

2017 Edition

JUDICIAL CAMPAIGN ETHICS HANDBOOK

New York State Advisory Committee on Judicial Ethics

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JUDICIAL CAMPAIGN ETHICS HANDBOOK
of the New York State Advisory Committee on Judicial Ethics
(2017 Edition)

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The 2017 Edition of the Handbook was prepared by a subcommittee appointed by Hon. George Marlow and Hon. Margaret T. Walsh, consisting of Sandra Buchanan, Esq., Hon. Edward Borrelli, Josefina Lessey, and Laura Smith, Esq. The 2017 Edition includes opinions issued as of March 8, 2017.

May 2017

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 “Committee”).

The Advisory Committee on Judicial Ethics

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

The Judicial Campaign Ethics Center

The New York State Unified Court System established the JCEC in 2004. Among its several roles, the JCEC serves as liaison to a subcommittee of the Committee 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 seeks to educate New York State voters about judicial elections. In its role as liaison to the Committee’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 Committee, review all written inquiries from judicial candidates. The JCEC sends each inquiring candidate a written response from the Subcommittee by e-mail. To facilitate a rapid response (generally within three business days), judicial candidates should e-mail their inquiries to the JCEC. Please visit our website at <http://www.nycourts.gov/ip/jcec/contactus.shtml> for details.

Please note that the JCEC responses are not published, and thus apply only to the particular candidate who submitted the inquiry and only for actions taken in connection with that specific campaign. By written agreement with the Commission on Judicial Conduct, a judicial candidate who makes an inquiry and subsequently conforms his/her conduct during that window

period to the advice contained in the JCEC’s response is presumed to have acted properly for purposes of any subsequent investigation by the Commission on Judicial Conduct.

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. All inquiries, whether by telephone, in writing or via electronic mail are, by law, treated as strictly confidential by the JCEC and the Subcommittee.

The Judicial Campaign Ethics Handbook

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

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

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It is our hope that candidates will seek and follow guidance from the JCEC and the Committee, in order to reduce the risk of public criticism and to promote public confidence in the judiciary.* Although published disciplinary determinations in campaign ethics matters are seldom unanimous – in fact, dissents and concurrences are common – the CJC has nonetheless imposed discipline on successful judge or non-judge candidates in each of the last several years, and has not been receptive to excuses that a candidate was “unaware of the relevant limitations” (2008 CJC Ann. Rep. at 145-50).

* The CJC has stated that “[a] judge’s election is tarnished and the integrity of the judiciary is adversely affected by misconduct that circumvents the ethical standards imposed on judicial candidates and provides an unfair advantage over other candidates who respect and abide by the rules. In such cases, we must consider whether allowing the respondent to retain his or her judgeship would reward misconduct and encourage other judicial candidates to ignore the rules, knowing that they may reap the fruits of their misconduct” (2013 CJC Ann. Rep. at 75-94).

CONTACT INFORMATION

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

Address: Judicial Campaign Ethics Center
Attn: Sandra H. Buchanan, Esq.
Office of Court Administration
25 Beaver Street, Suite 866
New York, New York 10004
Telephone: 1-888-600-JCEC (5232)
Fax: 1-212-401-9029
E-mail: jcec@nycourts.gov
Web site: www.nycourts.gov/ip/jcec

Advisory Committee on Judicial Ethics (for any judicial ethics inquiries)[†]

Address: Advisory Committee on Judicial Ethics
Attn: Laura L. Smith, Esq., Chief Counsel
New York State Unified Court System
25 Beaver Street, Suite 866
New York, NY 10004
Telephone: 1-866-79-JUDGE (58343) or 1-212-428-2504
Fax: Only with permission of the Co-Chairs or Chief Counsel
E-mail: Not applicable; signed original inquiries are required
Web site: www.nycourts.gov/ip/acje

Informal Inquiries on Judicial Ethics[‡]

Co-Chairs: Hon. George D. Marlow (ret.) at
1-866-79-JUDGE (58343) or 1-845-454-2125
Hon. Margaret T. Walsh at
1-866-79-JUDGE (58343)
Chief Counsel: Laura L. Smith, Esq. at
1-866-79-JUDGE (58343) or 1-212-428-2504
Special Counsel: Hon. Edward P. Borrelli, Referee at
1-866-79-JUDGE (58343) or 1-914-824-5329
Staff Counsel: John J. Sullivan, Esq. at 1-518- 453-8650

[†] The Advisory Committee does not accept e-mail inquiries.

[‡] In addition to the names listed here, all judicial members of the Committee are also available by telephone for informal inquiries.

