

2012 EDITION
JUDICIAL CAMPAIGN
ETHICS HANDBOOK

New York State Advisory Committee on Judicial Ethics

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*Indicates judges and lawyers of the Judicial Campaign Ethics Subcommittee.

JUDICIAL CAMPAIGN ETHICS HANDBOOK
of the New York State Advisory Committee on Judicial Ethics
(2012 Edition)

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The 2012 Edition of the Handbook was prepared by a subcommittee appointed by Hon. George Marlow and headed by Laura Smith, Esq., with assistance from Hon. Edward Borrelli, Maryrita Dobiél, Esq., Deborah Edelman, Esq., Jeremy Feinberg, Esq., and Josefina Lessey. The 2012 Edition includes opinions issued as of December 31, 2011.

February 2012

FOREWORD

Although many judges and justices of the New York State Unified Court System are chosen through a partisan electoral process, they are prohibited from engaging in political activities, except as authorized by the Rules Governing Judicial Conduct (22 NYCRR Part 100) or other provisions of law. While the Rules prescribe the parameters of ethically permissible political activities, applying those rules in specific situations can be challenging. As a result, incumbent judges and non-judge candidates for judicial office (collectively, “judicial candidates”) are encouraged to submit any campaign-related ethics questions to the Judicial Campaign Ethics Center (the “JCEC”) to receive guidance about the propriety of various forms of campaign-related political activity. Judges and quasi-judicial officials should submit all *other* ethics inquiries to the New York State Advisory Committee on Judicial Ethics (the “ACJE”).

The Advisory Committee on Judicial Ethics

In 1987, the ACJE was formed to help New York State judges and justices adhere to the high standards set forth in the Rules. In 1988, the legislature codified the ACJE’s creation in [Judiciary Law §212\(2\)\(l\)](#), which provides that whenever a judge acts in accordance with an advisory opinion of the ACJE, that act is “presumed proper” for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct. Since then, the ACJE has issued between 100 and 250 formal opinions annually in response to questions from judges and justices about the propriety of their own political and other activities. Those opinions set forth the ACJE’s interpretations of the Rules regulating political activities of judicial candidates, providing guidance for circumstances not specifically governed by a particular rule.

The Judicial Campaign Ethics Center

The New York State Unified Court System established the JCEC in the Fall of 2004. Among its several roles, the JCEC serves as liaison to a subcommittee of the ACJE to issue quick and reliable responses to judicial candidates with campaign-related ethics inquiries and provides campaign ethics training programs for judicial candidates. It also pursues projects to educate New York State voters about judicial elections. In its role as liaison to the ACJE’s Judicial Campaign Ethics Subcommittee (the “Subcommittee”), the JCEC provides judicial candidates with responses to campaign-related ethics questions during the campaign to help them avoid actionable misconduct and help ensure that candidates act in a way that will maintain public confidence in the judiciary.

Members of the Subcommittee, who also are members of the ACJE, review all written inquiries from judicial candidates. The JCEC sends each inquiring candidate a written response from the Subcommittee by e-mail. To facilitate a rapid response (generally within two to three business days), judicial candidates should e-mail their inquiries to the JCEC at jcec@nycourts.gov.

Please note that the JCEC responses apply only to the particular candidate who submitted the inquiry and are valid only for the duration of that candidate’s campaign season. By written

agreement with the Commission on Judicial Conduct, a judicial candidate who makes an inquiry and subsequently conforms his/her conduct during that window period to the advice contained in the JCEC's response is presumed to have acted properly for purposes of any subsequent investigation by the Commission.

The JCEC is only authorized to answer inquiries from a candidate about his/her own proposed conduct and will not answer questions about the conduct of a candidate's opponent or inquiries from third parties other than a candidate's authorized representative. All inquiries, whether by telephone, in writing or via electronic mail are, by law, treated as strictly confidential by the JCEC and the Subcommittee.

The Judicial Campaign Ethics Handbook

To help make the ACJE's judicial campaign ethics opinions readily available to those who need them most, we have summarized selected opinions concerning political activities for this Judicial Campaign Ethics Handbook. Although the included opinions address questions frequently asked by judicial candidates about their own permissible political activities, the Handbook is not intended to be an exclusive source for guidance on this subject. There is no substitute for seeking written guidance from the JCEC or ACJE on matters that are not squarely addressed in a black-letter rule or opinion.

In addition, we have included references to opinions issued by the New York State Bar Association ("NYSBA") and the Commission on Judicial Conduct ("CJC"), for informational purposes only. The ACJE was not involved in generating those opinions, and therefore does not necessarily endorse them.

CONTACT INFORMATION

Judicial Campaign Ethics Center (for campaign-related ethics inquiries only)

Address: Judicial Campaign Ethics Center
Office of Court Administration
25 Beaver Street, 11th Floor
New York, New York 10004

Telephone: 1-888-600-JCEC (5232)
Fax: 1-212-401-9029
E-mail: jcec@nycourts.gov
Web site: www.nycourts.gov/ip/jcec

Advisory Committee on Judicial Ethics (for all other judicial ethics inquiries)*

Address: Advisory Committee on Judicial Ethics
Attn: Maryrita Dobiell, Esq., Chief Counsel
New York State Unified Court System
4 Empire State Plaza, Suite 2001
Albany, New York 12223-1450

Telephone: 1-866-79-JUDGE (toll-free) or 1-518-474-7469
Fax: 1-212-295-4881
Web site: www.nycourts.gov/ip/acje

Informal Inquiries on General Matters of Judicial Ethics**

Chair: Hon. George D. Marlow (ret.) at
1-866-79-JUDGE (58343) or 1-845-454-2125

Vice-Chairs: Hon. Betty Weinberg Ellerin (ret.) and Hon. Jerome C. Gorski (ret.)

Chief Counsel: Maryrita Dobiell, Esq. at
1-866-79-JUDGE (58343) or 1-518-474-7469

Special Counsel: Hon. Edward P. Borrelli, JHO at
1-866-79-JUDGE (58343) or 1-914-824-5329

Staff Counsel: Jeremy Feinberg, Esq. at 1-212-428-2547
Laura L. Smith, Esq. at 1-212-428-2504

* *Note that the ACJE does not accept e-mail inquiries.*

** In addition to the names listed here, all judicial members of the ACJE are also available by telephone for informal inquiries.

JUDICIAL CAMPAIGN ETHICS HANDBOOK

1. Basic Rule: No Partisan Political Activity

The Rules generally prohibit full- or part-time judges, or judicial candidates seeking election to judicial office, from directly or indirectly engaging in any partisan political activity (22 NYCRR 100.5; 100.6[A]; pt. 1200 Rule 8.2[b]). As further explained in Section 3.1, *infra*, one very important exception is that all judges and judicial candidates may at all times be members of political parties.

As discussed in the following sections of this Handbook, the Rules define certain limited permissible political activity and conduct so that an individual can advance his/her own candidacy for elective *judicial* office (22 NYCRR 100.5[A]).

By contrast, as explained further in Section 2.2.4, *infra*, a judge who becomes a candidate for elective *non-judicial* office must resign from judicial office.

2. Becoming a Candidate

2.1 Pre-Candidacy Activities

2.1.1 *Testing the Waters*

A judge may meet privately with the head of a local political committee, political party members and leaders, or may appear privately before a party executive committee at any time to discuss the possibility of becoming a candidate for public office (Opinions [02-34](#) [judicial candidacy]; [97-65](#) [Vol. XV] [Lieutenant Governor]; [93-55](#) [Vol. XI] [district attorney]; [91-44](#) [Vol. VII] [another judicial office]; 22 NYCRR 100.0[Q]).

Such private preliminary discussions with political leaders or officials about a possible candidacy are not proscribed political activities under the Rules (Joint Opinion [04-143 and 05-05](#)), and a judge need not form a campaign committee before testing the waters (Opinion [94-30](#) [Vol. XII]). Accordingly, the pendency of a criminal investigation or indictment against a party leader does not render such private discussions impermissible (Joint Opinion [04-143 and 05-05](#)).

By contrast, a judge may not contact community residents before his/her window period begins to determine if they would support the judge's candidacy for judicial office, as such activity "does not involve a 'testing of the waters' about the possibility of receiving backing from a political party, but rather determining what the likelihood is of being supported by the voters themselves" (Opinion [02-34](#)).

2.1.2 *Anticipated Vacancies*

Until there is a vacancy in a judicial office, or it is a known fact that a vacancy in such office will occur, a prospective candidate cannot be deemed a candidate for that judicial office (Opinions [08-189](#); [99-14](#) [Vol. XVII]; [97-45](#) [Vol. XV]).

The fact that the incumbent “has publicly stated that [he/she] is considering retiring from the bench” is not sufficient to establish that there is an actual, known judicial vacancy (Opinion [99-14](#) [Vol. XVII]). Similarly, an anticipated vacancy in County Court based on the incumbent’s pending appointment to Supreme Court does not exist unless and until the appointment becomes effective (Opinion [97-45](#) [Vol. XV]).

In practice, this means that a prospective candidate for an anticipated vacancy may not announce his/her candidacy, allow the solicitation of funds, or engage in other political activity that would otherwise be permissible in furtherance of a judicial campaign, unless and until it is known that there is to be a vacancy and therefore an election to fill it (Opinions [08-189](#); [97-45](#) [Vol. XV]).

However, a judge may apply to a political party's judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle; (2) the judicial screening panel process is available to all potential candidates; and (3) the panel is an official screening panel, such as a standing panel of an existing political party (Opinion [09-40](#)).

2.2 **Candidacy and Window Period Defined**

Until an individual is an announced candidate (*infra* Section 2.2.1) for an actual, known opening for elective judicial office (*supra* Section 2.1.2) within his/her window period (*infra* Section 2.2.3), he/she may not engage in political activity under the Rules, but may only “test the waters” (*supra* Section 2.1.1) through private meetings to discuss whether he/she may be able to obtain the support of a political party or leader.

2.2.1 *Announcement of Candidacy*

A candidate is defined as “a person seeking selection for or retention in public office by election” (22 NYCRR 100.0[A]). A person becomes a candidate for public office under the Rules as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions (*id.*). The definition of “candidate” does not in any way depend on obtaining a political party’s nomination or support (*id.*).

Public elections encompassed by the Rules include primary and general elections, partisan and non-partisan elections, and retention elections (22 NYCRR 100.0[N]).

The Rules do not mandate a particular method for declaring oneself a candidate. Sitting judges traditionally write a letter to the Chief Administrative Judge (as the promulgator of the rules) and/or an appropriate local Administrative Judge (as the local representative of the Chief Administrative Judge).¹ However, conduct such as forming a campaign committee, issuing a press release, or meeting with community residents, are examples of alternative ways to publicly manifest one's candidacy for elective judicial office within the meaning of the Rules (Opinions [02-34](#); [00-11](#) [Vol. XVIII]; "Observations and Recommendations," 2001 CJC Ann. Rep. at 21-22).

2.2.2 *Unopposed Candidates*

Judicial candidates who are running unopposed may participate in permissible campaign activities, such as appearing with other candidates in door-to-door campaigning (Joint Opinion [97-118 and 97-122](#) [Vol. XVI]). However, the ACJE has noted that "there may be limitations in certain areas, such as post-election fund-raising" (*id.*); see section 7.3, *infra*, for discussion.

2.2.3 *"Window Period" Defined*

The "window period" is the period during which judges and non-judges who seek an elective judicial office may engage in political activity pursuant to Section 100.5 of the Rules Governing Judicial Conduct (Opinion [96-29](#) [Vol. XIV]). There is no geographic limitation on permissible campaign activities during a candidate's window period (Opinions [06-152](#); [03-122](#); [95-109](#) [Vol. XIII]).

Calculating the Start of the Window Period. The start of the window period for a particular elective judicial office is nine months before the primary election, judicial nominating convention, party caucus or other party meeting held to nominate candidates for that elective judicial office, or at which a committee or other organization may publicly solicit or support a candidate for that office (22 NYCRR 100.0[Q]).

Thus, to determine the start of the applicable window period, a judicial candidate may either count back nine months from the date of the formal nomination, *i.e.*, the scheduled primary, nominating convention, or party caucus for that judicial office; or (if earlier) count back nine months from the date of an official party meeting at which a candidate for the judicial office will be designated and endorsed, even if that designation is subject to being contested at a subsequent primary; or (if earlier) the date of the commencement of the petition process for that judicial office (Opinions [07-152](#); [06-152](#); [05-97](#); [02-90](#); [94-97](#) [Vol. XII]).

The window period for Supreme Court candidates commences nine months prior to the earlier of the following dates: (1) the date of formal nomination by convention; or (2) the date of

¹ This tradition is a means for sitting judges to make a formal record of when their window period begins, and may also enable an appropriate administrative office to respond to inquiries about the propriety of political activity by a sitting judge.

a recognized party-sponsored caucus or committee meeting within the candidate's judicial district held for the purpose of discussing or considering judicial nominations, even if a resulting designation or endorsement would be subject to a subsequent contest (Opinion [08-196](#)).

If no date for such an official party meeting has yet been set, the candidate may assume that the previous year's official date will be used again for the upcoming party meeting and then count back nine months from that presumed date (Opinions [08-196](#); [07-152](#)).

Calculating the End of the Window Period. The end of the window period for a judicial candidate depends on whether he/she is a candidate in the general election.

