensed lawyer, the Michigan Rules of Professional Conduct apply.").

5. *Id.* ("With regard to whether the law clerk of another judge of the same court may serve on the same organization's board, the Michigan Code of Judicial Conduct does not regulate the activity of those who are not judicial officers.").

6. *Id.*

A. Adjudicative Responsibilities:

* * *

- (2) A judge may require lawyers, court personnel, and litigants to be appropriately attired for court and should enforce reasonable rules of conduct in the courtroom.
- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.
- (4) A judge may make reasonable efforts, consistent with the law, court rules, and rules of evidence, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

* * *

- (14) Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.

* * *

B. Administrative Responsibilities:

* * *

- (2) A judge should direct staff and court officials subject to the judge's control to observe high standards of fidelity, diligence, and courtesy to litigants, jurors, witnesses, lawyers, and others with whom they deal in their official capacity.

* * *

With these principles in mind, law clerks must be mindful of how they communicate with the judges they serve, attorneys, pro se litigants, other members of the court staff, jurors, witnesses, and other stakeholders. They must demonstrate courtesy, respect, and patience in dealing with others and treat pro se litigants and members of the public with the same dignity afforded to judges, attorneys, and other court staff.⁷

Law clerks should provide assistance when doing so would not advantage one party over another. Such assistance may include providing information about a court's holiday schedule, the location of a particular office, a judge's filing or scheduling protocols, or other general public information.⁸ However, law clerks should not disclose information regarding pending or forthcoming matters that is not publicly available unless otherwise instructed by the judge, and then only in conformity with the principles discussed in *Section B. Confidentiality and Privileged Information*. Law clerks should also avoid engaging in discussions with counsel or parties that could lead to inadvertent *ex parte* communications, the disclosure of internal research or analysis, or the provision of legal advice concerning any matter before the court.

Law clerks must be cautious when sharing information about any philanthropic, nonprofit, social justice, or political activities with which they may be personally affiliated to reduce the potential implication that they were granted their position because a judge shares their interests or beliefs.⁹

7. MCJC (A)(4).

8. *Id.*

9. Michigan Ethics Opinion JI-066.

2. MICHIGAN RULES OF PROFESSIONAL CONDUCT

MRPC 8.4 sets forth types of misconduct that could subject an attorney to discipline:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) engage in conduct involving dishonesty, fraud, deceit, misrepresentation, or violation of the criminal law, where such conduct reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer;
- (c) engage in conduct that is prejudicial to the administration of justice;
- (d) state or imply an ability to influence improperly a government agency or official; or
- (e) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law.

Subsections (c), (d), and (e) of MRPC 8.4 are especially relevant to law clerks due to their close working relationships with judges and court administration.

Importantly, subsection (e) requires law clerks to be mindful of the MCJC as a whole. Situations may arise in which law clerks are asked by a judge to do something that might not seem like a violation of the MRPC. Because MRPC 8.4(e) prohibits attorneys from assisting a judge or judicial officer in violating the MCJC, law clerks must be aware of all the types of conduct or activities that could place them in jeopardy under that rule.

B. CONFIDENTIALITY AND PRIVILEGED INFORMATION

What is considered confidential or privileged information for judicial law clerks may differ from what is considered confidential or privileged information for other licensed attorneys. In addition to the obligations imposed by the MRPC, judicial law clerks should be aware of the applicable provisions of the MCJC.

MCJC 3(A)(9) expressly addresses the expectation of confidentiality for court staff:

MCJC 3(A) A Judge Should Perform the Duties of Office Impartially and Diligently.

- (9) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (6) and (7).¹⁰

MCJC 3(A)(9) extends to all nonpublic information obtained in the course of judicial employment, including draft opinions, internal deliberations, case discussions, and communications with chambers personnel. Disclosure, even inadvertently, can undermine the integrity of the judicial process and erode public confidence in the courts. Thus, judicial law clerks should treat all information that comes before the court with the same level of protection as a judge would, ensuring that such information is not disclosed or discussed outside chambers.

Law clerks must also recognize that confidentiality survives employment. Former law clerks remain bound by the same restrictions on disclosure of nonpublic information even after leaving chambers. Ethics Opinions J-002 and JI-089 reaffirm that judges, and by extension their court staff and law clerks, must avoid using or revealing information relating to former clients or cases in any subsequent role.