JUDICIAL CAMPAIGN ETHICS HANDBOOK

E-Handbook Hints:

- * Clicking on underlined opinion numbers provides quick access to referenced opinions.
- * Alternatively, to search for these and other opinions, you may go to one of these sites:
www.nycourts.gov > JUDGES > Ethics Opinions
www.nycourts.gov/ip/jcec > Handbook, Rules and Opinions > Search Ethics Opinions
www.nycourts.gov/ip/acje > Search ACJE Opinions > Search Ethics Opinions
- * The words “above” or “below” following a section number link to that handbook section.
- * You may use **Ctrl + F** (or other shortcuts) to search within this document.

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, [below](#), 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 2.2.7, [below](#), a judge who becomes a candidate for elective *non-judicial* office must resign from judicial office.

The Committee has advised that “[a] judge who is seeking appointment or re-appointment to judicial office is not a ‘candidate’ (see 22 NYCRR 100.0[A]) and does not have a ‘window period’ of permissible political activity” (Opinion [14-30](#); see also Opinions [15-176](#); [96-97](#)).

2. Becoming a Candidate

The definition of “candidate” under the Rules (22 NYCRR 100.0[A]) does not require obtaining a political party’s nomination or support (see Section 2.2, [below](#)).

It is often important to determine the date on which an individual becomes a “candidate,” as this typically commences the window period during which a judge may engage in limited political activity and a non-judge becomes subject to many of the same limitations. In addition, it triggers [financial disclosure obligations](#) for certain candidates (see Section 2.4, [below](#)).

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](#) [Lieutenant Governor]; [93-55](#) [district attorney]; [91-44](#) [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](#)). 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 vs Known Judicial 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](#); [97-45](#)).

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](#)).

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](#)).

As the Committee noted in Opinion [14-178](#):

When a judicial vacancy arises at the end of a judge's full term of office, or when a judge's term otherwise ends early by operation of law due to the judge's age, calculation of the window period is relatively straightforward according to the principles outlined above. In such circumstances, there is no doubt a judicial vacancy will occur as of a certain date. Similarly, if a judge has resigned or died, or has been removed from office, there is no doubt a judicial vacancy currently exists. In any of these circumstances, if the judicial office is an elective one, it is certain that an election must be held in a particular year to fill the vacancy (see N.Y. Const., Art. VI, § 21).

In other circumstances, however, there is some uncertainty about whether a vacancy will arise in a particular election year, and whether or not there is a "known judicial vacancy" is a fact-dependent determination. So far, the Committee has addressed a few of these circumstances:

- Scenario: Incumbent announces retirement, but has not yet retired.
 - 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](#)).
 - An incumbent judge’s public announcement that he/she will retire from the bench on a specific date, when coupled with an additional significant and reliable affirmative step to effectuate his/her retirement, is sufficient to create a known judicial vacancy for the purpose of determining when the window period opens and individuals may publicly announce their interest in seeking election to the position (Opinion [15-04](#)).
- Scenario: Incumbent may receive an interim appointment to a higher office, subject to confirmation by the legislature (Opinion [97-45](#)).
- Scenario: Incumbent has been elected to a higher office, but has not yet taken and filed the oath of office (*see* Opinion [14-178](#)).

Candidates are invited to write in for further guidance on their specific circumstances.

2.2 Candidacy and Window Period Defined

Until an individual is an announced candidate (Section 2.2.1, [below](#)) for an actual, known opening for elective judicial office (Section 2.1.2, [above](#)) within his/her window period (Section 2.2.2, [below](#)), he/she may not engage in political activity under the Rules, but may only “test the waters” (Section 2.1.1, [above](#)) through private meetings to discuss whether he/she may be able to obtain the support of a political party or leader.

2.2.1 Definition of “Candidate”; Announcement of Candidacy

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

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

The Rules do not mandate a particular method for declaring oneself a candidate. Sitting judges traditionally write a letter to the Chief Administrative Judge (as the promulgator of the rules) and/or an appropriate local Administrative Judge (as the local representative of the Chief Administrative Judge).¹ However, conduct such as forming a campaign committee, issuing a press

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

release, or meeting with community residents, are examples of alternative ways to publicly manifest one's candidacy for elective judicial office within the meaning of the Rules (Opinions [02-34](#); [00-11](#); "Observations and Recommendations," 2001 CJC Ann. Rep. at 21-22).

2.2.2 "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](#)). There is no geographic limitation on permissible campaign activities during a candidate's window period (Opinions [06-152](#); [03-122](#); [95-109](#)).