If the candidate is not a candidate in the general election, the window period ordinarily ends six months after the date of the primary election, convention, caucus or meeting at which he/she would have been nominated (22 NYCRR 100.0[Q]; Opinions [03-122](#); [01-111](#); [97-121](#) [Vol. XVI]). The window period for a judicial candidate who submitted his/her name to a party screening panel but did not receive the party's endorsement or nomination, and whose name ultimately did not appear on the ballot for the primary election, ends exactly six months from the last date on which the candidate could have filed an independent nominating petition for the judicial office sought (Opinion [08-53](#)).

When a candidate for Supreme Court Justice formally withdraws his/her name from consideration before the judicial nominating convention takes place, his/her window period ends six months from the date of his/her withdrawal or six months from the date of the nominating convention, whichever is earlier (Opinion [09-194](#)).

If he/she is a candidate in the general election, the window period ends precisely six months after the date of the general election (22 NYCRR 100.0[Q]; General Construction Law § 30; Opinions [04-87](#); [97-121](#) [Vol. XVI]; [97-25](#) [Vol. XV]; [93-20](#) [Vol. X] [fund-raising event for judge elected on November 3 must take place prior to May 3]; [91-67](#) [Vol. VII]). A recently elected judge may not attend a political event held "six months and one day after the general election" (Opinion [91-67](#) [Vol. VII]).

2.2.4 *Judge as Candidate for Non-Judicial Office (Incumbent Judges Only)*

A judge must resign from judicial office on becoming a candidate for elective non-judicial office, other than that of a delegate in a State constitutional convention (22 NYCRR 100.5[B]).² A judge may nonetheless test the waters for non-judicial office by making an appearance before the Executive Committee of a political party for the purpose of being interviewed as a possible candidate for the position of district attorney (Opinion [93-55](#) [Vol. XI];

² The term "candidate" is defined in the Rules as "a person seeking selection for or retention in public office by election" (22 NYCRR 100.0[A]), and the ACJE has cited this definition in the context of Section 100.5(B) (Opinions [10-207](#); [98-64](#) [Vol. XVIII]).

see also Opinion [97-65](#) [Vol. XV]). See also Section 2.1.1, *supra*, for further discussion of testing the waters.

2.3 Mandatory Education Program

The Rules require all judicial candidates (except for those seeking town or village justice positions) to attend a mandatory judicial ethics education program (22 NYCRR 100.5[A][4][f]). The rule provides that all judge and non-judge candidates for elective judicial office “shall complete” the ethics training program “any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office” (*id.*). For candidates running in a primary election, the date of nomination is defined as “the date upon which the candidate files a designating petition with the Board of Elections” (*id.*).

This ethics program is administered by the JCEC. Contact the JCEC at 1-888-600-5232 for more information and to register.

2.4 Mandatory Financial Disclosure

The Rules require all judicial candidates (other than candidates for justice of a town or village court) to file a financial disclosure statement with the Ethics Commission for the Unified Court System within 20 days following the date on which the judge or non-judge becomes a judicial candidate, unless the candidate was already required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge (22 NYCRR 100.5[A][4][g]). Contact the Ethics Commission at 1-212-428-2899 or visit their website at <http://www.nycourts.gov/ip/ethics> for more information.

This is different from, and in addition to, the campaign financial disclosure reports required under the Election Law. Contact the Board of Elections for more information about Election Law requirements.

2.5 Independent Judicial Election Qualification Commissions

The independent judicial election qualification commissions were established by the chief administrator of the courts in February 2007 (22 NYCRR 150). All judicial candidates, other than candidates for town or village justice, are invited to submit specified information to one of these commissions for evaluation (22 NYCRR 100.5[A][7]; 22 NYCRR 150 & Appendix A[5][A]; Opinion [07-91](#)). Please visit <http://www.ny-ijeqc.org> for more information.

These independent judicial election qualification commissions are different from, and in addition to, any other screening panels that may be offered by bar associations and political parties or other entities. See Section 3.3.2, *infra*, for further discussion of screening panels and their ratings.

3. Limits on Permissible Political Activity

The Rules distinguish between “conduct integral to a judicial candidate’s own campaign” and “ancillary political activity” in support of other candidates or party objectives, in order to address the State’s compelling interest in preventing the appearance or reality of political bias or corruption in its judiciary (*Matter of Raab*, 100 NY2d 305, 315 [2003] [upholding sanctions for candidate’s improper payments to a political party, anonymous participation in a phone bank for another candidate, and participation in a political party’s screening of other candidates]).

3.1 Membership in Political Parties; Voting; Signing Nominating Petitions

All judges and judicial candidates may maintain membership in a political party and identify themselves as a member of a political party, regardless of whether they are in their window period (22 NYCRR 100.5[A][1][ii]; 100.5[A][1][b]; Opinion [91-68](#) [Vol. XI]). However, a judge may not pay any dues to a political party, even during the window period of his/her election year (Opinion [91-68](#) [Vol. XI]).

The following paragraphs describe activities in which a judge or non-judge may participate at any time. The discussion focuses on judges, however, because it is describing exceptions to the rule barring judges from participating in political activities outside of their applicable window period.

In any year, whether a judge is or is not standing for election during that year, the judge also may vote in a party primary in which the judge, as a registered party member and voter, is eligible to vote. A judge who is a registered voter/member of a party may attend an official party caucus to nominate political candidates if all eligible registered voters/members are allowed to attend, provided that the vote is by secret ballot and the judge does not participate in the discussion or otherwise indicate a preference in any way for a specific candidate (22 NYCRR 100.5[A][1][ii]; Opinions [90-153](#) [Vol. VI]; [90-139](#) [Vol. VI]). The ACJE has subsequently held, modifying prior opinions, that a judge may attend a political party caucus held for the purpose of nominating and voting for political candidates and may vote for the candidate(s) of his/her choice even if voting is accomplished other than by secret ballot (Opinion [09-180](#)).

A judge may sign a nominating petition to place the name(s) of an individual or individuals on an electoral ballot in any year whether the judge is or is not standing for election in that year, as signing an election petition “is an act akin to voting rather than to campaigning” (Opinions [99-125](#) [Vol. XVIII]; [89-89](#) [Vol. IV]).

3.2 Membership in Political Clubs or Organizations

There are different rules for judge and non-judge judicial candidates with respect to membership in a political club or organization.³

Sitting judges may not be members, leaders, or officers of political clubs or organizations, whether or not they are in their window period (22 NYCRR 100.5[A][1][a]-[b]; Opinion [90-88](#) [Vol. VI]), and may not pay dues to such organizations (Opinion [91-68](#) [Vol. XI]).

A *non-judge candidate* for judicial office may be a member of a political organization (22 NYCRR 100.5[A][3]). If the non-judge candidate is elected, he or she must resign from the political club or organization.

Although non-judge candidates may continue to maintain ordinary membership during their campaign, they may not serve as officers in a political club or organization (Opinion [01-44](#) [non-judge candidate may not retain the position of ward committee person]; 22 NYCRR 100.5[A][1][a]). This means that when a non-judge becomes a candidate for elective judicial office (22 NYCRR 100.0[A]), he/she must resign any leadership position he/she may have held in any political club or organization.

3.3 Endorsement by Political Organizations and Other Persons and Entities

Personal Involvement of Candidate. A judicial candidate may personally seek and/or accept the support and endorsement of a wide variety of persons and entities, including labor unions, political parties, caucuses, political action committees, politicians and candidates for non-judicial office, and lawyers who appear before the court to which the candidate seeks election or re-election (Opinion [07-24](#) [labor union]; Joint Opinion [05-23 and 05-24](#) [non-judicial officials running for elective office]; Opinions [01-44](#) [Police Benevolent Association and political parties]; [94-86](#) [Vol. XII] [New York State Trial Lawyers Association]; [94-30](#) [Vol. XII] [members of political committees and “other parties and organizations”]; [93-99](#) [Vol. XI] [National Women’s Political Caucus and Republican Pro Choice PAC]; [93-52](#) [Vol. XI] [single-issue Right to Life party]; [92-19](#) [Vol. IX] [lawyer]; [89-125](#) [Vol. IV] [political party]). In Opinion [01-44](#), the ACJE expressly rejected the view of NYSBA Opinion 289 (1973), based on former Canon 7(b)(2) of the Code of Judicial Conduct, which prohibited judicial candidates from personally seeking endorsements (Opinion [01-44](#)).

Improper Pressure or Appearance of Impropriety. Any solicitation or acceptance of support or endorsements must be done in a time, place and manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). Among other things, the judge must not create the appearance or reality of improper pressure on attorneys

³ The term “political organization” is defined in the Rules as “a political party, political club or other group, the principal purpose of which is to further the election or appointment” of persons to public office (22 NYCRR 100.0[M]).

who have cases pending before him/her (*compare* Joint Opinion [05-105](#), [05-108](#), and [05-109](#); Opinion [97-99](#) [Vol. XVI]; 2009 CJC Ann. Rep. at 176-80 [disciplinary determination] *with* Opinion [04-94](#) [judge may accept an offer of support for his/her candidacy from an elected official who recently appeared before him/her on a family court matter, made after the parties and their attorneys resolved the matter by stipulation without the judge's intervention on their first court appearance]). A judge who is a judicial candidate within his/her window period may ask attorneys who regularly appear before him/her to attend a reception and speak to attendees about their experience appearing before the judge, as long as the candidate takes care to avoid any appearance of undue pressure on the attorneys in making this request (Opinion [08-152](#); *cf.* 2009 CJC Ann. Rep. at 176-80 [disciplinary determination]).

Improper Pledges or Promises. A candidate must be careful when seeking or accepting an endorsement not to make any commitments, pledges or promises of conduct that are inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d]; Opinions [99-33](#) [Vol. XVII]; [93-99](#) [Vol. XI]; [93-52](#) [Vol. XI] [candidate may not sign a pledge to support a party's platform]; *cf.* Opinion [99-44](#) [Vol. XVII]). (Restrictions on campaign speech are covered in more detail in Section 5, *infra.*) Sitting judges must at all times refrain from public comment about a pending or impending proceeding in any court within the United States or its territories (22 NYCRR 100.3[B][8]). These restrictions on a judicial candidate's speech during the campaign do not preclude the candidate from commenting on measures that would impact the administration of justice, such as, for example, a proposal to build a new courthouse, the adequacy of judicial salaries, or proposals to relieve calendar congestion.

Other Cautions. In seeking or accepting an endorsement from a non-judicial official or a candidate for non-judicial office, a judicial candidate should take steps, to the extent possible, to avoid the appearance that he/she is, in turn, endorsing another candidate (Joint Opinion [05-23](#) and [05-24](#); Opinion [03-64](#)). The rule against endorsing other candidates is described further in Sections 3.3.3 and 5.5, *infra.*

A judicial candidate may not make any payment to a political party or its committee in order to be considered for endorsement (Opinion [01-21](#); *cf.* Election Law 17-162).

Disclosure (Sitting Judges). Mere endorsement, in and of itself, does not trigger any recusal obligations for a judicial candidate who is a sitting judge. That is, the fact that a particular person or entity was among those endorsing his/her candidacy, without more, does not warrant a conclusion that the candidate's impartiality as a judge might reasonably be questioned and therefore does not mandate disqualification when that person or entity appears before the judge (22 NYCRR 100.3[E][1]; Opinions [07-24](#) [mere endorsement by a party of the judge's candidacy]; [04-106](#) [mere attendance of a party or attorney at a fund-raising event for the judge]; [03-64](#) [mere listing of attorney as a supporter of the candidate]).

However, if a sitting judge is aware that a person or entity who is appearing before him/her has endorsed his/her candidacy, the ACJE has advised:

The judge should disclose the fact that a named party to the litigation endorsed his/her candidacy and should give all counsel and parties the opportunity to be heard. The judge may preside, even if a party objects, provided the judge determines that he/she can be fair and impartial.

In deciding whether to recuse, however, the judge should consider all relevant factors, including, but not limited to: (a) the merits of any objections voiced by the parties or counsel, (b) any additional involvement by the labor union in the judge's campaign, and (c) the period of time since the election. If, after considering all relevant factors, the judge concludes in his/her discretion that the specific circumstances might give rise to an appearance of partiality, the judge should recuse.

(Opinion [07-24](#).) Other potential campaign-related disqualifications are covered in Section 8, *infra*.

Declining an Endorsement or Nomination. A judicial candidate is free to decline a nomination, endorsement, or cross-endorsement from any person or entity, as long as the declination is for independent reasons and is not a *quid pro quo* for his/her nomination or endorsement by another person or entity (Opinions [00-86](#) [Vol. XIX]; [93-99](#) [Vol. XI]; [93-25](#) [Vol. XI]; Joint Opinion [91-27/91-49](#) [Vol. VII] [judicial candidate may not agree to accept one party's designation conditioned on declining any offer of nomination for the same position by another political party]).

If a judicial candidate does not feel that he/she will be able to be fair and impartial in cases involving persons who have endorsed him/her, then he/she must either decline the endorsements, or must recuse from any specific cases in which he/she cannot be fair and impartial (*cf. People v. Moreno*, 70 NY2d 403 [1987]).