C. REPORTING MISCONDUCT

As members of a self-regulating profession, Michigan attorneys are required to report "significant violation[s] of the Rules of Professional Conduct" to the Attorney Grievance Commission when the violation "raises a substantial

¹⁰ MCJC 3(A)(6) requires a judge to dispose promptly of the business of the court. MCJC 3(A)(7) prohibits judges from making public statements that might be expected to affect the outcome or impair the fairness of a pending or impending matter.

question as to that lawyer’s honesty, trustworthiness, or fitness as a lawyer” and the attorney has knowledge of the violation, subject to the exceptions in MRPC 8.3(c).¹¹

Because law clerks occupy positions of trust within the judicial system, ethical vigilance is particularly important. Law clerks must not only avoid engaging in misconduct themselves but must also refrain from knowingly assisting or facilitating unethical conduct by others, including the judges for whom they work.¹² A clerk’s ethical obligations reinforce the fundamental principle that the judiciary must not only be impartial but must also appear impartial and operate with integrity.¹³

Because law clerks evaluate the written and oral positions of practicing attorneys, they may discover significant violations of the Rules of Professional Conduct that must be reported. As a best practice, a law clerk should disclose the perceived rule violation to the judge before reporting the matter to the Attorney Grievance Commission in order to keep the judge informed about conduct occurring in the courtroom.

This approach serves several important purposes:

- It ensures the judge is fully informed about conduct occurring in the courtroom or in filings submitted to the court.
- It allows the judge to provide guidance on whether the conduct falls within MRPC 8.3(a).
- It avoids undermining the judge’s authority or creating confusion about the source of a grievance.
- It protects the law clerk from acting unilaterally on an issue that may implicate judicial administration or case management.

Importantly, disclosure to the judge does not relieve a law clerk of the obligation to report if the violation is determined to be within MRPC 8.3(a). The reporting duty under MRPC 8.3 is personal to the lawyer and cannot be delegated or waived. However, consultation with the judge can assist the clerk in determining whether the conduct rises to the level that triggers mandatory reporting.

Reporting Judicial Misconduct – MRPC 8.3(b) imposes a parallel obligation with respect to judicial misconduct, requiring attorneys to report significant violations of the Code of Judicial Conduct that raise a substantial question as to a judge’s honesty, trustworthiness, or fitness for office to the Judicial Tenure Commission. While this duty applies broadly to attorneys, law clerks must approach such situations with particular care given their employment relationship with the judge.

If a law clerk believes a judge’s conduct may constitute a significant ethical violation, the law clerk may consider speaking with the Chief Judge before proceeding. The duty to report becomes mandatory once a law clerk concludes that the violation is significant and raises a substantial question as to the judge’s honesty, trustworthiness, or fitness for judicial office; however, thoughtful deliberation and appropriate consultation remain critical given the seriousness of such reports and the clerk’s institutional role.

If a law clerk suspects that a significant violation of the MRPC or MCJC has occurred, the law clerk is encouraged to visit the State Bar of Michigan’s Ethics Home Page. There, law clerks will find resources on numerous ethics topics, including answers to Frequently Asked Questions, Michigan Bar Journal articles such as Reviewing the obligation to report potential misconduct and MRPC 8.3 – Navigating the duty to report, and formal opinions interpreting the MRPC and MCJC. Additionally, all members of the State Bar of Michigan may contact the SBM Ethics Helpline at (877) 558-4760 to receive verbal, nonbinding ethics advice from a staff attorney regarding their prospective conduct and reporting obligations.

11. MRPC 8.3(a).

12. MRPC 8.4(e).

13. MCJC 1.

III. CONFLICTS

A. INTRODUCTION TO CONFLICTS OF INTEREST

Conflicts of interest are addressed in MRPC 1.7, 1.8, and 1.9. A conflict of interest for a law clerk may arise when the clerk's prior legal involvement or external obligations could impair the law clerk's ability to provide impartial and objective assistance to a judge in the performance of judicial duties. Examples include financial interests in a matter, close personal relationships with participants in a case, prior knowledge of disputed facts, or other private interests that could create bias or undermine confidence in the judiciary.

The MRPC governs all aspects of a lawyer's conduct and therefore applies to law clerks. MRPC 8.4(a) defines misconduct as violating or attempting to violate the MRPC or knowingly assisting or inducing another to do so. Thus, assisting a judge in a matter despite the existence of a conflict may constitute misconduct if it reflects adversely on the lawyer's fitness or is prejudicial to the administration of justice.¹⁴

Although the MCJC directly governs judges rather than law clerks, clerks must avoid influencing a judge in a manner that would cause the judge to violate the MCJC.¹⁵ Doing so could amount to knowingly assisting judicial misconduct and could subject the clerk to professional discipline.¹⁶

With respect to conflicts of interest involving law clerks, disclosure is essential. A law clerk must promptly inform the judge of any conflict to allow for appropriate mitigation measures, such as screening the clerk from the case or notifying affected parties and requesting consent. Failure to disclose or mitigate could result in disciplinary action.