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](#)).

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](#)).

In Joint Opinion [14-92/14-94](#), the Committee took the opportunity to apply these principles to the unusual circumstance where, after a political party held its official designating meeting, it subsequently scheduled a second one:

The Committee's intention is to allow judicial candidates to count back nine months from the date when "the nomination process ... functionally starts" (Opinion 08-196). Accordingly, a judicial candidate may count back nine months from the date of the earliest official party meeting at which a candidate will be informally designated or endorsed for the position. It is irrelevant that, under some circumstances, the political party may also need to hold additional meetings due to a previously designated candidate's withdrawal or ineligibility, or perhaps due to a vacancy that has

unexpectedly been created, or other unforeseen circumstances. ... Where a judicial candidate has calculated commencement of the applicable window period in good faith based on a political party's announced meeting schedule, the Committee can see no public interest to be served by calling that determination into question merely because the party has decided to hold additional meetings beyond the one initially announced. Judicial candidates must be able to calculate the start of their window period for a known judicial vacancy and then move forward with their campaigns.

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

If a candidate for Supreme Court Justice is not a candidate in the general election, the window period ordinarily ends six months after the date of the primary election, convention, caucus or meeting at which he/she would have been nominated (22 NYCRR 100.0[Q]; Opinions [03-122](#); [01-111](#); [97-121](#)). When a candidate for Supreme Court Justice formally withdraws his/her name from consideration before the judicial nominating convention takes place, his/her window period ends six months from the date of his/her withdrawal or six months from the date of the nominating convention, whichever is earlier (Opinion [09-194](#)).

The window period for a judicial candidate who submitted his/her name to a party screening panel but did not receive the party's endorsement or nomination, and whose name ultimately did not appear on the ballot for the primary election, ends exactly six months from the last date on which the candidate could have filed an independent nominating petition for the judicial office sought (Opinion [08-53](#)). In such instances, the candidate who did not receive a party's endorsement or nomination may continue to seek direct support from the electorate and file the independent nominating petition with the Board of Elections to place his/her name on the ballot for a primary election (*see id.*).

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

2.2.3 Candidates Who Are Unopposed

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](#)). However, the Committee has noted that "there may be limitations in certain areas, such as post-election fund-raising" (*id.*); see Section 7.2, [below](#), for discussion.

2.2.4 Repeat Candidates; Candidates Who Are Running Two Years in a Row

Judicial candidates who are running two years in a row, whether for the same judicial position or a different one:

- Must complete the judicial campaign ethics training program for the current election cycle, but may potentially be eligible for a “fast-track” option. Contact the JCEC at 1-888-600-5232 for more information and to register; see also the JCEC’s [Training FAQs page](#).
- Must not use campaign funds raised in the current election cycle to pay campaign debts incurred in a prior election cycle. See Section 7.1.2, [below](#).
- Must not transfer or roll over unexpended campaign funds from any prior campaign to the current campaign. See Section 7.1.2, [below](#).
- Should review Opinion [14-148](#) for guidance about using any unexpended campaign funds during any “overlapping” window period that may exist between two campaigns for the same judicial office. See Section 7.1.3, [below](#).

As always, please reach out to the JCEC for guidance on other issues that may arise.

2.2.5 Candidates Who Currently Hold Non-Judicial Public Office

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]; cf. [Joint Opinion 00-78 and 00-80](#) [noting, in light of section 100.5(A)(1)(c), that “we cannot say that, as a matter of judicial ethics, the chief assistant district attorney [who is running in a primary against two incumbent judges] is precluded from appearing in court during the campaign, assuming that such appearances are part of his/her official duties”]).

The Committee has advised that, for the purposes of the Rules Governing Judicial Conduct, a judge “assumes office upon taking and filing his/her oath of office” (Opinion [04-137](#)). Thus, for example, a non-judge who is seeking election to judicial office may remain employed as a police officer until he/she takes and files the oath of office as a judge (Opinion [15-01](#)), and a non-judge who is seeking full-time judicial office may continue to practice law until he/she takes and files the oath of office as a full-time judge (Opinion [98-92](#)).

2.2.6 Candidates for Town or Village Justice Positions

Candidates for election to Town Justice or Village Justice positions are generally subject to the same ethical standards as other judicial candidates throughout their campaigns.

Thus Town and Village Justice candidates, like all other judicial candidates, should review the applicable Rules and consult the Judicial Campaign Ethics Center for guidance as needed.