3.3.1 Questionnaires

A judicial candidate may answer questionnaires provided by a screening committee, an independent judicial election qualifications commission, a union, the League of Women Voters, or other groups, provided that the questions do not seek to elicit a pledge, promise or commitment inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d][i]-[ii]; Opinions [05-119](#) [League of Women Voters]; [93-106](#) [Vol. XI] [questionnaire from bar association's judicial screening committee]; [93-99](#) [Vol. XI] [questionnaires from National Women's Political Caucus and/or the Republican Pro Choice PAC]). A candidate may respond to questions regarding the proper administration of justice, and may make a promise or pledge to perform faithfully and impartially the duties of judicial office (22 NYCRR 100.5[A][4][d][i], [iii]). A judicial candidate may sign a "Statement of Principles"

pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion [05-119](#)). The statements a candidate makes on a questionnaire or in seeking an endorsement are subject to the same ethics rules as the candidate's other campaign statements, as explained further in Section 5, *infra*.

3.3.2 Screening Panels

The Rules Governing Judicial Conduct do not require a judicial candidate to participate in any screening process to determine his/her qualifications for judicial office, whether conducted by a political party, a bar association, or an independent judicial election qualification commission (22 NYCRR 100.5; Opinion [07-91](#)).⁴

However, “appearing before a bar association’s judicial screening committee is not a prohibited activity” under the Rules (Opinion [94-86](#) [Vol. XII] [noting that non-participation “could result in serious repercussions to the judge’s candidacy, especially if bar association or screening committee approval is a requirement of the political body nominating or appointing the judge”]). A judge may even apply to a political party’s judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle, (2) the judicial screening panel process is available to all potential candidates, and (3) the panel is an official screening panel, such as a standing panel of an existing political party (Opinion [09-40](#)).

Disqualification is not automatically required if attorneys on the screening committee later appear before the judge (*id.*). See discussion in Section 8.3, *infra*.

A judicial candidate may answer the questions posed in a questionnaire of a bar association’s judicial screening committee, subject to the limitations on judicial campaign speech (Opinion [93-106](#) [Vol. XI]).

A judge who is a judicial candidate may provide the names of attorneys who regularly appear before him/her as references (Opinion [97-99](#) [Vol. XVI]; *cf.* Opinion [07-130](#) [judge may respond to inquiries from an independent judicial election qualification commission or a bar association screening panel regarding a judicial candidate]). The candidate may also request attorneys who regularly appear before him/her to furnish comments or testimony directly and exclusively to a bar association screening committee (Opinion [97-99](#) [Vol. XVI]).

⁴ The independent judicial election qualification commissions were established by the chief administrator of the courts in February 2007 (22 NYCRR 150). All judicial candidates, other than candidates for town or village justice, are invited to submit specified information to one of these commissions for evaluation (22 NYCRR 100.5[A][7]; 22 NYCRR 150 & Appendix A[5][A]; Opinion [07-91](#)). Please visit <http://www.ny-ijeqc.org> for more information.

The ACJE has held that a judicial candidate’s decision about whether to sign a waiver of the privilege of confidentiality at the request of a screening committee is a personal decision, which does not raise a question of judicial ethics (Opinion [94-86](#) [Vol. XII]).

A judicial candidate may inform the public that an independent judicial election qualification commission has found the candidate qualified for the judicial position he/she seeks and may publish an exact copy of the commission’s press release about such finding (Joint Opinion [07-150 and 07-151](#)). However, if an independent judicial qualifications commission issues only one of two ratings – “qualified” or “not qualified” – a judicial candidate may not state that he/she has received the “highest” or “best” rating from the commission (Opinion [09-162](#)). A judicial candidate may also comment about his/her opponent’s rating by an independent judicial qualifications commission as long as his/her comments are accurate and not misleading (Opinion [09-162](#)). The ACJE has also recognized, without specifically commenting on the practice, that a local bar association’s rating of a candidate may be used by that candidate’s organization as an “endorsement” in campaign advertising (Opinions [07-130](#); [88-100](#) [Vol. II]).

A judicial candidate may not, however, participate in the screening of other candidates (*Matter of Raab*, 100 NY2d at 315; Joint Opinion [05-105, 05-108, and 05-109](#)).

3.3.3 Limited Endorsement of Judicial Convention Delegate by Supreme Court Candidate in Furtherance of His/Her Own Candidacy

As discussed further in Section 5.5, *infra*, a candidate for judicial office is prohibited from “publicly endorsing or publicly opposing (other than by running against) another candidate for public office” (22 NYCRR 100.5[A][1][e]; *see generally id.* at 100.5[A][1][c], [d], [f]).

However, the ACJE has held that a candidate for Supreme Court who seeks a political party’s nomination may ask voters to vote in a primary election for the judicial convention delegate who will support his/her nomination, as long as the Supreme Court candidate makes clear that his/her endorsement of the delegate is for the purpose of furthering his/her own candidacy (Opinion [08-157](#)).

This very limited exception has been recognized in light of the specific nature of the judicial convention system for nominating candidates for Supreme Court (*compare* Opinion [97-75](#) [Vol. XV] [candidate for town justice may not circulate separate petitions to form a judicial convention and/or to name a delegate to the party’s national convention, as in doing so the candidate would be “engaging in partisan political activity unrelated to [his/her] own campaign for elective judicial office”]).

In Joint Opinion [10-101/11-01](#), in response to inquiries from Supreme Court candidates, the ACJE provided further guidance on the practical implications of the narrow exception recognized in Opinion [08-157](#):

- *Circulating Petitions.* A Supreme Court candidate may circulate petitions listing only the names of the delegate candidates who will support his/her nomination, and no other names, but must make clear that his/her endorsement of such delegates is for the purpose of furthering his/her own candidacy (Joint Opinion [10-101/11-01](#)).
- *Campaign Literature.* A Supreme Court candidate may use his/her own campaign funds to pay for campaign literature or mailings in which the judicial candidate will ask voters to vote in a primary election for the judicial convention delegates who will support his/her nomination, but again the candidate must make clear that his/her endorsement of the delegate candidates is for the purpose of furthering his/her own candidacy (Joint Opinion [10-101/11-01](#)). In such campaign literature or mailings, the Supreme Court candidate may announce and comment on the fact that particular delegate candidates have pledged to support him/her but should not further describe or comment on the delegate candidates' views or stances on issues (*see id.*).
- *Direct and Indirect Campaign Contributions.* A Supreme Court candidate may not make campaign contributions to a delegate candidate's campaign and may not pay for a delegate candidate's own advertisements (Joint Opinion [10-101/11-01](#)).
- *Must Comply with Applicable Laws and Rules.* The campaign activities authorized in Joint Opinion [10-101/11-01](#) are only ethically permissible "to the extent that they are legally permitted and otherwise performed in compliance with the Rules Governing Judicial Conduct" (*see id.*)

3.4 Nominating and Designating Petitions⁵

A judicial candidate may circulate a nominating or designating petition only if the petition includes the candidate's own name as a nominee or designee (Opinions [09-148](#); [03-42](#); [98-99](#) [Vol. XVII]; [91-96](#) [Vol. VIII]; [91-94](#) [Vol. VIII]). Judicial candidates may be listed together on a petition with other candidates on their slate (Opinions [03-06](#); [02-64](#)). Thus, a judicial candidate may circulate a petition for several candidates that includes his/her own name, but may not circulate individual petitions for other candidates (Opinions [09-148](#); [02-64](#); [98-99](#) [Vol. XVII]; [91-94](#) [Vol. VIII]).

A judge may sign a petition to place the name(s) of an individual or individuals on an electoral ballot in any year, whether the judge is or is not standing for election in that year (Opinions [99-125](#) [Vol. XVIII]; [89-89](#) [Vol. IV]).

⁵ The Rules do not define the terms "nominating petition" and "designating petition," and the terms appear to be used interchangeably in published ethics opinions. Sample petition forms are available on the Board of Elections web site.

3.5 Attendance at Political Gatherings

During the judicial candidate's window period, the candidate may, unless otherwise prohibited by law or rule, attend and speak at gatherings on behalf of his/her own candidacy (22 NYCRR 100.5[A][2][i]-[v]). The candidate may attend a wide variety of events as part of his/her campaign, including his/her own fund-raising events (Opinion [91-37](#) [Vol VII]), fund-raisers for other elected officials (Opinions [03-51](#); [01-17](#) [Vol. XIX]; [91-94](#) [Vol. VIII]), a fund-raiser sponsored by a not-for-profit advocacy organization that promotes equal rights for gay and lesbians (Opinion [03-45](#)), or a rally sponsored by civic associations in opposition to a shopping mall project in the candidate's township (Opinion [00-82](#) [Vol. XIX] [decided without reference to Part 100.5]). However, a judicial candidate must faithfully follow the prohibition against personally soliciting funds and other campaign speech restrictions (22 NYCRR 100.5[A][1][h]; 100.5[A][4][d]). These restrictions are covered in more detail in Section 5, *infra*.

Purchasing tickets to politically-sponsored events. Judicial candidates may not make contributions to any political organization or candidate (22 NYCRR 100.5[A][1][h]; *see also* Election Law 17-162). Thus, a judicial candidate may not contribute money to assist in covering the cost of the music at a political fund-raising event (Opinion [88-72](#) [Vol. II]). However, the Rules expressly permit a judicial candidate to purchase two tickets to, and attend, a politically-sponsored dinner or event, including a fund-raising event for other elected officials or candidates (Opinion [01-17](#) [Vol. XIX]; [88-87](#) [Vol. II]), subject to certain restrictions to help prevent the appearance of an impermissible political contribution (22 NYCRR 100.5[A][2][v]).

Number of tickets: Judicial candidates may not purchase more than two (2) tickets to a politically-sponsored dinner or event (22 NYCRR 100.5[A][2][v]). A judicial candidate may not purchase an entire table (*i.e.*, more than two tickets), even when the price per ticket falls under the \$250 limit (Joint Opinion [06-80 and 06-81](#)).

Price of tickets: The ticket price "shall not exceed the proportionate cost" of the event (22 NYCRR 100.5[A][2][v]). A ticket price of \$250 or less is deemed to be the proportionate cost of the function (*id.*). Judicial candidates may purchase two tickets for \$250 or less, regardless of whether other attendees pay more than \$250 per ticket (Joint Opinion [06-80 and 06-81](#)).

In addition, a judicial candidate may not purchase tickets at a price higher than the price all other attendees are required to pay, because that would be an impermissible political contribution (Opinions [03-122](#) ["The payment may not exceed the cost of the ticket."]; [92-97](#) [Vol. X] [where tickets are offered at multiple prices, the candidate "must purchase those with the lowest price"]; [88-26](#) [Vol. I] [judicial candidate "may purchase the lowest priced dinner ticket to the political club fundraiser, but should not purchase the more expensive tickets denominated as 'Sponsor' or 'Patron'"]; 22 NYCRR 100.5[A][1][h]).

A candidate may not pay more than \$250 per ticket unless he or she obtains a statement from the sponsor of the event that the amount paid represents the candidate's proportional cost of the function (22 NYCRR 100.5[A][2][v]).

Use of tickets: A judicial candidate may “purchase two tickets to, and attend, politically sponsored” events (22 NYCRR 100.5[A][2][v]). The ACJE has determined that a judicial candidate should not purchase tickets to a political function unless he/she “intends and expects to use” the tickets (Opinion [03-68](#)). It is permissible for a judicial candidate who is unable to attend a politically sponsored function to purchase up to two tickets to the function and send up to two bona fide campaign representatives to attend on his/her behalf (Opinion [07-64](#)).

Source of funds: The Rules do not specify whether personal funds (as opposed to campaign funds) may be used to purchase tickets to political events. However, it appears that both “campaign contributions” and the “personal funds” of judicial candidates may be used to pay for campaign-related goods and services, subject to the fair value rule (22 NYCRR 100.5[A][6]; cf. Opinions [08-43](#) [noting that a campaign may be entirely self-financed]; [03-122](#) [permitting judicial candidate to substitute a personal check for a committee check, where the event sponsor states that the committee check cannot legally be accepted, as “payment in a legally required manner would not be prohibited”]; Joint Opinion [98-132 and 98-136](#) [Vol. XVII] [holding that “reimbursement of personal funds used solely for campaign-related expenses is not prohibited” under the circumstances presented]).

No involvement in internal workings of a political party. Although a judicial candidate may attend political functions during his/her window period, he/she may not be involved in the political process other than in furtherance of his/her own campaign or as a voter (*see generally* 22 NYCRR 100.5[A][1]-[2]; *Matter of Raab*, 100 NY2d at 315). Thus, a judicial candidate may not sit in on a political party's interviews of candidates for elective office, even if requested to do so by the party (Opinion [00-64](#) [Vol. XIX]). Similarly, if a judge who is a judicial candidate wishes to attend the national convention of a political party, he/she must do so strictly as a spectator (Opinion [99-156](#) [Vol. XVIII]; *see also* Opinion [95-83](#) [Vol. XIII]).

Not speaker or guest of honor. Although a candidate for judicial office may not be the speaker, guest of honor or recipient of an award at a fund-raising event sponsored by a political organization, he/she may attend the event, be introduced as a judicial candidate, and briefly acknowledge the introduction (Opinions [07-09](#); [03-51](#) [candidate may attend Congressman's fund-raiser, but may not accept a Congressional Merit Award at the event]; [01-27](#) [candidate may attend political party's fund-raiser, but may not accept an award]; 22 NYCRR 100.5[A][1][d]; *see also* 2007 CJC Ann. Rep. at 127-35 [disciplinary determination] [judicial candidate engaged in impermissible political activity by serving as a keynote speaker for a political party's fund-raiser]). A judicial candidate may not permit his/her name to be listed as a “Contributor” on an invitation to a political club's fund-raising dinner (Opinion [88-26](#) [Vol. I]).