B. RULES AND PROCEDURES FOR RECUSAL

A law clerk is prohibited from participating in a matter in which the law clerk has personally and substantially participated while in private practice or nongovernmental employment.¹⁷ A judge is required to recuse or be disqualified when the judge's impartiality might reasonably be questioned, including instances of personal bias, financial interest, or prior involvement in the case.¹⁸ As attorneys, law clerks must adhere to standards designed to prevent conduct prejudicial to the administration of justice.¹⁹ Although Michigan Court Rule 2.003 directly governs judges, if a law clerk's conflict could create either an actual conflict or the appearance of impropriety for the judge, the clerk must disclose the conflict, and the judge may need to recuse or screen the clerk. Failure to do so may be considered conduct prejudicial to the administration of justice. Law clerks should advise the judge of potential grounds for recusal and must ensure their actions do not contribute to improper influence or bias.

Under MCR 2.003(C)(1)(b), the test for determining whether an appearance of impropriety exists is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."²⁰ Although this standard applies directly to judges, its spirit equally governs law clerks. Clerks must proactively identify and disclose circumstances that could raise questions about fairness or objectivity. Even when the clerk is confident in their impartiality, the appearance of partiality alone can require recusal from involvement in a case.

IV. PROFESSIONAL CONDUCT

A. INTERACTING WITH JUDGES, ATTORNEYS, AND THE PUBLIC

Under Canon 3(A)(4) of the MCJC, a judge "shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending pro-

14. MRPC 8.4; see also MCR 9.104(1) (defining attorney misconduct to include conduct prejudicial to the proper administration of justice).

15. MRPC 8.4(e).

16. *Id.*

17. MRPC 1.11(c)(1). However, a law clerk can participate if, under applicable law, no one is, or by lawful delegation may be, authorized to act in the law clerk's stead in the matter.

18. MCR 2.003.

19. MRPC 8.4(c); MCR 9.104(1).

20. *Kern v Kern-Koskela*, 320 Mich. App. 212, 232 (2017).

ceeding.”²¹ Likewise, MRPC 3.5(b) prohibits attorneys from communicating *ex parte* with a tribunal concerning a pending matter, except as permitted by law. The Supreme Court’s decision in *In re Murchison*²² underscores that “a fair trial in a fair tribunal is a basic requirement of due process” and that one-sided communications undermine that guarantee.

For judicial law clerks, the rule applies with equal force. Because law clerks act as extensions of the court, a communication addressed to a law clerk that discusses the merits of a case and is not shared with all parties is an *ex parte* communication, just as if it had been sent directly to the judge. Michigan Ethics Opinion JI-134 confirms that judges must instruct and supervise clerks and court staff to prevent such violations. Permissible communications include only administrative matters, such as scheduling or procedural logistics, where no party gains an advantage.

Law clerks must strictly avoid *ex parte* communications. They should not discuss pending matters with anyone, including litigants or attorneys, outside the courtroom or without all parties present. If approached, the proper response is to decline politely and direct the person to file an appropriate pleading or paper. All correspondence to chambers must be logged and routed according to court protocols to ensure the judge does not see any communication not shared with all parties. Even inadvertent violations can erode public confidence, require recusal, or lead to reversal. Ethics Opinions JI-134 and JI-85 emphasize that both judges and clerks share responsibility for preventing and reporting improper communications.

For further guidance, see the Michigan Judicial Institute’s resources available through the Michigan Courts website, Judges & Court Staff, which outlines procedures for handling correspondence and interactions with litigants. Additional discussion of recusal and impartiality can be found in *Judicial Disqualification in Michigan (2nd ed.)*, also available through the MJJ, and in the *Michigan Bar Journal*.

Law clerks also interact with the public outside of the courtroom. All lawyers are at some point approached by friends or family members to provide legal advice or assistance on “simple questions.” Law clerks should avoid these conversations. They may seem innocuous enough; however, as court staff members, law clerks have a professional duty to the court and the public it serves. By assisting in any way, a clerk may unknowingly give one litigant an advantage over another or over other interested parties in pending or impending litigation, or may inadvertently create an attorney-client relationship. Consequently, clerks must be circumspect in their refusal to provide any kind of legal assistance to friends, family, or acquaintances, however innocent the request may seem. Doing so may place the law clerk in violation of MRPC 8.4(e).