However, candidates for election to town or village courts are not required to:

- complete the campaign ethics training program approved by the Chief Administrator of the Courts (*see* 22 NYCRR 100.5[A][4][f]) or
- file a financial disclosure statement with the Ethics Commission for the Unified Court System (*see* 22 NYCRR 100.5[A][4][g]).

Of course, because they are held to the same ethical standards as other candidates, Town and Village Justice candidates are encouraged to view the campaign ethics training program online, even though the training is not mandatory for them.

2.2.7 Judge as Candidate for Non-Judicial Office

A judge must resign from judicial office on becoming a candidate for elective non-judicial office, other than that of a delegate in a State constitutional convention (22 NYCRR 100.5[B]).² A judge may nonetheless test the waters for non-judicial office by making an appearance before the Executive Committee of a political party for the purpose of being interviewed as a possible candidate for the position of district attorney (Opinion [93-55](#); *see also* Opinion [97-65](#)). See also Section 2.1.1, [above](#), for further discussion of testing the waters.

2.3 Mandatory Education Program

The Rules require all judicial candidates (except for those seeking town or village justice positions) to attend a mandatory judicial campaign ethics education program (22 NYCRR 100.5[A][4][f]).

The rule provides that all judge and non-judge candidates for elective judicial office “shall complete” the ethics training program “any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office” (*id.*). For candidates running in a primary election, the date of nomination is defined as “the date upon which the candidate files a designating petition with the Board of Elections” (*id.*).

This training program is administered by the JCEC. Contact the JCEC at 1-888-600-5232 for more information and to register; see also the JCEC’s [Training FAQs page](#).

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

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]).

The JCEC has prepared an [online FAQs page](http://www.nycourts.gov/IP/ethics/FDform.shtml) to help candidates determine whether and when they must file (<http://www.nycourts.gov/IP/ethics/FDform.shtml>).

For more information, such as what forms to use, what must be disclosed, and where to file, please visit the Ethics Commission's website at <http://www.nycourts.gov/ip/ethics>, or contact the Ethics Commission at 1-212-428-2899 for more information.

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

2.5 Independent Judicial Election Qualification Commissions

The independent judicial election qualification commissions were established by the chief administrator of the courts in February 2007 (22 NYCRR 150). All judicial candidates, other than candidates for town or village justice, are invited to submit specified information to one of these commissions for evaluation (22 NYCRR 100.5[A][7]; 22 NYCRR 150 & Appendix A[5][A]; Opinion [07-91](#)). Please visit <http://www.ny-ijeqc.org> for more information. These independent judicial election qualification commissions are different from, and in addition to, any other screening panels that may be offered by bar associations and political parties or other entities. See Section 3.3.2, [below](#), for further discussion of screening panels and their ratings.

3. Limits on Permissible Political Activity

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

3.1 Membership in Political Parties; Voting; Signing Nominating Petitions

All judges and judicial candidates may maintain membership in a political party and identify themselves as a member of a political party, regardless of whether they are in their window period (22 NYCRR 100.5[A][1][ii]; 100.5[A][1][b]; Opinion [91-68](#)). 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](#)). 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. The Committee advised in 1990 that 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 (Opinions [90-153](#); [90-139](#)). In 2009, the Committee expressly modified these earlier opinions, advising that a judge may attend a political party caucus held for the purpose of nominating and voting for political candidates and may vote for the candidate(s) of his/her choice even if voting is accomplished other than by secret ballot (22 NYCRR 100.5[A][1][ii]; Opinion [09-180](#)).

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

3.2 Membership in Political Clubs or Organizations

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

Sitting judges may not be members, leaders, or officers of political clubs or organizations, whether or not they are in their window period (22 NYCRR 100.5[A][1][a]-[b]; Opinion [96-29](#) [judge may not serve as a political party’s committee person]; [90-88](#) [judge may not be a member of a Chairman’s Club of a county political organization]), and may not pay dues to such organizations (Opinion [91-68](#)).

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

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

office (22 NYCRR 100.0[A]), he/she must resign any leadership position he/she may have held in any political club or organization.