*Political functions held after the election but during the window period.*⁶ A judicial candidate who has been elected as a judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions [92-29](#) [Vol. IX]; [91-67](#) [Vol. VII] [recently elected judge may not attend political event held “six months and one day after the general election”]; [91-24](#) [Vol. VII]; [89-136](#) [Vol. IV]). The judge’s campaign committee may purchase these tickets using campaign funds (Opinion [92-29](#) [Vol. IX]; [91-24](#) [Vol. VII].) A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion [07-187](#)).

A judge who was an unsuccessful candidate in a primary election for a different judicial office may also continue to attend political functions throughout his/her window period, which ends exactly six months after the primary election (Opinion [96-124](#) [Vol. XV]).

Political functions held after the window period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature (“Observations and Recommendations,” 2001 CJC Ann. Rep. at 27). A non-candidate judge may not escort his/her spouse (who was a candidate for elective office) to fund-raising events held for the spouse, even where the judge did not participate in the event and was not introduced at the event (Opinions [07-169](#); [06-147](#); *see also* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). This restriction has no geographic limitations, insofar as it has been extended to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion [99-156](#) [Vol. XVIII]; *cf.* Opinion [95-109](#) [Vol. XIII]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor’s identity and purposes of an event in order to avoid inadvertently attending a prohibited political event (“Observations and Recommendations,” 2001 CJC Ann. Rep. at 27).

3.6 Attendance at Charitable Gatherings or Events

The ACJE has recognized that a judicial candidate may promote his/her candidacy at events that are not politically sponsored, including charitable fund-raisers (Opinion [07-137](#)). For instance, a judicial candidate may purchase an advertisement on a T-shirt that will be distributed to participants in a charitable event, so long as neither the candidate’s name nor the prestige of judicial office will be used for fund-raising purposes (Opinion [07-137](#)). However, a candidate may not use campaign funds to make charitable donations unless they directly benefit the campaign, because charitable contributions per se are not a traditional part of the election process and are impermissible under prior opinions, unless they are used to secure campaign-related advertising, goods or services, or to attend charitable events in furtherance of the candidate’s campaign (Opinion [07-137](#); 22 NYCRR 100.5[A][6]).

⁶ See Section 2.2.3, *supra*, for a discussion of how to calculate the window period.

An individual who is not currently a judge may be a speaker or guest of honor at a charitable fund-raising event, even though he/she is a judicial candidate (Opinion [07-90](#)). By contrast, a sitting judge may not be the speaker or guest of honor at a charitable organization's fund-raising events, even during his/her window period (22 NYCRR 100.4[C][3][b][ii]; Opinion [07-90](#)).

4. Fund-Raising and Use of Campaign Funds During the Campaign

A judicial candidate may, of course, contribute to his or her *own* campaign to the extent permitted by the Election Law (Opinions [01-21](#) [Vol. XIX]; [91-68](#) [Vol. XI]; 22 NYCRR 100.5[A][2]). If the candidate is not soliciting or accepting money from any other person (i.e., if he/she is running an entirely self-funded campaign), he/she is not ethically required to form a campaign committee (Opinion [08-43](#); *cf.* Opinion [89-05](#) [Vol. III]).

However, a judicial candidate may not personally solicit or accept campaign contributions or funds (22 NYCRR 100.5[A][1][h]; 100.5[A][5]; *see also, e.g.*, Opinion [92-43](#) [Vol. IX] [recently elected judge may not personally sell tickets to a political victory celebration]). Therefore, if a candidate wishes to accept any campaign contributions, he/she must form a campaign committee (22 NYCRR 100.5[A][4][c]; 100.5[A][5]). Candidates should, of course, comply with any Election Law requirements with respect to reporting and/or registration of their committee.

4.1 Campaign Committees

A judicial candidate may establish one or more committees of “responsible persons” to solicit and accept reasonable campaign contributions and support from the public (including lawyers), manage the expenditure of funds for the candidate’s campaign and obtain public statements of support for the candidacy (22 NYCRR 100.5[A][5]; Opinions [07-135](#); [95-62](#) [Vol. XIII]).⁷ The campaign committee may also conduct the candidate’s campaign through media advertisements, brochures, mailings, candidate forums, etc. (22 NYCRR 100.5[A][5]).

Who may serve on the campaign committee. Although the Rules do not set forth a list of qualifications for persons who may serve on a campaign committee, it is the judicial candidate’s obligation to make sure that all individuals serving on the campaign committee are “responsible persons” (22 NYCRR 100.5[A][5]; “Observations and Recommendations,” 2001 CJC Ann. Rep. at 26-27; *cf.* Opinion [07-64](#) [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate’s behalf]). Attorneys may serve on the campaign committee, and a judge who is a candidate for judicial office may personally ask individual attorneys to join his/her campaign

⁷ A judicial candidate who wishes to solicit or accept campaign contributions must establish a committee to solicit and accept campaign contributions on his/her behalf (22 NYCRR 100.5[A][1][h]; 100.5[A][2][i]; 100.5[A][4][c]; 100.5[A][5]; Opinions [07-135](#); [95-62](#) [Vol. XIII]).

committee (Opinion [92-19](#) [Vol. IX]), although this must be done in a manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.4[A][4][a]). In December 2008, a judge was publicly disciplined for requesting support for his/her candidacy from an attorney in his/her courtroom shortly before the attorney was scheduled to appear before the judge (2009 CJC Ann. Rep. at 176-80). For specific issues relating to family and court employees serving on a campaign committee, please see Section 6, *infra*.

When the committee may be formed. The committee may be formed during a candidate's window period. However, if a judicial candidate has run an entirely self-funded campaign, without a campaign committee, he/she may not form a campaign committee after the election "to recoup costs [he/she] incurred and paid personally during the campaign period" (Opinion [89-05](#) [Vol. III]). See generally Section 7, *infra*, regarding post-election fund-raising.

No joint campaign committees. Judicial candidates may not establish a joint campaign committee with other candidates, because participation by the candidate, directly or indirectly, in the activities and functioning of the single joint re-election committee constitutes an involvement in a political campaign other than his/her own campaign for judicial office (Opinions [03-06](#); [02-64](#); [88-04](#) [Vol. I]; compare *infra* Sections 4.2 [joint fund-raising]; 5.5 [joint campaigning]). Similarly, a judicial candidate may not participate in a campaign bank account maintained by a political organization, in which contributions received by the organization on behalf of the judge are mingled with contributions received on behalf of other judicial and non-judicial candidates (Opinion [97-80](#) [Vol. XVI]).

Knowledge of the identities of contributors and amounts contributed. A judicial candidate may attend his/her own fund-raising event and may actually see and acknowledge individuals in attendance, but the identities of those who contribute to a judicial candidate's campaign should otherwise be kept from the candidate (Opinion [07-88](#)). No candidate for judicial office should attempt to have any listing of contributors made available to him/her, nor may the candidate seek to learn the identity of those who contributed to his/her campaign (Opinions [02-06](#); [87-27](#) [Vol. I]; see also NYSBA Opinion 289 [stating that a candidate also should not seek to learn the identity of those who contributed to his/her opponent's campaign]).

A judicial candidate should not personally send a letter to persons who contributed funds to his/her election campaign, because such a letter would clearly signify knowledge of those who contributed (Opinion [02-06](#)). The campaign committee, however, may send a letter thanking contributors for their financial support, provided that the committee sends it within the candidate's window period (Opinion [02-06](#)). Such a letter may even include a direct quote from the candidate expressing thanks, but the campaign committee should make clear in the letter that the candidate has not been informed of the identities of the contributors (*id.*).⁸

⁸ The ACJE has recognized that a judge or judicial candidate may inadvertently or incidentally become aware of some of his/her campaign contributors through attendance at fund-raisers (Opinions [07-88](#); [04-106](#)), through a litigant's decision to seek the judge's disqualification based on campaign contributions (Opinion [10-135](#)), or through reading a newspaper (Opinion

Although dinners and other fund-raising affairs are permitted during the window period, it is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because “[i]t would be unrealistic to expect that the judge would be unaware of the names appearing in and contributors to such publication” and “it is conceivable that one or more subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence” the judge (Opinion [87-27](#) [Vol. I]).

Permissible contributors. The campaign committee may solicit and accept reasonable contributions from the public, including lawyers (Opinion [03-06](#)).

The New York State Bar Association has taken the position that a judge’s campaign committee may not knowingly solicit or accept contributions from a party to litigation that is before the judge, nor one employed by, affiliated with, or a member of the immediate family of a party to litigation before the judge. In addition, a judicial candidate’s campaign committee should not solicit or accept contributions from a party which may reasonably be expected to come before the candidate if elected or from one who has come before the candidate so recently that it manifests an appearance of impropriety (NYSBA Opinion 289).

The campaign committee may accept a campaign contribution from a local elected official who is not a judge, when the source of the funds is the official’s own political campaign committee account (Opinion [02-109](#)).

The committee may also accept campaign contributions from an already existing political committee or a group of lawyers who raise funds on the candidate’s behalf, as long as neither the existing political committee nor the group of lawyers uses the judicial candidates’ names to raise funds for other non-judicial candidates or for a political party (Opinion [03-06](#)).

Permissible methods of fund-raising. Although the Rules do not set forth a list of permissible and impermissible methods for a campaign committee to use in raising funds for the judicial candidate’s campaign, any method chosen must be consistent with the dignity, impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). The ACJE has ruled on a few specific methods of fund-raising:

Dinners and fund-raising affairs: The campaign committee may hold dinners and other fund-raising events during the window period (Opinion [87-27](#) [Vol. I]).

[04-106](#)). Such knowledge, inadvertently gained, does not automatically require a judge’s disqualification, as long as the judge concludes that he/she can be impartial. *See* Section 8.2, *infra*. In 2011, the Administrative Board adopted Part 151, a new case assignment rule, to help ensure that cases involving a judge’s larger campaign contributors are not assigned to the judge for a two-year period (22 NYCRR 151). Part 151 is designed to operate at the administrative level, without any involvement by the judge, parties, or counsel.

Campaign committee's website: The campaign committee may solicit campaign contributions on a website it sponsors, provided that the contributors are directed to send all donations to the campaign committee and not to the candidate himself/herself (Opinion [07-135](#)). The judicial candidate may not solicit campaign contributions on his/her own website (*id.*).

Raffle: The campaign committee may, if permitted by law, sell raffle tickets and conduct a raffle at a fund-raiser for the candidate (Opinion [07-88](#)). The judicial candidate may be present during the raffle, but must not personally participate in selling tickets (*id.*).

No souvenir journals: It is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because “[i]t would be unrealistic to expect that the judge would be unaware of the names appearing in and contributors to such publication” and “it is conceivable that one or more subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence” the judge (Opinion [87-27](#) [Vol. I]).

4.2 Joint Fund-Raising

A judicial candidate may not hold a joint fund-raiser with a non-judicial candidate (Opinion [08-40](#)).

Two judicial candidates may participate in a joint fund-raising event if the proceeds are divided equally between the two campaigns, provided neither candidate comments on the other's qualifications or endorses the other (Opinions [01-99](#); [91-113](#) [Vol. VIII]).

The candidates may not establish a single joint campaign committee, however, as each candidate would then be perceived as a participant in another candidate's campaign, and would readily be seen as endorsing the other candidate (Opinions [03-06](#); [02-64](#); [88-04](#) [Vol. I]).

A judicial candidate may not participate in a political organization's campaign bank account that would co-mingle the funds contributed to the judge's campaign with contributions received on behalf of other judicial or non-judicial candidates (Opinion [97-80](#) [Vol. XVI]).

For a discussion of joint campaigning see Section 5.5, *infra*.

4.3 Proper Utilization of Campaign Funds

A judicial candidate may expend campaign funds during the window period in any manner consistent with the Rules and the Election Law (Opinion [92-97](#) [Vol. X]; *see also, e.g.*, Election Law §§14-130; 17-162). For example, judicial candidates are specifically prohibited from using campaign funds or personal funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

Campaign contributions may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]; Election Law §14-130) and thus should not be used for personal expenses unrelated to the campaign (Opinion [89-152](#) [Vol. V]). Campaign funds generally should be used in a manner consistent with the contemplation of donors, such as to fund campaign activities and literature, and after the campaign ends, to fund a modest and reasonable victory party within the window period as part of the election cycle (Opinion [87-16](#) [Vol. I]).

A judicial candidate may not make a payment to a political party in order to be considered for its endorsement (Opinion [01-21](#) [Vol. XIX]; Election Law §§14-130; 17-162).

A judicial candidate may not make a general payment or contribution to a political party or county committee (*Matter of Raab*, 100 NY2d at 315-16 [“The contribution limitation is intended to ensure that political parties cannot extract contributions from persons seeking nomination for judicial office in exchange for a party endorsement.”]; 22 NYCRR 100.5[A][5]; Opinions [01-21](#) [Vol. XIX]; [92-97](#) [Vol. X]; *cf.* Election Law 17-162).

Nor may the candidate pay for a share of a political party’s headquarters or general campaign mailings, such as those generally encouraging voters to vote for that party’s candidates without specifying the names of particular candidates (*Matter of Raab*, 100 NY2d at 316 [candidate sanctioned for, among other things, paying a substantial sum to a political party without verifying that the payment was used to cover expenditures for his own campaign as opposed to other candidates’ races or general party needs]; Opinions [01-21](#) [Vol. XIX] [candidate may not pay \$2,500 to party to “support the endorsed candidates for town offices in the payment of campaign expenses”]; [92-97](#) [Vol. X]; *cf.* Opinion [91-94](#) [Vol. VIII] [paying more than the candidate’s proportionate share of actual campaign services would constitute an impermissible contribution]).