B. SOCIAL MEDIA AND PUBLIC STATEMENTS

While law clerks are not attorneys representing clients, they are part of the judicial office and must ensure that judges’ chambers do not post or facilitate commentary that could suggest bias, identify litigants or attorneys in ways that undermine confidentiality, or reveal internal deliberations.²³

Judges must avoid public statements that undermine the appearance of impartiality, neutrality, or the integrity of the judiciary. For example, Michigan Ethics Opinion JI053 warns that judges should be cautious when engaging in campaign criticism of sitting judges, Michigan Ethics Opinion JI004 emphasizes that judicial campaign pledges must not compromise neutrality, and Michigan Ethics Opinion JI057 states that judges should not make public statements indicating bias or predisposition in pending cases. It is best practice for law clerks to follow this guidance as well.

Online communications and public statements carry the same core ethical obligations as more traditional channels. Law clerks must help ensure that neither actual misconduct nor the appearance of impropriety arises from social media posts or statements tied to the judge’s office. By doing so, they protect confidentiality, preserve impartiality, and uphold the public trust that underpins the judicial institution.

For more information on the use of social media by judges, please see Judicial Social Media FAQs.

21. Note that this applies to substantive communications on the merits of the case. *Ex parte* communications regarding “scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits ...” are expressly permitted. MCJC 3(A)(4)(a).

22. 349 US 133 (1955).

23. MCJC 2.

V. ACCEPTING GIFTS AND HOSPITALITY

Law clerks in Michigan should adhere to strict ethical standards regarding the acceptance of gifts and hospitality, as outlined in MCJC Canon 4(D) and reinforced by Michigan Ethics Opinion JI-146. Ethics Opinion JI-146 explicitly states that “a judge, judge’s family member, or staff member may accept gifts that are considered ‘ordinary social hospitality’ but should not accept any other gifts from persons who may appear before the judge” (emphasis added). Judicial staff, including law clerks, are expected to err on the side of caution and decline any gift or hospitality that could be perceived as compromising the impartiality or integrity of the judiciary. These rules exist to preserve the integrity, impartiality, and independence of the judiciary and its staff.

Thus, law clerks may accept gifts that constitute “ordinary social hospitality.” This term refers to modest, customary gestures exchanged in a social rather than professional context, such as a cup of coffee, a meal among friends, or a small token for which there is a reasonable expectation of reciprocity.²⁴ Additionally, gifts from relatives, wedding or engagement gifts, and loans from financial institutions made on standard terms are generally permissible. Law clerks should not accept gifts from attorneys, litigants, or anyone whose interests have or are likely to come before the judge or court, regardless of the value. Under the MCJC, gifts presented in a professional context or in circumstances where there is no reasonable expectation of reciprocity are also impermissible if they create an appearance of impropriety.²⁵ Even gifts given with good intentions must be declined if they could be perceived as undermining the impartiality or integrity of the court.²⁶

VI. TRANSITIONING TO PRACTICE

A. EMPLOYMENT AND OUTSIDE ACTIVITY WHILE WITH THE COURT

Teaching, Writing, and Other Similar Activities

Law clerks in Michigan may engage in teaching, writing, and similar outside activities, but such engagements are subject to the court approval and limitations intended to protect the integrity and impartiality of the judiciary. Law clerks should ensure that any outside activities or roles they undertake do not create confusion about their official role with the court, compromise the confidentiality of their work with the court, or appear to leverage their court position for personal gain. Law clerks must not use court resources for outside activities and should avoid topics or engagements that could conflict with pending matters or the interests of the court. Before undertaking teaching or writing activities, especially on legal subjects or issues that may come before the court, law clerks should seek approval from their judges and disclose any potential conflicts.²⁷

For service on the board of a bona fide civic organization, see Michigan Ethics Opinion JI-66.

Secondary Employment

Full-time judicial officers are prohibited from practicing law in a representative capacity.²⁸ Certain part-time judicial officers may continue to practice law, but only under limited circumstances.²⁹ Lastly, “[a] full-time staff attorney or law clerk may not simultaneously serve as a part-time magistrate or referee, even in a different jurisdiction, when both roles may require performance during regular business hours.”³⁰

Law clerks may engage in secondary employment if permitted by the court under limited circumstances. Law clerks should analyze each situation on a case-by-case basis to determine whether representation is permitted.³¹

24. Michigan Ethics Opinion JI-146.

25. MCJC Canon 2.

26. *Id.*

27. See also Model Code of Conduct for Michigan Trial Court Employees (“I will avoid activities that could cause an adverse reflection on my position or the court.”).