3.3 Endorsement by Political Organizations and Other Persons and Entities

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

Improper Pressure or Appearance of Impropriety. Any solicitation or acceptance of support or endorsements must be done in a time, place and manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). Among other things, the judge must not create the appearance or reality of improper pressure on attorneys who have cases pending before him/her (*compare* Joint Opinion [05-105, 05-108, and 05-109](#); Opinion [97-99](#); 2009 CJC Ann. Rep. at 176-80 [disciplinary determination] *with* Opinion [04-94](#) [judge may accept an offer of support for his/her candidacy from an elected official who recently appeared before him/her on a family court matter, made after the parties and their attorneys resolved the matter by stipulation without the judge’s intervention on their first court appearance]). A judge who is a judicial candidate within his/her window period may ask attorneys who regularly appear before him/her to attend a reception and speak to attendees about their experience appearing before the judge, as long as the candidate takes care to avoid any appearance of undue pressure on the attorneys in making this request (Opinion [08-152](#); *cf.* 2009 CJC Ann. Rep. at 176-80 [disciplinary determination]). A town justice should not ask individual court officers of the town court to publicly support his/her re-election to avoid any appearance of undue pressure, but may solicit endorsements during his/her window period from any organization to which the officers may belong, such as a union or court officers’ association (Opinion [11-65](#)).

Improper Pledges or Promises. A candidate must be careful when seeking or accepting an endorsement not to make any commitments, pledges or promises of conduct that are inconsistent with the impartial performance of the adjudicative duties of the office (*see* 22 NYCRR 100.5[A][4][d]; Opinions [93-99](#); [93-52](#); *cf.* Opinions [16-07](#); [candidate may not sign a pledge to support and endorse other party candidates or to consult with the party on any appointments when in public office]; [99-44](#); [99-33](#) [candidate may not sign a pledge to support a party’s platform]). (Restrictions on campaign speech are covered in more detail in Section 5, [below](#)). 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. See additional discussion of judicial campaign speech in Section 5, [below](#).

Single-Issue Parties. The mere fact that a political party or any other organization is limited to the single issue suggested in the party's name does not, without more, preclude a judicial candidate's acceptance of the party's endorsement or nomination (Opinions [15-71](#); [14-113](#); [93-52](#); cf. Opinion [00-86](#) ["Clearly, accepting a nomination ... does not necessarily require acceptance of that party's goals, positions, or platform."]).

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

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

Disclosure. 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 Committee has advised:

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

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

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

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

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

3.3.1 Questionnaires

A judicial candidate may answer questionnaires provided by a screening committee, an independent judicial election qualifications commission, a union, the League of Women Voters, or other groups, provided that the questions do not seek to elicit a pledge, promise or commitment inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d][i]-[ii]; Opinions [05-119](#) [League of Women Voters]; [93-106](#) [questionnaire from bar association’s judicial screening committee]; [93-99](#) [questionnaires from National Women’s Political Caucus and/or the Republican Pro Choice PAC]). A candidate may respond to questions regarding the proper administration of justice, and may make a promise or pledge to perform faithfully and impartially the duties of judicial office (22 NYCRR 100.5[A][4][d][i], [iii]). A judicial candidate may sign a “Statement of Principles” pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion [05-119](#)). The statements a candidate makes on a questionnaire or in seeking an endorsement are subject to the same ethics rules as the candidate’s other campaign statements, as explained further in Section 5, [below](#).

3.3.2 Screening Panels

The Rules Governing Judicial Conduct do not require a judicial candidate to participate in any screening process to determine his/her qualifications for judicial office, whether conducted by a political party, a bar association, or an independent judicial election qualification commission (22 NYCRR 100.5; Opinion [07-91](#)).⁴ However, “appearing before a bar association’s judicial screening committee is not a prohibited activity” under the Rules (Opinion [94-86](#) [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”]). Thus, for example, a judge or non-judge judicial candidate for election to town or village justice may fully participate as a candidate in a local bar association’s screening process, subject to generally applicable limitations on judicial campaign speech (Opinion [12-97](#)).

⁴ The independent judicial election qualification commissions were established by the chief administrator of the courts (22 NYCRR 150). Please see Section 2.5, or visit <http://www.ny-ijeqc.org> for more information.

A judicial candidate may appear before a political party's screening panel (Opinion [11-64](#)). A judge may even apply to a political party's judicial screening panel to determine his/her qualifications for a particular judicial office at a time when there are no actual, known vacancies for such office provided (1) there is a good-faith reason to believe there will be a vacancy later in the same election cycle, (2) the judicial screening panel process is available to all potential candidates, and (3) the panel is an official screening panel, such as a standing panel of an existing political party (Opinion [09-40](#)).

Disqualification is not automatically required if attorneys on the screening committee later appear before the judge as attorneys (Opinion [11-64](#)). See discussion in Section 8.4, [below](#).

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](#)).

The Committee has advised 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](#)).

Providing Names of References. A judicial candidate may provide a party screening panel with the names of individuals "who can meaningfully assess the [candidate's] qualifications, character and temperament" (Opinion [11-64](#)); and, in the Committee's view, the public can only benefit when such individuals are also "familiar with the legal system" ([id.](#)).

