

2009 EDITION
**JUDICIAL CAMPAIGN
ETHICS HANDBOOK**

New York State Advisory Committee on Judicial Ethics

CHAIR

HON. GEORGE D. MARLOW

VICE CHAIRS

HON. BETTY WEINBERG ELLERIN

HON. JEROME C. GORSKI

MEMBERS

HON. RICHARD T. AULISI

HON. LAWRENCE J. BRACKEN

HON. ARNOLD F. CIACCIO (*SUBCOMMITTEE CHAIR*)*

HON. RANDALL T. ENG

HON. DEBRA L. GIVENS

HON. YVONNE GONZALEZ

HON. MICHAEL R. JUVILER

HON. BARBARA R. KAPNICK

HON. BENTLEY KASSAL

HON. E. MICHAEL KAVANAGH

HON. JAMES J. LACK*

HON. YVONNE LEWIS

HON. DANIEL J. LOUGHLIN*

HON. RICHARD B. LOWE, III

HON. THOMAS E. MERCURE

HON. DENISE F. MOLIA*

HON. ROBERT C. MULVEY*

HON. E. JEANNETTE OGDEN

HON. JOHN M. OWENS

HON. STANLEY PARNES

HON. DAVID J. ROMAN

HON. THOMAS J. SHEERAN

HONORARY MEMBERS

HON. LOUIS C. BENZA

HON. FRED W. EGGERT

HON. HAROLD J. HUGHES

FACULTY

HON. ROBERT G. BOGLE

HON. SHIRLEY TROUTMAN

SPECIAL COUNSEL

HON. EDWARD P. BORRELLI, JHO*

RAYMOND S. HACK, ESQ.

COUNSEL

MARYRITA DOBIEL, ESQ. (*CHIEF COUNSEL*)

ERIN DEVANEY, ESQ.*

JEREMY FEINBERG, ESQ.

ADINA C. GILBERT, ESQ.

JULIANA MAUGERI, ESQ.

LAURA L. SMITH, ESQ.*

JONATHAN ZIMET, ESQ.

JUDICIAL CAMPAIGN ETHICS HANDBOOK
of the New York State Advisory Committee on Judicial Ethics
(April 2009 Edition)

TABLE OF CONTENTS

ACKNOWLEDGMENTS	i
FOREWORD	ii
The Advisory Committee on Judicial Ethics	ii
The Judicial Campaign Ethics Center	ii
Contact Information	iv
JUDICIAL CAMPAIGN ETHICS HANDBOOK	1
1. Basic Rule: No Partisan Political Activity	1
2. Becoming a Candidate	1
2.1 Pre-Candidacy Activities	1
2.1.1 <i>Testing the Waters</i>	1
2.1.2 <i>Anticipated Vacancies</i>	2
2.2 Candidacy and Window Period Defined	2
2.2.1 <i>Announcement of Candidacy</i>	2
2.2.2 <i>Unopposed Candidates</i>	3
2.2.3 <i>“Window Period” Defined</i>	3
2.2.4 <i>Judge As Candidate for Non-Judicial Office (Incumbent Judges</i> <i>Only)</i>	4
2.3 Mandatory Education Program	4
2.4 Mandatory Financial Disclosure	4
3. Limits on Permissible Political Activity	5
3.1 Membership in Political Parties; Voting; Signing Nominating Petitions	5
3.2 Membership in Political Clubs or Organizations	6
3.3 Endorsement by Political Organizations and Other Persons and Entities.	6
3.3.1 <i>Questionnaires</i>	8
3.3.2 <i>Screening Panels and Independent Judicial Election Qualification</i> <i>Commissions</i>	8