28. Michigan Ethics Opinion JI-128 (“MCJC 5F and MCR 9.201(2) prohibit judicial officers from practicing law in a representative capacity ... a full-time circuit court employed attorney referee may not appear before a judge in a representative capacity.”). See also Michigan Ethics Opinion JI-77 (“It is not ethical for a full-time district court lawyer magistrate, probate court lawyer referee, or circuit court lawyer referee to engage in the private practice of law.”).

29. Michigan Ethics Opinion RI-42. See also JI-77.

30. Michigan Ethics Opinion JI-151.

31. Michigan Ethics Opinion JI-97.

B. ETHICAL CONSIDERATIONS WHEN TRANSITIONING FROM JUDICIAL LAW CLERKSHIP TO LEGAL PRACTICE

Transitioning from a judicial law clerkship to private or public practice is a pivotal career step that implicates several rules of professional conduct. For example, former law clerks must be acutely aware of the rules governing the use of confidential information and conflicts of interest.

Seeking employment while serving as a judicial law clerk raises unique ethical challenges, especially when applying to law firms or organizations that appear before the court. Law clerks must avoid conflicts of interest. If a law clerk is seeking employment with an entity that is currently appearing before the judge, the clerk must promptly disclose the matter to the judge³² and recuse themselves from any involvement in related matters. A law clerk shall not negotiate for employment with any party or lawyer for a party in a matter in which the judge for whom the clerk works is personally and substantially participating.³³ If employment negotiations take place but the clerk ultimately declines employment, the clerk should disclose to all parties the proposed employment and take no further involvement in the case.³⁴ Law clerks must not use their position to influence hiring decisions or gain unwarranted advantages.

Ethical obligations continue after the clerkship concludes. MRPC 1.11 Successive Government and Private Employment outlines the requirements of this transition. Former law clerks are bound by ongoing duties of confidentiality and impartiality and must not use or disclose confidential information acquired during their service.

Former law clerks should not participate in cases or matters in which they were substantially involved as clerks. The Michigan Code of Judicial Conduct and multiple Ethics Opinions (e.g., JI-56, JI-6) require former law clerks to avoid any appearance of impropriety, such as representing clients before their former judges or courts or leveraging insider knowledge for personal or professional advantage. These restrictions preserve public trust in judicial impartiality and prevent conflicts of interest.

C. CONFIDENTIALITY AND USE OF INFORMATION

MRPC 1.11 imposes a continuing obligation on former judicial law clerks to preserve the confidentiality of information acquired during their clerkships.³⁵ Former clerks are strictly prohibited from using or revealing any confidential information gained in their roles as clerks to the disadvantage of any party or for their own advantage or that of their clients.³⁶ This duty is ongoing and does not end when the clerkship concludes. Additionally, Michigan Ethics Opinion RI-43 emphasizes that a former law clerk must not participate in any matter in which the clerk had substantial involvement during the clerkship, nor may they use confidential court information in subsequent representation. RI-43 expands upon the obligations in MRPC 1.11 by stating that the rule was “primarily intended to safeguard client loyalty and confidentiality and to preclude exploitation of public office for private advantage.”

D. CONFLICTS OF INTEREST AND SCREENING

When entering practice, former clerks must be vigilant about potential conflicts of interest arising from their clerkship. MRPC 1.11(b) requires that when a former law clerk joins a law firm, the firm must screen the former law clerk from participation in any matter in which the former clerk was substantially involved as a clerk, and the former clerk must not share confidential information with other members of the firm. Without proper screening, disqualification may be imputed to the firm.³⁷ Michigan Ethics Opinion R-4 clarifies that proper screening procedures, such as physical and electronic separation of files and written notice to affected parties, are necessary to prevent any appearance of impropriety or actual conflict.

In sum, former law clerks must not use or disclose confidential information gained during their clerkship and must not participate in any matter on which they worked as a clerk. Former clerks should ensure that their new employ-

32. MRPC 1.12(b).

33. Michigan Ethics Opinion JI-35.

34. *Id.*

35. See Michigan Rule of Professional Conduct 1.11 Successive Government and Private Employment.

36. *Id.*

37. Michigan Rule of Professional Conduct Rule 1.10 Imputed Disqualification: General Rule.

ers implement effective screening³⁸ if any matters arise which the clerk may have gained confidential information about while serving as clerks.