However, a candidate may reimburse such a committee or organization for his/her proportionate share of the actual campaign costs (Opinions [92-97](#) [Vol. X]; [91-94](#) [Vol. VIII]). The ACJE has held that a candidate for Supreme Court “may reimburse the county committee for expenses it incurred in the preparation and the printing of petitions and distribution for judicial delegates, for postage for notices, audio and refreshment expenses for the judicial convention and for the printing of campaign materials ..., provided that the candidate or the candidate’s treasurer on a reasonable basis of fact believes that these expenses are reasonable and actual costs actually and proportionately relating to the candidate’s judicial campaign” (Opinion [92-97](#) [Vol. X]; *see also* Opinion [01-21](#) [Vol. XIX]; *Matter of Raab*, 100 NY2d at 316).

A judicial candidate may continue to attend political events and make certain other expenditures using campaign funds throughout his/her window period, even after the general election. The ACJE has held:

During the six-month post-election Window Period, a judge or candidate for judicial office may use campaign funds for those activities permitted under Section 100.5(A)(2) of the Rules

Governing Judicial Conduct and for some expenditures that are considered a “traditional part of the total election process”. For example, during his/her Window Period, a judicial candidate may continue to use campaign funds to purchase two tickets to and attend political dinners and other events, “provided that the event’s organizer sells tickets to judicial candidates or their campaign committees [at] a price not exceeding \$250 per ticket, even if the price per ticket for other attendees exceeds \$250”. This Committee also has advised that a successful candidate for judicial office may use a small amount of campaign funds for “a modest victory celebration during the six-month post-election period (Window Period)” because it is a “traditional part of the total election process”.

At the end of their Window Periods, candidates for judicial office must return any unexpended campaign funds to donors on a pro rata basis.

(Opinion [07-187](#) [citations omitted]). See Section 7, *infra*, for further discussion of proper post-election handling of unexpended or surplus campaign funds and other post-election conduct.

A judicial candidate may not use unexpended campaign funds to purchase tickets and a journal advertisement as part of a charitable fund-raising event which will take place after the expiration of the window period (Opinion [99-56](#) [Vol. XVII] [purchase of tickets for a charitable dinner that will not take place until after the window period expires “amounts to a contribution to the charity and is therefore, in our opinion, an improper expenditure of campaign funds”]).

5. Communications with Voters

Judicial candidates “are encouraged to educate the voting public on the qualities and qualifications that would make them the best candidate for the office sought” and all campaign communications “should be designed to instill confidence in the candidate’s ability to fairly and impartially discharge the duties of the office” (Opinion [04-95](#)). Judicial candidates may also use campaign slogans that are consistent with the Rules (*e.g.*, Opinion [05-117](#) [“vote experience not politics”]).

5.1 Form of Advertisements

Any form of media, including but not limited to radio, television, the Internet, newspapers, periodicals, palm cards, lawn signs, flyers, billboards, posters and handbills, may be used in a judicial campaign (*e.g.*, Opinions [07-135](#); [05-99](#); Joint Opinion [05-23 and 05-24](#)). A judicial candidate may personally appear in media advertisements and may distribute pamphlets and other literature to support his/her candidacy (22 NYCRR 100.5[A][2][i]-[ii]). The ACJE has ruled on a few specific methods of advertising:

Promotional Items. A judicial candidate may distribute promotional materials of no more than nominal value, such as pens, pencils, letter openers and the like, to support his/her candidacy (Opinion [98-97](#) [Vol. XVII] [noting that “these items have campaign slogans imprinted on them” and thus are treated as campaign literature]; *compare* 2007 CJC Ann. Rep. at 127-35 [candidate disciplined for distributing items of value to voters, such as \$5 coupons and drinks at a local bar]).

A judicial candidate may purchase an advertisement on a T-shirt, along with the names or business logos of the other eligible donors, that will be given at no cost to participants in a charitable event, so long as neither the candidate’s name nor the prestige of judicial office will be used for fund-raising purposes (Opinion [07-137](#)).

Political Journals. A judicial candidate may use campaign funds to purchase the lowest priced full-page advertisement in a political organization’s journal, in which the candidate’s supporters are thanked, where the journal is being distributed at a politically sponsored dinner held after the election but during the window period (Opinion [99-38](#) [Vol. XVII] [suggesting the possibility that paying \$3,000 for an advertisement might be regarded as an impermissible political contribution]). For situations not directly covered by Opinion [99-38](#), please contact the Subcommittee for an opinion.

Internet. Although the ACJE has not addressed use of many specific forms of internet-based communications in a judicial campaign, the ACJE also “has not opined that there is anything per se unethical about communicating using other forms of technology” (Opinion [08-176](#) [providing general guidelines for a judge’s use of online social networks]).

The Commission on Judicial Conduct has taken the position that when judicial candidates use the Internet for campaign purposes, they may not include electronic links on their websites to the websites of partisan political parties, organizations or other campaigns (“Observations and Recommendations,” 2001 CJC Ann. Rep. at 27).

A candidate may include a link on his/her campaign website to newspaper articles about him/her, provided that nothing in the article is misleading and provided the article maintains the dignity of judicial office (Opinion [07-135](#); 22 NYCRR 100.5[A][4][a]).

Radio. A judicial candidate may be endorsed for re-election in a radio advertisement by a non-judicial candidate for elective office, provided the radio advertisement does not suggest the judge is endorsing that candidate (Joint Opinion [05-23 and 05-24](#)).

Photographs with Others. While a judicial candidate may include a photograph taken with a relative in a state trooper uniform, neither the photograph or its context may suggest that the candidate would support law enforcement interests over other parties that may appear before his or her court (Opinion [07-136](#)).

A judicial candidate who is married to a sitting judge may include in his/her campaign literature a photograph of the candidate's family, which includes and identifies the spouse, as long as the spouse's judicial title and position are not mentioned or featured (Opinion [96-07](#) [Vol. XIV]; *cf.* Opinion [06-94](#)).

A judicial candidate may be photographed with other candidates for elective office and use this photograph in his/her campaign, although use by another candidate which "might imply an endorsement by the judge of the candidate is to be avoided, and the judge should take steps to prevent such use to the extent possible" (Opinion [03-64](#)).

Campaign Signs. It is ethically permissible for a judicial candidate within his/her window period to display campaign signs supporting his/her own candidacy, even if these signs also list other candidates on his/her slate (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion [07-167](#)). However, a judicial candidate should not display a campaign sign that endorses another candidate (22 NYCRR 100.5[A][1][c]-[e]; Opinion [07-167](#)), such as, for example, campaign signs that list only other candidates' names.

Sponsorship of Softball Team. A judicial candidate in his/her window period may promote his/her candidacy at non-politically sponsored events, including a local softball tournament (*see* Opinion [10-80](#)). Although a candidate may not simply donate campaign funds to a softball team (*see* 22 NYCRR 100.5[A][5]; Election Law §14-130), it is permissible to purchase campaign-related advertising in furtherance of the candidate's campaign by sponsoring a softball team (*see* Opinion [10-80](#)). As with any other campaign expenditures, the candidate should first determine that he/she will obtain fair value for the money expended for such advertisements to avoid any appearance of impropriety (*see id.*; 22 NYCRR 100.5[A][6]).

5.2 Use of Judicial Title, Robes, and Courthouse

An incumbent judge may not use the prestige of judicial office to promote his/her candidacy. For example, an incumbent judge may not make a judicial determination calculated to obtain support for his/her candidacy or to further the judge's political interest (22 NYCRR 100.2[A]-[B]; 100.3[B][1]).

Use of Judicial Title and Robes. An incumbent judge running for re-election or for election to another judicial position may be identified as "judge" (or "justice," as may be appropriate) on campaign signs and other literature (Opinion [94-50](#) [Vol. XII] [part-time town justice]; 22 NYCRR 100.5[A][4][d][iii]). A Housing Court judge, although not a judge of the Unified Court System, is still a judge and thus may refer to himself/herself as a "judge" in campaign literature (Opinion [03-90](#)).

An incumbent judge may circulate campaign literature with a photograph of himself/herself in judicial robes (Opinions [05-101](#); [03-90](#)).

A judicial candidate may not use the term “re-elect” when seeking an office other than the one in which he/she is currently serving by election (Opinion [94-50](#) [Vol. XII] [town justice who received nomination for county court judge]; 22 NYCRR 100.5[A][4][d][iii]). This limitation applies even if the candidate was previously elected to the judgeship sought and, although defeated for re-election, currently holds the office by appointment (Opinion [97-18](#) [Vol. XV] [noting that the judge has held the same judicial title on a continuing basis]).

A non-judge judicial candidate who formerly held the position of village justice may use the phrase “former village justice” and may use photographs in which he/she appeared in judicial robes for use with that designation in campaign literature (Opinion [04-16](#)). A former judge may not, however, be referred to as a “judge” or ask the voters to “re-elect” him/her (Opinion [97-72](#) [Vol. XV] [former judge may not use the phrase “Vote for Judge (name)” or “Re-elect Judge (name)”]).

Use of Juror Contact Information. Neither a judge nor the judge’s campaign committee may contact jurors who have served on cases over which the judge has presided, to ask their support in the judge’s re-election campaign (Opinion [90-93](#) [Vol. VI]). A law clerk must refrain from post-trial contact with jurors at all times, including during his/her campaign for judicial office (Opinion [01-36](#)).

Use of Judicial Letterhead or Stationery. A judge should not use court stationery in a re-election campaign, even if the stationery is marked “personal and unofficial” ([Joint Opinion 04-143 and 05-05](#); Opinion [99-155](#) [Vol. XVIII]).

Use of Courthouse. Because the courthouse may not be used for political purposes, “care must be taken to avoid using photographs that might convey the impression that the courthouse is being used for political purposes and, in particular, to facilitate the candidacy of a sitting judge” (Opinion [05-101](#)). The judge may not “be filmed inside his/her chambers, or inside the courthouse while asking viewers to vote for him/her” (Opinion [07-139](#)).

Judicial candidates who are incumbent judges are permitted to use photographs depicting them in judicial robes and taken in any public place, or in chambers or the court library, provided that there is no indication of the official nature of the location and administrative permission is obtained (Opinion [05-101](#); 22 NYCRR 29.1 [requirements for obtaining administrative permission for photographs or videorecording in a courthouse]). Subject to the rules relating to the permissible scope of comment by candidates, the campaign committee of a judge seeking re-election may reproduce excerpts of audio and video recordings and photographs of court proceedings which were authorized by existing rules (Opinion [94-67](#) [Vol. XII]). With appropriate administrative approval, a judge who is a judicial candidate may use a photograph of himself/herself in a public hallway of the courthouse, in front of the door to his/her chambers (Opinion [07-139](#); 22 NYCRR 29.1).

Published Courtroom Photographs. A judge who is a judicial candidate may use photographs of himself/herself that a photographer took in the courtroom during a public trial

with appropriate administrative permission and that were thereafter published by a newspaper (Opinion [07-135](#)). A judge who is a judicial candidate may also use administratively approved, published photographs of himself/herself hosting visitors to the court while the court was not in session (Opinion [07-137](#)).

Photographs of Swearing In Ceremony. An incumbent judge who is currently a judicial candidate may use a photograph from his/her public swearing-in ceremony held in the town hall that was published as a news item in the local newspaper, provided such use does not in any way imply that the judge who was administering the oath of office endorses the judicial candidate (Opinion [07-89](#); 22 NYCRR 100.5[A][1][e]).

Use of Quotations from Current Judges and Quasi-Judicial Officials. A judicial candidate should not use quotations from letters written by judges or quasi-judicial officials of the Unified Court System in his/her campaign literature, because it would imply that the person quoted was endorsing the judge's election (Opinion [08-64](#); 22 NYCRR 100.5[A][1][e]).

5.3 Content of Campaign Speech

With very limited exceptions, *an incumbent judge* may not comment publicly about any proceeding that is pending or impending in any court within the United States or its territories (22 NYCRR 100.3[B][8]). This restriction applies at all times, whether or not the judge is a candidate for judicial office, and both within and outside the window period (Opinion [90-67](#) [Vol. V]).

Although *non-judge candidates for judicial office* are not prohibited from publicly commenting on pending or impending cases, they must exercise caution, with respect to any particular cases, controversies or issues that are likely to come before the court, to avoid making any commitments that are inconsistent with the performance of the adjudicative office (22 NYCRR 100.5[A][4][d][ii]).

Non-judge candidates for judicial office who are simultaneously holders of other political offices are given some flexibility to make statements or participate in activities which might otherwise be prohibited for judicial candidates, assuming those statements or acts are necessary as a function of the non-judicial public office (22 NYCRR 100.5[A][1][c]).