Attorneys. A judge who is a judicial candidate may provide the names of attorneys who regularly appear before him/her as references (Opinion [97-99](#)).

Judges. A judicial candidate should not ask sitting judges to write to a political party's screening panel directly but, instead, should give the panel names of sitting judges the candidate wishes the panel to contact (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 3; Opinion [11-64](#) [noting that "sitting judges are not only familiar with the legal system but are likely well-situated to observe conduct that is relevant to a potential judicial candidate's qualifications, competence, character, and temperament" and therefore a candidate may "provide a political party's screening panel with the names of sitting judges as references, if the candidate wishes to do so"]).

Asking Individuals to Provide Information Directly to a Screening Panel. The Committee has addressed two specific situations so far. For other situations not directly covered by these opinions, candidates may seek further guidance from the JCEC or the Committee.

Asking attorneys. 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, but only if such materials are given directly and exclusively to the screening committee and not to the judge (Opinion [97-99](#)).

Asking judges. By contrast, a judicial candidate should not ask sitting judges to write to a political party's screening panel directly but, instead, should give the panel names of

sitting judges the candidate wishes the panel to contact (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 3).⁵

Use of Screening Panel Ratings. A judicial candidate may inform the public that an independent judicial election qualification commission has found the candidate qualified for the judicial position he/she seeks and may publish an exact copy of the commission’s press release about such finding (Joint Opinion [07-150 and 07-151](#)). However, if an independent judicial qualifications commission issues only one of two ratings – “qualified” or “not qualified” – a judicial candidate may not state that he/she has received the “highest” or “best” rating from the commission (Opinion [09-162](#)).⁶ A judicial candidate may also comment about his/her opponent’s rating by an independent judicial qualifications commission as long as his/her comments are accurate and not misleading (Opinion [09-162](#)).

A judicial candidate may also truthfully refer to a local bar association evaluation committee rating of his/her qualifications in his/her campaign materials (Opinion [12-97](#)). The Committee 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](#)).

A judicial candidate may not, however, participate in the screening of other candidates (*Matter of Raab*, 100 NY2d at 315; *see* Opinions [16-47](#) [a non-judge judicial candidate in his/her window period may not serve on a bar association’s screening panel evaluating applicants for appointment to state or federal judicial office]; [00-64](#)). *See* also a discussion of campaign-related disqualifications in Section 8, [below](#) (Opinions [12-97](#); [11-64](#); [10-121](#)).

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

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

⁵ The Committee has emphasized that, to avoid any appearance that a sitting judge is engaging in impermissible political activity by providing comments to a political party’s screening panel, “the judge’s comments should be made solely in response to a direct request from the [political] party’s screening panel and should be addressed only to the requesting panel” (Joint Opinion [12-84/12-95\[B\]-\[G\]](#)).

⁶ Part 150 [was amended in March 2012](#) to provide that the independent judicial election qualification commissions in all four departments will evaluate judicial candidates “to determine whether they are highly qualified, qualified, or not qualified for the office to which they seek election” (22 NYCRR 150.5[a]). Thus, the independent judicial election qualification commissions can now issue three different ratings.

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

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

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

Circulating Petitions. A Supreme Court candidate may circulate petitions listing only the names of the delegate candidates who will support his/her nomination, and no other names, but must make clear that his/her endorsement of such delegates is for the purpose of furthering his/her own candidacy (Joint Opinion [10-101/11-01](#)).

Campaign Literature. A Supreme Court candidate may use his/her own campaign funds to pay for campaign literature or mailings in which the judicial candidate will ask voters to vote in a primary election for the judicial convention delegates who will support his/her nomination, but again the candidate must make clear that his/her endorsement of the delegate candidates is for the purpose of furthering his/her own candidacy (Joint Opinion [10-101/11-01](#)). In such campaign literature or mailings, the Supreme Court candidate may announce and comment on the fact that particular delegate candidates have pledged to support him/her but should not further describe or comment on the delegate candidates' views or stances on issues (*see id.*).

Direct and Indirect Campaign Contributions. A Supreme Court candidate may not make campaign contributions to a delegate candidate's campaign and may not pay for a delegate candidate's own advertisements (Joint Opinion [10-101/11-01](#)).