3.4	Nominating and Designating Petitions	9
3.5	Attendance at Political Gatherings	10
3.6	Attendance at Charitable Gatherings or Events	12
4.	Fund-Raising and Use of Campaign Funds During the Campaign	13
4.1	Campaign Committees	13
4.2	Joint Fund-Raising	15
4.3	Proper Utilization of Campaign Funds	16
5.	Communications with Voters	17
5.1	Advertisements	17
5.2	Use of Judicial Title, Robes, and Courthouse (Incumbent Judges and Former Judges Only)	19
5.3	Campaign Speech	20
5.4	Judicial Decisions Affecting Campaign Activities and Comments	22
	5.4.1 “Announce Clause” Restrictions Struck Down	22
	5.4.2 “Pledge and Promise” Restrictions Remain in Effect	22
5.5	Joint Campaigning	23
5.6	Debates	24
6.	Involvement of Friends, Family, and Colleagues in Judicial Campaign	24
6.1	Judge’s Staff Participating in the Judge’s Campaign (Incumbent Judges Only)	24
6.2	Participation of a Judicial Candidate’s Family	26
7.	Post-Election Fund-Raising and Use of Unexpended Campaign Funds	27
7.1	Unexpended or Surplus Campaign Funds	27
	7.1.1 <i>Permissible Uses and Closing of the Campaign Account</i>	27
	7.1.2 <i>Prohibited Uses</i>	29
7.2	Post-Election Fund-Raising	30
7.3	Other Post-Election Conduct	31
8.	Campaign-Related Disqualifications	31
8.1	Endorsements	31
8.2	During the Campaign (Incumbent Judges Only)	32
8.3	After the Campaign: The Two Year Rule (Incumbent Judges and Successful Judicial Candidates)	33

ACKNOWLEDGMENTS

Each iteration of the Handbook has drawn heavily on the expertise and hard work of members of the ACJE and their counsel and support staff. Special thanks are due to the ACJE's Judicial Campaign Handbook subcommittee for the initial draft of the Handbook in 2003: Hon. Edward P. Borrelli, Hon. Lawrence J. Bracken, Hon. Jerome C. Gorski, and Maryrita Dobiell, Esq. Subsequent updates to the Handbook have involved Judicial Campaign Ethics Center staff, the office of the Statewide Judicial Director of Ethics Education and Counsel, and the office of the Statewide Special Counsel for Ethics.

The April 2009 Edition of the Handbook has been updated to include opinions issued as of March 31, 2009.

April 2009

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 State Commission on Judicial Conduct. Since then, the ACJE has issued between 100 and 200 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.

To ensure that these opinions are readily available to those who need them most, the ACJE, with assistance from the JCEC, has 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. We also have included references to opinions issued by the New York State Bar Association (“NYSBA”) and the New York State Commission on Judicial Conduct (“CJC”), for informational purposes only. The ACJE has not had any involvement in the formulation of those opinions, and therefore does not necessarily endorse them.

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, both by e-mail and postal delivery. To facilitate a rapid response (generally within two to three business days), judicial candidates should e-mail their inquiries to the JCEC at contactjcec@courts.state.ny.us.

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 NYS 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.

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: contactjcec@courts.state.ny.us
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: 1-518-295-4881
Web site: www.nycourts.gov/ip/acje

Informal Inquiries on General Matters of Judicial Ethics**

Chair: Hon. George D. Marlow at 1-866-79-JUDGE (58343) or 1-845-486-2200
Vice-Chairs: Hon. Betty Weinberg Ellerin and Hon. Jerome C. Gorski
Chief Counsel: Maryrita Dobiell, Esq. at 1-866-79-JUDGE (58343) or 1-518-474-7469
Special Counsel: Hon. Edward P. Borrelli, JHO, at 1-914-824-5329
Staff Counsel: Adina Gilbert, Esq. at 1-845-486-2699
Jeremy Feinberg, Esq. at 1-212-428-2547
Juliana Maugeri, Esq. at 1-845-486-2209
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, 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, 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]; Opinion 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” 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 as soon as he or she makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions (*id.*). Public elections 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). However, conduct such as forming a campaign committee, issuing a press release, or meeting with community residents, are examples of other alternative ways to manifest one's candidacy for elective judicial office (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.*).

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 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 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]; Opinion 97-121 [Vol. XVI]).

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]; Opinions 97-121 [Vol. XVI]; 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]). 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]).

2.3 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.*). This ethics program is provided by the JCEC in both live and recorded format. Contact the JCEC at 1-888-600-5232 for the current schedule.

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/index.shtml> 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.

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 (*In re 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]).

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.

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, 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

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 (Opinions 07-24 [labor union]; 05-23/05-24 [non-judicial officials running for elective office]; 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).

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 100.4[A][4][a]). Among other things, the judge must not create the appearance or reality of improper pressure on attorneys who have cases pending before him/her (*compare* Joint Opinion 05-105, 05-108, and 05-109; Opinion 97-99 [Vol. XVI] *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 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.) 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.

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).

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).

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 judge must disclose that endorsement and give all counsel and parties the opportunity to be heard (Opinion 07-24). The judge may nonetheless preside, even if a party objects, provided that the judge considers all relevant factors and determines in the exercise of conscience that he or she can be fair and impartial (*id.*). (Other potential campaign-related disqualifications are covered in Section 8.)