All judicial candidates must refrain from making improper pledges or promises (*Matter of Watson*, 100 NY2d 290 [2003]; 22 NYCRR 100.5[A][4][d][i]), and any promises of conduct in office must be consistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.3[B][9][a]; 100.5[A][4][d][i]-[ii]). A candidate must consider the import of his/her statements in the context of the campaign as a whole to determine whether he/she has articulated a pledge or promise that compromises the faithful and impartial performance of judicial duties (*Matter of Watson*, 100 NY2d 290 [candidate sanctioned for explicit and repeated statements that he intended to “work with” and “assist” police and other law enforcement personnel if elected to judicial office]; Opinion [04-95](#) [candidate may not make campaign

statements indicating a refusal to participate in the lawful and accepted practice of plea bargaining in criminal cases]). A candidate may not promise to set up and fund a “legal scholarship” if elected (Opinion [03-28](#)). A candidate may sign a “Statement of Principles” pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion [05-119](#)), but may not sign a pledge to support a political party’s platform (Opinion [93-52](#) [Vol. XI]). The Commission on Judicial Conduct has publicly admonished a judge for use of campaign literature advertising a lecture the judge planned to give with a “tenant attorney and activist” on how to “beat your landlord, ... and win in court!” (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]). The Commission has also publicly admonished a judge for statements which, when viewed in their entirety, conveyed bias because they “single[d] out a particular class of litigants for special treatment” (2011 CJC Ann. Rep. at 120-24). Further, if a judicial candidate has made an improper promise during his/her campaign, he/she may be required to disqualify him/herself in certain matters (22 NYCRR 100.3[E][1][f]; *see also infra* Section 8.4).

Campaign material may include a truthful, dignified discussion of the candidate’s qualifications and the qualifications of his/her opponent(s), as long as the discussion is accurate and not misleading (Opinions [04-16](#); [90-67](#) [Vol. V]; 2007 CJC Ann. Rep. at 115-18 [disciplinary determination]). A judicial candidate may not, in the guise of discussing qualifications, make an otherwise prohibited statement (NYSBA Opinion 289).

A judicial candidate may refer to his/her current and past employment in campaign materials, including service on the staff of sitting judges (Opinion [97-32](#) [Vol. XV] [noting that the mere listing of the names and titles of these judges does not constitute impermissible participation by those judges in the judicial campaign]).

A judicial candidate should not use quotations from letters written by judges or quasi-judicial officials of the Unified Court System in his/her campaign literature, because it would imply that the person quoted was endorsing the judge’s election (Opinion [08-64](#); 22 NYCRR 100.5[A][1][e]). However, it is ethically permissible for a judicial candidate to use quotations from letters written by individuals who are not subject to Part 100.5, as long as the candidate ensures that doing so does not mislead the public (Opinion [08-64](#)). Thus, if a judicial candidate wishes to use quotations from letters written in support of his/her nomination for a prestigious award, the candidate should clearly indicate the date and the original purpose for each quotation, and any other information required to ensure that each quotation is presented accurately (*id.*).

Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion [99-117](#) [Vol. XVIII]). See also Section 5.5, *infra*, for a discussion of joint campaigning.

A judicial candidate may not knowingly make a false statement or misrepresent the identity, qualifications, current position or other fact concerning himself/herself or his/her

opponent (22 NYCRR 100.5[A][4][d][iii]). A judicial candidate should take care to ascertain the truth of claims that he/she makes about an opponent, and be careful not to create a false impression of his/her opponent's record by omitting relevant facts (2007 CJC Ann. Rep. at 115-18 [disciplinary determination] [noting that there is no place for distortions in a campaign for judicial office]).

The Commission on Judicial Conduct has publicly admonished a judicial candidate for using campaign literature which "conveyed the erroneous impression that respondent had been endorsed" by a particular newspaper (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]).

The Commission has also disciplined a judicial candidate for stating that as a Supreme Court Justice, he/she "will still be responsible for all pistol permits" in a particular county (2011 CJC Ann. Rep. at 120-24). The Commission found that the representation was "legally incorrect" because it misrepresented the candidate's jurisdiction over pistol permits as exclusive, and also found that this misstatement of law "buttressed" the candidate's overall "biased message" (*see id.*).

During a campaign for judicial office, a candidate may bring to the public's attention the fact that his/her opponent has been publicly admonished or censured by the Commission on Judicial Conduct as long as such reference is made in a manner that maintains the dignity appropriate to judicial office (Opinion [01-98](#)).

It is also permissible to refer to ratings by screening panels and independent judicial election qualification commissions; see Section 3.3.2, *supra*, for a discussion of relevant opinions.

A judicial candidate may respond to personal attacks or attacks on the candidate's record as long as the response is consistent with the requirements of the rules, i.e., dignified, truthful, etc. (22 NYCRR 100.5[A][4][e]).

A judicial candidate is prohibited from appealing directly or indirectly to the fear, passion or prejudice of the electorate or from appealing purposefully to or against members of a particular race, sex, ethnic group, religion or similar group (Opinion [05-119](#); NYSBA Opinion 289).

5.4 Judicial Decisions Affecting Campaign Activities and Comments

5.4.1 "Announce Clause" Restrictions Struck Down

In June 2002, the Supreme Court of the United States determined that a section of the Minnesota Code of Judicial Conduct known as the "announce clause," which prohibits candidates for judicial election from announcing their views on disputed legal and political

issues, violated the First Amendment to the United States Constitution (*Republican Party of Minnesota v. White*, 536 US 765 [2002]).

Although New York’s Rules do not include an “announce clause,” some precedential authority in New York has restricted campaign statements similar to those previously prohibited by Minnesota’s now invalid “announce clause” (Opinion [90-67](#) [Vol. V]; NYSBA Opinion 289). Following the U.S. Supreme Court opinion, in July 2002, the New York State Court of Appeals determined that it was not misconduct for a candidate for judicial office to refer to himself/herself as a “law and order” candidate (*Matter of Shanley*, 98 NY2d 310 [2002]).

5.4.2 “Pledge and Promise” Restrictions Remain in Effect

The United States Supreme Court specifically refrained from addressing or striking down other language in the Minnesota rules that prohibited a candidate for judicial office from making pledges or promises of conduct in office (*Republican Party of Minnesota v. White*, 536 US 765 [2002]).

In *Matter of Watson*, the Court of Appeals reviewed a Commission on Judicial Conduct determination that an elected judge should be disciplined for improper statements made while he was a non-judge candidate for elective judicial office (100 NY2d 290 [2003]). The Commission had held that these statements gave the appearance that the newly elected judge would not be impartial, would not decide cases on an individual basis, and would be biased against defendants in criminal cases. The statements at issue included: an exhortation to “put a real prosecutor on the bench”; representations that the candidate (then employed as an assistant district attorney) had “proven experience in the war on crime” and could, if elected, use bail and sentencing to make the municipality “very unattractive” for certain criminal defendants; promises to “work with” and “assist” law enforcement personnel if elected to judicial office; and statements that his opponents were to blame for an increase in crime (*Matter of Watson*, 100 NY2d at 296-97, 299).

The Court of Appeals agreed that the campaign statements made by Judge Watson were improper (*id.* at 299) and upheld New York’s limitation on campaign “pledges and promises” against a constitutional challenge. The Court held that New York’s Rules do not include a provision analogous to Minnesota’s “announce clause” (*id.* at 300) and expressly determined that New York’s limitation on campaign “pledges and promises” does not suffer from the same constitutional infirmity that invalidated the “announce clause” (*id.* at 303).

The Court also noted that in order for a statement to be deemed an improper pledge or promise, a candidate need not preface a statement with the phrase “I promise” (*id.* at 298). Rather, statements are deemed improper if they favorably or unfavorably single out a particular party or class of litigants or convey the impression that the candidate will behave in a manner inconsistent with the faithful and impartial performance of judicial duties (*id.* at 298-99).

In light of the above-described cases, candidates for judicial office in New York must take great care not to run afoul of existing restrictions on campaign language. Until there has been a

dispositive ruling from a court of final jurisdiction, the only prudent course for a judicial candidate to follow is to adhere to the standards called for within New York’s existing Rules as interpreted and applied by the ACJE and to seek guidance wherever needed by contacting the JCEC.

5.5 Joint Campaigning

A judicial candidate is prohibited from publicly endorsing or publicly opposing (other than by running against) any other candidate for political or judicial office (22 NYCRR 100.5[A][1][e]). This prohibition includes both direct and indirect endorsement of any other candidate for elective office (22 NYCRR 100.5[A][1]).⁹ The ACJE has stated that a judicial candidate may not indirectly endorse an incumbent judge who is running for re-election by stating that he/she is the unanimous choice to “join the incumbent” judge on the bench (Opinion [05-117](#)). Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion [99-117](#) [Vol. XVIII]). Judicial candidates may not make statements directly in support of another candidate (Opinion [91-94](#) [Vol. VIII]), and they are also prohibited from distributing literature on behalf of another candidate (Opinion [91-94](#) [Vol. VIII]), erecting signs on their real property supporting other candidates, displaying “bumper stickers” on their vehicles supporting other candidates, or engaging in similar partisan conduct. (See Section 6.2, *infra*, for a discussion of political activity by a judicial candidate’s spouse on jointly owned property.)

The judicial candidate’s name may, however, appear in media advertisements and may be listed on election materials along with the names of other judicial and non-judicial candidates for elective office as part of a single “slate” of candidates (22 NYCRR 100.5[A][2][iii]-[iv]; Opinions [05-99](#); [91-94](#) [Vol. VIII]). Thus, a judicial candidate may display campaign signs promoting his or her own candidacy, even if the sign also lists other candidates on the slate (Opinion [07-167](#)), and may similarly distribute joint campaign literature on which his or her name appears (Opinion [91-94](#) [Vol. VIII]).

Two judicial candidates may display campaign lawn signs that have both candidates’ names printed on them, but they may not send voters one letter conveying both candidates’ qualifications and bearing both candidates’ signatures that is printed on letterhead comprising both candidates’ names (Opinion [09-176](#)).

A judicial candidate may allow a political party to issue joint campaign literature with other candidates for elective office (22 NYCRR 100.5[A][2][iii]; Opinion [01-99](#)). In addition, a candidate may advertise with one or more candidates for elective office, including those running for non-judicial office, provided that the candidate does not endorse any other candidate and pays no more than his or her *pro rata* share of the cost of the advertisements (Opinions [05-99](#); [01-99](#);

⁹ The ACJE has recognized one very limited exception. See Section 3.3.3, *supra* (discussing Opinion [08-157](#) and Joint Opinion [10-101/11-01](#)).

[91-107](#) [Vol. VIII] [suggesting a disclaimer that neither judicial candidate is endorsing another candidate]).

A judicial candidate may appear at gatherings and otherwise campaign with other candidates for elective office (including campaigning door-to-door), but must take great care to ensure that he/she does not endorse or comment on the qualifications of other candidates (22 NYCRR 100.5[A][2][ii]; Opinions [91-94](#) [Vol. VIII]; [90-166](#) [Vol. VI]).

5.6 Debates

A judicial candidate may participate in a debate with other judicial candidates, as long as he/she adheres to the Rules Governing Judicial Conduct (Opinions [05-119](#); [94-78](#) [Vol. XII]). For instance, judicial candidates should be careful to maintain the dignity of judicial office, avoid making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office, and avoid making statements that commit or appear to commit him/her with respect to cases, controversies or issues that are likely to come before the court (Opinions [05-119](#); [94-78](#) [Vol. XII]; 22 NYCRR 100.5[A][4][d]). A sitting judge must not publicly comment on pending or impending matters in the United States or its territories (Opinion [94-78](#) [Vol. XII]; 22 NYCRR 100.3[B][8]). A judicial candidate may need to make clear to organizers of a debate that, as a candidate for judicial office, he or she must comply with the Rules, and that such compliance may constrain his or her participation in any debate (Opinion [05-119](#)).

6. Involvement of Friends, Family, and Colleagues in Judicial Campaigns

A judicial candidate may personally “seek sign locations and campaign workers” (Opinion [94-30](#) [Vol. XII]). See also Section 4.1, *supra*, regarding campaign committees.

6.1 Judge’s Staff Participating in the Judge’s Campaign (Incumbent Judges Only)

All nonjudicial court employees, whether or not they are members of a judge’s staff, are subject to Part 50 of the Rules of the Chief Judge governing the political activities of non-judicial employees. Court employees should contact the Unified Court System’s Office of Court Administration for guidance on how Part 50 applies to their particular circumstances. (Contact: ETHICS HELPLINE: 1-888-28ETHIC.)

Court employees may, in general, attend political fund-raising events (subject to the \$500 limit if a personal appointee), pass nominating petitions, attach campaign bumper stickers to their cars, post campaign signs at their residences, hold a non-elected or otherwise permissible positions in a political organization and participate in any other permissible political activity outside of scheduled work hours and away from the workplace (22 NYCRR 50.1[III][B]; 50.2[c]; 50.5; 100.5[C]; Opinions [07-11](#); [03-111](#) [circulating, reviewing and drafting petitions]; [94-35](#) [Vol. XII] [joining political club]; [93-100](#) [Vol. XI] [political bumper stickers and campaign signs]; [93-36](#) [Vol. XI] [soliciting and coordinating volunteers, designating persons to organize

volunteer efforts, canvassing for signatures on nominating petitions, conducting telephone polls for a candidate]; [91-77](#) [Vol. VII] [participating in political campaign of law clerk's spouse]; [90-102](#) [Vol. VII]; [90-85](#) [Vol. V] [carrying nominating petitions]; [89-101](#) [Vol. IV] [attending political fund-raiser]). They should avoid giving the impression that the judge or the court is involved in political activities (Opinions [93-100](#) [Vol. XI]; [93-36](#) [Vol. XI]; [90-102](#) [Vol. VII]). Court employees may also serve on a judge's campaign committee, subject to certain limitations depending on their roles in the court system (22 NYCRR 100.5[A][4][b]; 100.5[A][5] [members of a campaign committee must be "responsible persons"]; Opinion [04-10](#) [typist in appellate court may serve as treasurer of trial judge's campaign committee]).