VII. THE JUDICIAL PERSPECTIVE

Judicial law clerks occupy a uniquely trusted position within our courts. They are not simply employees or research attorneys. They are extensions of the judicial office itself. The work they perform, the discretion they exercise, and the judgment they demonstrate—often outside public view—directly shape the quality, integrity, and legitimacy of the judicial process.

From the judicial perspective, ethical conduct by law clerks is not a technical exercise in rule compliance. It is a daily, lived commitment to fairness, restraint, professionalism, and respect for the rule of law. When a clerk acts with integrity, the court is strengthened. When a clerk stumbles ethically, even unintentionally, the credibility of the institution is placed at risk.

Every person who enters a courtroom, whether a represented litigant, a self-represented party, a juror, a witness, or a member of the public, must believe that decisions are made based on law and facts, not favoritism, relationships, or personal beliefs. That confidence does not arise solely from what a judge says from the bench. It is shaped by countless interactions behind the scenes, many of which involve law clerks.

Judges rely on law clerks to approach each case with an open mind, intellectual honesty, and professional discipline. A clerk's task is not to "win" an argument, champion a particular outcome, or mirror the clerk's personal views about what is just or fair. Rather, it is to help the judge reach a legally sound, well-reasoned, and impartial decision.

From a judge's perspective, clerks who excel ethically share certain habits:

- They test their own assumptions.
- They identify weaknesses in arguments they personally find persuasive.
- They present competing authorities fairly and accurately.
- They resist the temptation to overstate or undercut.

This kind of intellectual integrity is inseparable from ethical integrity. Judges notice it and depend on it.

Judges expect clerks to treat everything learned in chambers as confidential unless the judge clearly indicates otherwise. That duty continues after the clerkship ends. Former clerks must never use insider knowledge to advance themselves or their clients.

Judges are keenly aware that justice must not only be fair but must also appear fair. Clerks play a critical role in protecting that appearance.

Judges also expect clerks to disclose potential conflicts immediately. Judges cannot address what they do not know. Disclosure is not an admission of wrongdoing; it is an act of professionalism.

Judges bear ultimate responsibility for preventing *ex parte* communications, but law clerks are often the first point of contact. From their chambers, judges see how easily these situations arise, particularly with self-represented litigants and incarcerated individuals.

38. See Michigan Ethics Opinion R-004.

Judges expect clerks to:

- Decline substantive communications about pending matters.
- Route correspondence through proper filing channels.
- Avoid offering explanations that cross into legal advice.
- Inform the judge when improper communications occur.

Law clerks should never feel pressure to “help” by answering questions that go beyond public, procedural information. The kindest response is often the firmest one: directing the person to file a pleading or seek legal counsel.

Judges recognize that reporting ethical concerns, especially those involving colleagues or superiors, is extraordinarily difficult. Judges do not view this obligation as adversarial. They view it as protective.

Clerks should not rush to conclusions, but neither should they ignore serious concerns. Consulting ethics resources and, in appropriate circumstances, informing the judge are consistent with professionalism. Silence in the face of known, serious misconduct is not.

Judges expect departing clerks to:

- Honor post-employment conflict rules.
- Avoid appearing before their former judge where prohibited.
- Respect screening requirements.
- Continue to safeguard confidential information.

A former clerk’s professional reputation will always be linked, in some measure, to the court in which he or she served. In conclusion, the most valued clerks are not necessarily the ones who write the longest memoranda or cite the most cases. They are the ones who demonstrate sound judgment, humility, discretion, and unwavering respect for the judicial role.

If you remember nothing else from this guidebook, remember this:

You are a guardian of the court’s credibility.

As a judicial law clerk, every day, through ordinary decisions and small choices, you either strengthen or weaken public confidence in the judiciary. Judges trust you with that responsibility and hope you carry it with pride.

VIII. CONCLUSION

Judicial law clerkships require strong legal skills, exceptional judgment, discretion, and ethical awareness. Law clerks play a critical role in preserving the integrity, impartiality, and public confidence of the courts. Ethical lawyering as a judicial law clerk requires vigilance, humility, independence of judgment, and a deep commitment to the rule of law. By adhering to these principles, law clerks honor the trust placed in them, support fair and impartial adjudication, and carry forward the values of judicial service into their future careers.