Must Comply with Applicable Laws and Rules. The campaign activities authorized in Joint Opinion [10-101/11-01](#) are only ethically permissible "to the extent that they are legally permitted and otherwise performed in compliance with the Rules Governing Judicial Conduct" (*id.*)

3.4 Nominating and Designating Petitions⁷

A judicial candidate may circulate a nominating or designating petition only if the petition includes the candidate's own name as a nominee or designee (Opinions [09-148](#); [03-42](#); [98-99](#); [91-96](#); [91-94](#)). Judicial candidates may be listed together on a petition with other candidates on their slate (Opinions [03-06](#); [02-64](#)). Thus, a judicial candidate may circulate a petition for several candidates that includes his/her own name, but may not circulate individual petitions for other candidates (Opinions [09-148](#); [02-64](#); [98-99](#); [91-94](#); *compare* 2017 CJC Ann. Rep. at 192-202 [candidate disciplined for participating in prohibited political activity by circulating an individual designating petition for another candidate for elective office]).

Sitting judges who are judicial candidates have sometimes asked whether they may authenticate nominating petitions. The question of who may authenticate a nominating petition is primarily a legal question (*see, e.g.*, Election Law § 6-132; *Russell v. Board of Elections*, 45 NY2d 800 (1978) (“Given the unambiguous wording of the statute . . ., it is clear that the Legislature intended to restrict the class of officials who are authorized to authenticate a nominating petition.”). However, as it appears that a notary public may authenticate petitions of any political party,⁸ the Committee has discussed this question in light of certain constitutional restrictions on several categories of judges. Specifically, the Committee has advised that “a judge who is constitutionally barred from holding ‘another public office or trust’ (NY Const art VI §20[b]) may not serve as a notary public” and therefore cannot witness signatures on his/her petitions as a notary public (Opinions [14-109](#); [13-111](#); [03-129](#)). By contrast, a judge who is not subject to this constitutional bar may “hold the office of a Notary Public, and as such, may authenticate a nominating petition of any political party as a Notary Public” during his/her window period (Opinions [03-42](#) [town or village justices]; [14-107](#) [city court judges who preside outside of New York City]; *compare* 2017 CJC Ann. Rep. at 192-202 [a part-time judge and judicial candidate, who was not a notary public, disciplined for failing to comply with the law by improperly attesting to signatures on two designating petitions]).⁹ Similarly, a non-judge candidate for judicial office who is also a licensed notary public may, to the extent it is legally

⁷ 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.

⁸ “In lieu of the signed statement of a witness who is a duly qualified voter of the state qualified to sign the petition, the following statement signed by a notary public or commissioner of deeds shall be accepted: ...” (Election Law § 6-132[3]; *see also id.* 6-138[2]; 6-140[2]; 6-204[1]; 6-206[2]).

⁹ Article 6, Section 20(b) of the New York State Constitution applies to a “judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate’s court, judge of the family court or judge of a court for the city of New York” (Opinion [13-111](#)). The provision does not apply to a town or village justice (Opinion [03-42](#)), district court judge (Opinion [98-07/98-24](#)), or city court judge outside of New York City (Opinions [14-107](#); [90-32](#)).

permissible, authenticate individual and joint petitions that do not bear his/her name in his/her capacity as a notary public during his/her window period (*see* Opinion [15-145](#)).

A judge may also 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](#); [89-89](#)).

3.5 Attendance at Political Gatherings

During the judicial candidate's window period, the candidate may, unless otherwise prohibited by law or rule, attend and speak at gatherings on behalf of his/her own candidacy (22 NYCRR 100.5[A][2][i]-[v]). The candidate may attend a wide variety of events as part of his/her campaign, including his/her own fund-raising events (Opinion [91-37](#)), fund-raisers for other elected officials (Opinions [03-51](#); [01-17](#); [91-94](#)), a fund-raiser sponsored by a not-for-profit advocacy organization that promotes equal rights for gay and lesbians (Opinion [03-45](#)), politically sponsored golf tournaments (Opinion [12-129\[A\]-\[G\]](#), at Question 3), or a rally sponsored by civic associations in opposition to a shopping mall project in the candidate's township (Opinion [00-82](#) [decided without reference to Part 100.5]).¹⁰ 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, [below](#).

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](#) [contribution was not for judge's own campaign]). 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](#); [88-87](#)), 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](#)).

¹⁰ The principle is not unlimited, of course, because a judicial candidate must maintain the dignity of judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). For example, where an entity organizes and promotes its fund-raiser around a theme exhorting attendees to "repeal or disregard" a particular statute, a judicial candidate should not attend that particular event (Opinion [14-49](#) ["the theme of simply 'repealing or disregarding' a particular law is profoundly disrespectful of the rule of law, and reflects an attitude which is wholly incompatible with the judicial function"]).