All Staff Members. A judge who is a candidate for judicial office must prohibit his/her staff from doing anything on his/her behalf that he/she would be prohibited from doing himself/herself (22 NYCRR 100.5[A][4][b]). A judge must further, except to the extent permitted by Rule 100.5(A)(5), prohibit his/her staff from taking part in any activity that might be perceived as doing for the candidate what he/she is prohibited from doing under Part 100.5 (22 NYCRR 100.5[A][4][c]).

Personal Appointees. An incumbent judge shall prohibit members of the judge's staff who are the judge's personal appointees (such as the judge's law clerk, personal secretary, etc.) from contributing, directly or indirectly, money or other valuable consideration (e.g., non-monetary contributions) in amounts exceeding \$500 in the aggregate during any calendar year, to all political campaigns or other partisan political activity (22 NYCRR 100.5[C][2]; Opinions [10-76](#); [97-103](#) [Vol. XVI] [judge's part-time law clerk should not donate office space to a political party which, if rented on the open market, could have a value of over \$500]; [89-101](#) [Vol. IV] [judge's law assistant may attend political fund-raisers, subject to the aggregate calendar year limit]).

The \$500 limit does not apply to a staff member's contribution to his/her own campaign (22 NYCRR 100.5[C][2]; Opinion [07-189](#)).

A judge's personal appointee may not hold office in a political party or organization, personally solicit funds in connection with a partisan political purpose, or personally sell tickets to or promote a fund-raising event of a political candidate, political party or partisan political club (22 NYCRR 50.2[c]; 100.5[A][4][b]-[c]; 100.5[C][3]; Opinions [94-35](#) [Vol. XII]; [90-102](#) [Vol. VII]).

A judge's personal appointee also is prohibited from serving as treasurer of the judge's re-election committee (22 NYCRR 50.2[c]; 100.5[C][3]; Opinions [03-48](#) [law clerk]; [00-05](#) [Vol. XVIII] [court attorney]).

Quasi-Judicial Employees. Quasi-judicial employees, such as judicial hearing officers, court attorney-referees and support magistrates, are subject to the same limitations on political activity as judges (22 NYCRR 100.6[A]; Opinions [05-14](#); [00-117](#) [Vol. XIX]; [95-119](#) [Vol. XIII]).

6.2 Participation of a Judicial Candidate's Family

The Rules define a member of the judicial candidate's family to include "a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship" (22 NYCRR 100.0[H]).

The Rules do not restrict the bona fide, independent political activity of a judicial candidate's spouse or any other member of the judicial candidate's family (Opinion [06-147](#)). Generally, a spouse or other member of the judicial candidate's family may exercise his/her individual political rights, including circulating and authenticating nominating petitions, attending politically sponsored events, holding office in a political organization, making contributions to political campaigns or organizations and participating in other activities that would not be permissible for the candidate, as long as the actions are those of the family member and not intended to be the indirect political activity of the candidate (Opinions [06-142](#); [98-99](#) [Vol. XVII]). A judge or judicial candidate should, however, make a concerted effort to convince his/her spouse to refrain from referring to him/her when supporting or soliciting support for another candidate, to avoid the appearance that the judge or judicial candidate also supports that candidate (22 NYCRR 100.5[A][1]; Opinion [06-142](#)).

The judicial candidate must, however, encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate himself/herself (22 NYCRR 100.5[A][4][a]). The judicial candidate must further, except to the extent permitted by Rule 100.5(A)(5), prohibit his/her family from undertaking any activities on the candidate's behalf that the candidate is prohibited from doing himself/herself or which may appear to be the candidate's indirect activity (22 NYCRR 100.5[A][1]; 100.5[A][4][c]; Opinion [98-99](#) [Vol. XVII]). Family members may also serve on a judicial candidate's campaign committee as long as the candidate determines that they are "responsible persons" who will abide by applicable laws and ethics rules (22 NYCRR 100.5[A][5]; cf. Opinion [07-64](#) [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). See also Section 4.1, *supra*.

A judicial candidate may permit his/her relatives to serve on his/her campaign committee (Joint Opinion [08-125](#), [08-147](#), [08-148](#) and [08-149](#)). As members of a candidate's campaign committee, a candidate's relatives "may solicit and accept reasonable campaign contributions and support from the public" (22 NYCRR 100.5[A][5]) as long as their actions do not appear to be the candidate's indirect activity (Opinion [98-99](#) [Vol. XVII]), and as long as such relatives are careful to keep the donors' identities and the amount of any donation from the candidate (Joint Opinion [08-125](#), [08-147](#), [08-148](#) and [08-149](#)).

Campaign Signs. A judicial candidate should not display campaign signs endorsing another candidate on his/her real property (22 NYCRR 100.5[A][1][c]-[e]), other than a sign listing the candidate as a member of a slate of current candidates (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion [07-167](#)). A judicial candidate should "strongly urge" his/her spouse not to place signs endorsing other political candidates on the real property where the judicial candidate and

spouse reside, even if the spouse is the sole titled owner of the property (Opinions [07-169](#); [99-118](#) [Vol. XVIII]; [96-112](#) [Vol. XIV]). Once the candidate has done so, he/she is not required to take further action (Opinion [07-169](#)). A judicial candidate or judge whose spouse is a candidate for public office is not required to discourage the spouse-candidate from placing the spouse's own campaign sign on jointly-owned property (Opinion [06-94](#)).

Political Contributions. Because a judicial candidate may not make political contributions (22 NYCRR 100.5[A][1][h]), if family members of the candidate make political contributions, these should be made from the family member's separate funds (Opinion [95-138](#) [Vol. XIII]). It is inadvisable for a judicial candidate's family member to make a political contribution using a joint bank account, even if the candidate's name is deleted from the check (Opinions [98-111](#) [Vol. XVII]; [96-29](#) [Vol. XIV]). Any contribution should specify that it is the contribution of the family member and not that of the judicial candidate (Opinion [96-29](#) [Vol. XIV]). If a judicial candidate's spouse has no independent source of income, however, he/she may make political contributions from funds that have been set aside for the spouse's sole discretionary use, again provided that the spouse does not use a check from a joint checking account with the candidate (Opinion [98-111](#) [Vol. XVII]).

7. Post-Election Fund-Raising and Use of Unexpended Campaign Funds

7.1 Unexpended or Surplus Campaign Funds

7.1.1 Permissible Uses and Closing of the Campaign Account

Permissible campaign expenditures are discussed in more detail in section 4.3, *supra*, and 7.3, *infra*. Judicial candidates should make every reasonable effort to return unexpended campaign funds to contributors on a *pro rata* basis (Opinions [07-187](#); [93-80](#) [Vol. XI]; [91-12](#) [Vol. VII]; [90-06](#) [Vol. V]; [89-152](#) [Vol. V]; [88-89](#) [Vol. II]; [88-59](#) [Vol. II]; [87-02](#) [Vol. I]; *see also* Opinion [92-94](#) [Vol. X] [funds left over from prior non-judicial campaign]). A judicial candidate who receives a cross-endorsement may even, if he/she wishes, return most of the funds *pro rata* before the election while retaining a small sum for possible use during the window period (Opinion [05-21](#); *see also* section 2.2.2, *supra*, regarding unopposed candidates).

Nevertheless, if the remaining unexpended funds are *de minimis* or otherwise so limited that, under the circumstances, returning the balance to contributors will be significantly unworkable or impracticable, unexpended funds may be used to purchase items which the court system or municipality does not otherwise provide, for use by the judge in the performance of judicial duties (Opinions [06-162](#); [99-71](#) [Vol. XVIII] [funds totaling less than \$150 are *de minimis* and need not be returned to contributors on a *pro rata* basis]). In determining whether it is impracticable to return the unexpended campaign funds to contributors, the judicial candidate may consider factors such as the total number of contributors and the cost of returning the funds (Opinions [07-65](#); [06-162](#)). A candidate should, to the extent possible, take steps to minimize the risk of uncashed checks that will delay the closing of his or her campaign account (Opinion [07-65](#)). When returning unexpended campaign funds *pro rata* to contributors, however, a

candidate may not decline to issue checks under a specific monetary threshold (e.g., \$10 or less), even if the funds would be distributed *pro rata* to other contributors (*id.*).

Subject to the considerations set forth in Opinions [07-65](#) and [06-162](#), a small amount of unexpended campaign funds may be used to purchase an item such as a modestly-priced laptop, if it is necessary to the performance of judicial duties and is not otherwise provided by the court system or the municipality (Opinion [06-162](#)). Any items so purchased must be donated to the Unified Court System (Opinions [98-139](#) [Vol. XVII] [office furniture]; [95-36](#) [Vol. XIII] [carpeting in chambers]; [93-56](#) [Vol. XI] [office equipment]). The donation may be formalized by writing a letter to the local District Administrative Judge identifying the designated items (Opinion [04-06](#)).

It is not appropriate for a judge to use significant amounts of unexpended campaign funds to purchase numerous items, or items which the court system or municipality readily provide (Opinion [06-162](#) [unexpended campaign funds may not be used to purchase a fax machine, desk or chair for a state-paid judge when such items are provided by the Unified Court System]). Nor may they be used to purchase an item that requires an ongoing service agreement that would be billed to the Unified Court System, such as a cell phone (Opinion [06-162](#)). Unexpended campaign funds may not be used to purchase a television (Opinion [06-162](#)).

Some otherwise unexpended campaign funds may, however, be used to finance a “modest and reasonable” post-election victory reception within the window period (Opinion [07-187](#); Opinions [93-19](#) [Vol. X]; [89-152](#) [Vol. V]; [87-16](#) [Vol. I] [authorizing “a modest reception to which contributors and campaign workers are invited”]). The ACJE has noted that “[t]he ‘induction’, ‘robing’, or ‘victory’ party or reception is a traditional part of the total election process and a reasonable expenditure is expected for this purpose by those persons who contributed to the campaign fund” (Opinion [87-16](#) [Vol. I]). In 2003, the Commission on Judicial Conduct sanctioned a judicial candidate who spent nearly \$20,000 in unexpended campaign funds on an induction reception and dinner for over 250 guests (2004 CJC Ann. Rep. at 153-56 [disciplinary determination]). The Commission concluded that “[t]he amount expended for the dinner was an unreasonably large amount of campaign funds to be spent for a dinner to celebrate respondent's induction as a Supreme Court Justice” (*id.* at ¶11). After the expiration of the window period, a judge may hold a victory party “only if it is financed with the judge’s private funds” (Opinion [93-19](#) [Vol. X]) (noting that “a victory party is a private party and not a political activity as long as no campaign funds are used to finance the event”).

Judicial candidates should be aware that the Rules further prohibit the use of campaign funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

Time frame for closing the campaign account. Although the Rules do not specify a time-frame for the disposition or return of funds or the closing of the campaign account, it should be done as soon as practicable on expiration of the window period, and in compliance with the requirements of the Election Law (22 NYCRR 100.5[A][2]; 100.5[A][5]; Opinions [07-187](#); [05-21](#); [04-87](#); [01-81](#)). A judge’s intention to purchase unspecified items for the courthouse at

some indeterminate time in the future is not an adequate basis for leaving the campaign account open beyond the window period (Opinion [04-87](#)).

7.1.2 Prohibited Uses

Unexpended campaign funds may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]). Thus, they may not be donated (either directly or through the purchase of gifts) to any:

- Political party or entity (Opinions [90-193](#) [Vol. VI]; [88-59](#) [Vol. II]; [87-02](#) [Vol. I]).
- Charitable fund or institution, even if designated in the State tax return (Opinions [08-151](#); [03-109](#); [90-04](#) [Vol. V]; [87-02](#) [Vol. I]).
- Bar association (Opinion [92-29](#) [Vol. IX]).
- Community legal assistance group (Opinions [93-80](#) [Vol. XI]).
- Graduates of the drug court program (Opinion [05-132](#)).
- Campaign workers (Opinion [98-06](#) [Vol. XVI] [even “token gifts”]).

As further explained in Section 7.1.1, *supra*, there are limits on the items that a judge may purchase with unexpended campaign funds even for use in his/her official duties. For instance, a judge should not use unexpended campaign funds to purchase items that require an ongoing service agreement that would be billed to the Unified Court System, items that the court system or municipality readily provide, or items (such as a television) that are not directly necessary to the performance of his/her judicial duties (Opinion [06-162](#)).

Similarly, the ACJE has held that the definition of the window period “makes each campaign finite, allowing no campaign fund-raising action between campaigns. Nor does it permit any coalescence of the funds solicited for one campaign with another campaign” (Opinion [94-21](#) [Vol. XII]). Accordingly, a judicial candidate may not transfer, use or retain any campaign funds:

- to satisfy debts from past campaigns (Opinions [97-04](#) [Vol. XV]; [94-21](#) [Vol. XII] [repayment of loans made by judge and spouse in prior campaigns]).
- for use in any future campaign for any office, judicial or otherwise, including the candidate’s anticipated campaign for election or re-election to the same bench or election to a higher judicial office (Opinions [01-81](#); [92-68](#) [Vol. IX]; [90-06](#) [Vol. V] [same or other office]; [89-152](#) [Vol. V]; [88-89](#) [Vol. II] [higher judicial office]).