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 (*id.*; *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 as to the position the candidate will take on particular legal issues, or with regard to any party, parties or class of parties, in the event of his/her election (22 NYCRR 100.5[A][4][d]; 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 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.

3.3.2 Screening Panels and Independent Judicial Election Qualification Commissions

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).¹

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 there is a good-faith reason to believe there will be a vacancy later in the same election cycle, the judicial screening panel process is available to all potential candidates, and 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.

¹ 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-ijecq.org/index.shtml> for more information.

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.* Opinions 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]).

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). 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 (*In re Raab*, 100 NY2d at 315; Joint Opinion 05-105, 05-108, and 05-109).

3.4 Nominating and Designating Petitions²

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 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 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]).

3.5 Attendance at Political Gatherings

² 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.

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.

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. Opinion 08-43 [noting that a campaign may be entirely self-financed]; Opinion 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]; *In re 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 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]).

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. 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.* 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]).

A judicial candidate who is not currently a judge may be a speaker or guest of honor at a charitable fund-raising event (Opinion 07-90). By contrast, a sitting judge may not be the speaker or guest of honor at any 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

4.1 Campaign Committees

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]).

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]).

The candidate may, however, 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]). 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). 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 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. For specific issues relating to family and court employees serving on a campaign committee, please see Section 6.

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]; *see also infra* Section 4.2). 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 except to the extent legally permissible (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 or to his/her opponent's campaign (Opinions 02-06; 87-27 [Vol. I]; *see also* NYSBA Opinion 289).

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.*).

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]). 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]).

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]).

4.3 Proper Utilization of Campaign Funds

A judicial candidate may expend campaign funds in any manner consistent with the Rules and the Election Law (Opinion 92-97 [Vol. X]). Judicial candidates are specifically prohibited from using campaign funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

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]). See Section 7.1 for further discussion of proper post-election handling of campaign funds.

A judicial candidate may not use campaign funds for the private benefit of the candidate or others, nor may a candidate make a payment to a political party in order to be considered for its endorsement (22 NYCRR 100.5[A][5]; Opinion 01-21 [Vol. XIX]).

A judicial candidate may not make a general payment or contribution to a political party or county committee (*In re 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 (*In re 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]; *In re Raab*, 100 NY2d at 316).

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 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. 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.

5.2 Use of Judicial Title, Robes, and Courthouse (Incumbent Judges and Former Judges Only)

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]).

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]).

5.3 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 100.2[A]; 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 judge may not promise to set up and fund a “legal scholarship” if elected (Opinion 03-28). Further, if a judicial candidate has made an improper promise during his/her campaign, he/she must disqualify himself/herself in any case that might later come before him/her as judge regarding that subject matter (22 NYCRR 100.3[E][1][f]; *see also infra* Section 8.3).

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]). 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]).

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]). 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 State 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). A judicial candidate should take care to ascertain the truth of claims that he/she makes about an opponent, and 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]).

Also, 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). Accordingly, 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, however, 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: “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 word 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]). The ACJE has stated that a judicial candidate may not indirectly endorse an incumbent judge by stating that he/she is the “unanimous choice” to join the incumbent 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 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]).

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; 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]; Opinions 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]).

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

All 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]; Opinion 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]).

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

Judicial candidates should make every reasonable effort to return unexpended campaign funds to contributors on a *pro rata* basis (Opinions 07-187; 06-162; 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).

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 Committee 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 03-109; 90-4 [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, 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, 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 (Opinion 91-12 [Vol. VII]). 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 (Opinion 97-04 [Vol. XV]; 94-21 [Vol. XII]; *see also* 2004 CJC Ann. Rep. at 156 [disciplinary determination]).

The Committee 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.

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 relatives. The campaign committee may not raise funds after the election to repay loans made to the committee by the candidate or the candidate's relatives, 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).

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.* 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

8.1 Endorsements

As discussed in more detail in Section 3.3, mere 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 (Opinions 00-78/80 [Vol. XIX] [opponent is chief assistant district attorney]; 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 07-26; 04-106). Merely being listed as supporting the candidate does not give rise to an inference of partiality (Opinion 03-64).

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, nor must the judge disclose that fact to opposing counsel (Opinion 94-86 [Vol. XII]). 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]; 95-156 [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.

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 him/her 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.)