Unexpended campaign funds may not be used for another election campaign, even if the donor states that he/she does not want the funds and wishes the judge to use them for another campaign (Opinions [01-81](#); [91-12](#) [Vol. VII]; *see also* 2004 CJC Ann. Rep. at 156 [disciplinary determination]). The judicial candidate may not ask donors to allow the unexpended funds to be utilized for any unpaid expenses or outstanding loans generated in any other past campaign or for a potential future campaign (Opinions [97-04](#) [Vol. XV]; [93-15](#) [Vol. XI]).

The ACJE has also held that a judicial candidate may not use unexpended campaign funds from a prior non-judicial campaign for a present judicial campaign, for general party use, or for the campaigns of other candidates on the same slate (Opinions [93-15](#) [Vol. XI]; [92-94](#) [Vol. X]).

7.2 Post-Election Fund-Raising

Post-election fund-raising, where permitted, must be held within the candidate's window period (Opinion [02-13](#)). Accordingly, a judge must instruct his/her campaign committee not to undertake any fund-raising events after the window period has expired, even if there are unpaid campaign debts (*id.*). The following paragraphs discuss several specific types of post-election fund-raising events for which candidates have sought guidance from the ACJE.

Please note that there may also be legal issues with respect to repayment of loans after election day (*see* Election Law 14-114[6]), which the ACJE cannot address.

Raising funds to satisfy outstanding election debts to third parties. A judicial candidate's campaign committee may, within the applicable window period, hold a post-election fund-raising event, the proceeds of which will be used to satisfy outstanding election debts to third parties (Opinions [97-41](#) [Vol. XV] [legal obligations of the campaign committee for the recently concluded campaign]; [96-31](#) [Vol. XIV] [outstanding campaign debts to third parties]; [87-27](#) [Vol. I]). It is advisable that the campaign committee disclose that the funds raised will be used to pay off the debts of the campaign (Opinion [03-122](#)). The judicial candidate may attend such a post-election fund-raising event held on his/her behalf (Opinions [03-122](#); [97-41](#) [Vol. XV]). To the extent that any such post-election fund-raiser succeeds in raising more funds than necessary to discharge the debts owed to third party creditors, any such excess funds must be returned to the campaign contributors on a *pro rata* basis (Opinion [03-119](#)).

Raising funds to reimburse the candidate or his/her spouse. The campaign committee may not raise funds after the election to repay loans made to the committee by the candidate or the candidate's spouse, or to permit the candidate to recoup campaign expenses he/she incurred and paid personally during the campaign period (Opinions [05-136](#); [03-119](#); [96-31](#) [Vol. XIV] [repaying loans made by candidate to campaign committee]; [94-21](#) [Vol. XII] [repaying loans made by candidate and spouse to prior campaigns]; [89-05](#) [Vol. III] [reimbursement for campaign expenses paid by the candidate]). The fact that the campaign treasurer executed a promissory note in return for the candidate's loan to the campaign committee does not change the result (Opinion [05-136](#)).

Raising funds to benefit or reimburse political party. The campaign committee may not raise funds to reimburse a political leader for campaign costs incurred by the leader, absent a legal obligation to make such reimbursement (Opinion [90-195](#) [Vol. VI]). A judicial candidate may not authorize a political party to hold a post-election fund-raising event on behalf of the judge, where it is intended that any funds remaining after payment of campaign debts would belong to the political party organization (Opinion [98-146](#) [Vol. XVII]).

Third party fund-raiser honoring newly elected judge. A newly elected full-time judge may be the honoree of a dinner sponsored by a civic organization where any profits will be transferred to the judge's campaign committee, provided that this event takes place within the judge's window period (Opinion [93-20](#) [Vol. X]).

7.3 Other Post-Election Conduct

A recently elected judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions [92-29](#) [Vol. IX]; [91-67](#) [Vol. VII] [recently elected judge may not attend political event held "six months and one day after the general election"]; [91-24](#) [Vol. VII]; [89-136](#) [Vol. IV]). The judge's campaign committee may purchase these tickets using campaign funds (Opinion [92-29](#) [Vol. IX]; [91-24](#) [Vol. VII]). A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion [07-187](#)). See also section 4.3 and 7.1.1, *supra*, for further discussion of post-election use of campaign funds.

A recently elected judge may attend and deliver a presentation on a non-controversial substantive legal topic at a political organization's meeting held within his/her window period (Opinion [97-35](#)).

A judge who was an unsuccessful candidate in a primary election for a different judicial office may also continue to attend political functions throughout his/her window period, which ends exactly six months after the primary election (Opinion [96-124](#) [Vol. XV]).

However, a judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27). A non-candidate judge may not escort his/her spouse (who is a candidate for elective office) to fund-raising events held for the spouse, even where the judge would not participate in the event and would not be introduced at the event (Opinion [06-147](#); *see also* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). This restriction has no geographic limitations, insofar as it has been extended to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion [99-156](#) [Vol. XVIII]; *cf.* Opinion [95-109](#) [Vol. XIII]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

8. Campaign-Related Disqualifications

The United States Supreme Court addressed legal disqualification of a judge based on expenditures of a campaign supporter in *Caperton v. A.T. Massey Coal Co.*, 556 US 868, 129 S Ct 2252 (2009) (holding that, for due process reasons, recently elected appellate judge should have disqualified himself from presiding over appeal involving corporation whose president and chief

executive officer had spent over \$3 million in support of the judge’s campaign). The Court noted that these expenditures were made following the trial court’s entry of a \$50 million judgment against the corporation, at a time when it was likely that corporation would be seeking review in the court to which the judge was seeking election. The Court termed *Caperton* an “exceptional” and “extreme” case, which it expected to apply only in “rare instances” (*id.*, 129 S Ct at 2263, 2265, 2267). As of the date of writing, it appears that there are no published New York State court opinions applying *Caperton* to disqualify judges based on campaign contributions in New York (*cf. Anderson v. Belke*, 80 A.D.3d 483 [1st Dep’t 2011] [citing *Caperton* for the proposition that “Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge’s recusal; and this is no ‘exceptional case.’”]).¹⁰

8.1 Endorsements

As discussed in more detail in Section 3.3, *supra*, mere receipt of an endorsement, in and of itself, does not trigger any recusal obligations for a judicial candidate, although it may result in disclosure obligations under some circumstances.

8.2 During the Campaign (Incumbent Judges Only)

Opponent. A judge may preside over a case when one of the attorneys representing a party is the judge’s opponent in the upcoming election, unless the judge doubts his/her own impartiality (Opinion [11-76](#); Joint Opinion [00-78 and 00-80](#) [Vol. XIX] [opponent is chief assistant district attorney]; Opinions [92-82](#) [Vol. IX] [opponent is attorney]; [92-57](#) [Vol. IX] [opponent is district attorney]); *see also* Opinion [06-12](#) [opponent is district attorney and has threatened to file an ethics complaint against the judge]). However, the judge should recuse himself/herself when the judge’s opponent in an upcoming election is a party in a proceeding before the judge (Opinion [91-110](#) [Vol. VIII]).

Opponent’s supporter. Where a law firm has distributed a letter to the public requesting financial and political support for a judge’s opponent in a re-election campaign, the judge need not disqualify himself/herself from matters in which attorneys from that law firm appear before him/her, if the judge believes he/she can be impartial, but the judge should disclose on the record that he/she is aware of the letter and believes he/she can be impartial (Opinion [03-77](#)).

Mere contributor to or supporter of judge’s campaign. A judge running for re-election is not disqualified solely because a party or attorney was present at a fund-raiser held on the judge’s behalf and is now appearing before the judge (Opinion [04-106](#)). Knowledge that an attorney contributed to the judge’s campaign does not, by itself, require the judge to disqualify himself/herself when the attorney appears before the judge (Opinions [10-135](#); [07-26](#); [04-106](#)).

¹⁰ In June 2011, the administrative board of the courts adopted Part 151 (22 NYCRR pt 151), which is intended to administratively assign cases in a manner that takes into account campaign contributions by litigants or their attorneys above specified thresholds.

Merely being listed as supporting the candidate does not give rise to an inference of partiality (Opinion [03-64](#)).

If attorneys who regularly appear before the judge attend a reception and speak to attendees about their experience appearing before the judge at the judge's request, in support of the judge's candidacy, recusal is not thereafter required, as long as the judge believes he/she can be fair and impartial (Opinion [08-152](#)).

Active campaign conduct in support of judge. A judge who is running for election should exercise recusal when attorneys who are engaged in fund-raising or in other active conduct in support of the judge's candidacy appear before the judge during the course of the campaign, even for matters the judge considers to be "routine, non-contested or administrative" (Opinions [07-26](#); [03-64](#); [01-07](#) [attorneys involved in planning an initial fund-raiser for the judge, who will not hold any office in the campaign or provide any assistance beyond contacting persons with respect to the initial fund-raiser]; [97-129](#) [Vol. XVI]; [94-12](#) [Vol. XII]; [89-107](#) [Vol. IV] [campaign manager]).

A judge also must disqualify himself/herself in any matter involving the law firm of the judge's campaign coordinator or campaign finance chair for the duration of the campaign, subject to remittal (Opinion [97-129](#) [Vol. XVI]). Disqualification, subject to remittal, is also required for partners or associates of individuals who were involved in planning an initial fund-raiser for the judge (Opinion [01-07](#)). However, a judge need not disqualify himself/herself from a pending class action, where the judge's campaign treasurer is a member of "a large class" solely in an individual capacity rather than as treasurer of the campaign committee (Opinion [91-131](#) [Vol. VIII]).

Screening panel. A full-time judge seeking re-election who appears before a bar association's judicial screening committee does not need to recuse himself/herself from cases in which an attorney who sits on the screening panel appears before the judge in a representative capacity, nor must the judge disclose that fact to opposing counsel (Opinion [94-86](#) [Vol. XII]). However, a judge who is a candidate for judicial office should disqualify him/herself, subject to remittal, from presiding in a case when an attorney who is a member of a political party's candidate screening panel subcommittee that reviewed the judge's application for the political party's endorsement also is a partner in the plaintiff/law firm in the case (Opinion [10-121](#) [noting that the screening panel member is involved "not as an attorney representing a client but as a partner in a law firm that is the plaintiff in the case"])). A judge who is seeking re-election may request attorneys who regularly appear before him/her to furnish comments or testimony to a bar association's screening committee, only if such materials are given directly and exclusively to the screening committee and not to the judge (Opinion [97-99](#) [Vol. XVI]). The judge may provide the names of attorneys who regularly appear before him/her as references to the screening committee (Opinion [97-99](#) [Vol. XVI]).

Officer of a political party. A judge need not disqualify himself/herself in a proceeding in which an officer of a political party that designated the judge for judicial office is likely to be a material witness, where the official did not play any specific role in the judge's campaign (Opinion [02-108](#)).

8.3 After the Campaign: The Two-Year Rule (Incumbent Judges and Successful Judicial Candidates)

Minimal participant. In general, a judge need not disclose or disqualify himself/herself in a matter in which an attorney who appears before the judge publicly supported the judge (Opinion [90-182](#) [Vol. VI]), or who minimally participated in the judge's campaign by gathering petition signatures (Opinion [90-196](#) [Vol. VI]) or distributing literature (Opinion [90-196](#) [Vol. VI]), unless the judge doubts his/her own impartiality (Opinion [07-26](#)).

Similarly, neither disclosure or disqualification is required after the date of the election with respect to attorneys who were involved only in planning an initial fund-raiser for the judge, or who served only as the host of a single fund-raiser or on the committee that was hosting that fund-raiser, as long as they did not hold any office in the campaign or provide any continuing assistance beyond that one fund-raiser (Opinions [03-64](#); [01-07](#)).

Leadership or continuing fund-raising role. If attorneys appearing before the judge held leadership positions in the campaign or maintained a continuing fund-raising role throughout the course of the campaign, then the recusal should extend for a two-year period following the election, subject to remittal (Opinions [07-26](#); [06-54](#); [03-64](#); [97-129](#) [Vol. XVI] [campaign coordinator or campaign finance chair]; [99-156](#) [Vol. XIV]; [89-107](#) [Vol. IV] [campaign manager]).

With respect to other attorneys from the former campaign manager's firm, including an attorney listed as "of counsel" on firm letterhead, the judge must continue to disclose the relationship and should consider recusal if the parties' motions warrant it for a two-year period following the campaign (Opinion [06-54](#)). After two years have elapsed, the judge must continue to disclose but may preside in such matters (Opinions [97-129](#) [Vol. XVI] [campaign coordinator or campaign finance chair]; [91-129](#) [Vol. VIII] [campaign treasurer]).

A judge may also need to disqualify himself/herself, under certain circumstances, when a "key member" of his/her campaign committee is called as an expert witness (Opinion [05-77](#) [advising disqualification in light of the totality and history of the relationship under the facts presented]).

Opponent. A judge need not disqualify himself/herself when a party in a proceeding or the attorney representing a party was the judge's opponent in a prior campaign (Opinions [91-146](#) [Vol. VIII] [former opponent as litigant]; [90-136](#) [Vol. VI] [former opponent as attorney]), unless the judge doubts his/her impartiality.

8.4 After the Campaign: Pledge or Promise

A judge must disqualify himself/herself in a proceeding if, while a candidate for judicial office, he/she made a pledge or promise of conduct in office that is inconsistent with the impartial

performance of the adjudicative duties of the office or made a public statement not in his/her adjudicative capacity that commits the judge with respect to an issue in the proceeding or the parties or controversy in the proceeding (22 NYCRR 100.3[E][1][f]). (Making such a pledge or promise as a judicial candidate is also prohibited directly, as discussed *supra* in Sections 5.3 and 5.4.)

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