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 seen as an impermissible political contribution (Opinions [13-60](#); [12-129\[A\]-\[G\]](#); [03-122](#) [“The payment may not exceed the cost of the ticket.”]; [92-97](#) [where tickets are offered at multiple prices, the candidate “must purchase those with the lowest price”]; [88-26](#) [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]).

“Pay-What-You-Wish” fund-raiser: Subject to certain limitations, a judicial candidate may pay to attend a political fund-raiser for which no tickets are sold and no standard admission price has been set (Joint Opinion [13-99/13-100 and 13-101/13-102](#)). If the invitation provides a “list of suggested levels of ‘donations’ or ‘support,’” a judicial candidate “may treat these ‘suggested donation’ levels as ticket prices and may, therefore, pay the lowest priced suggested donation if it is \$250 or less” (Joint Opinion [13-99/13-100 and 13-101/13-102](#)). If the invitation provides no guidance whatsoever to attendees about how much they are expected to pay, a judicial candidate may pay up to \$250 to attend the event (Joint Opinion [13-99/13-100 and 13-101/13-102](#)). For situations not directly covered by Joint Opinion [13-99/13-100 and 13-101/13-102](#), including the question of how much a judicial candidate may pay for two people to attend such an event, please contact the Subcommittee for an opinion.

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

Source of funds: The Rules do not specify whether personal funds (as opposed to campaign funds) may be used to purchase tickets to political events. However, it appears that both “campaign contributions” and the “personal funds” of judicial candidates may be

used to pay for campaign-related goods and services, subject to the fair value rule (22 NYCRR 100.5[A][6]; *cf.* Opinions [08-43](#) [noting that a campaign may be entirely self-financed]; [03-122](#) [permitting judicial candidate to substitute a personal check for a committee check, where the event sponsor states that the committee check cannot legally be accepted, as “payment in a legally required manner would not be prohibited”]; Joint Opinion [98-132 and 98-136](#) [holding that “reimbursement of personal funds used solely for campaign-related expenses is not prohibited” under the circumstances presented]).

No Involvement in Internal Workings of a Political Party. Although a judicial candidate may attend political functions during his/her window period, he/she may not be involved in the political process other than in furtherance of his/her own campaign or as a voter (*see generally* 22 NYCRR 100.5[A][1]-[2]; *Matter of Raab*, 100 NY2d at 315). Thus, a judicial candidate may not sit in on a political party’s interviews of candidates for elective office, even if requested to do so by the party (Opinion [00-64](#)). Similarly, if a judge who is a judicial candidate wishes to attend the national convention of a political party, he/she must do so strictly as a spectator (Opinion [99-156](#); *see also* Opinion [95-83](#)). A judge who is a judicial candidate also may not accede to the request of a political organization’s district leader to comment on a proposed judicial candidate rating system for the political party (Opinion [12-144](#)).

Speaker or Guest of Honor. A judicial candidate must not be a speaker, guest of honor, or award recipient at a politically sponsored event, unless either (a) the event is not a fund-raiser, or (b) the candidate’s participation is unannounced prior to the event (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 1). During his/her window period, a judicial candidate may nonetheless attend fund-raising events sponsored by a political organization, 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](#)).

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](#); [91-67](#) [recently elected judge may not attend political event held “six months and one day after the general election”]; [91-24](#); [89-136](#)). The judge’s campaign committee may purchase these tickets using campaign funds (Opinion [92-29](#); [91-24](#).) 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](#)).

See Section 2.2.2, [above](#), for a discussion of how to calculate the window period. See also Section 7.3, [below](#), for a discussion on other post-election conduct.

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; *see also* Opinions [06-71](#); [97-31](#); [92-95](#); [89-26](#); [88-32](#)). A non-candidate judge may not escort his/her spouse (who is a candidate for elective office) to political events held for the spouse, even where the judge will not participate in the program or be introduced at the event (*see* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]; *see also* Opinion [06-147](#)). 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](#); *cf.* Opinion [95-109](#)). 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 Committee 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]). Similarly, a judicial candidate may not permit his/her campaign committee to solicit or accept items for donation to a local charity (Opinion [14-146](#)).

To the extent legally permissible, a judicial candidate may use campaign funds to attend bar association functions or other events that are not hosted by political organizations throughout his/her window period, including in the post-election window period, provided that his/her attendance is in furtherance of his/her campaign for judicial office and the candidate determines that he/she will receive fair value for the expenditure (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 2).

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

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

A judicial candidate may, of course, contribute to his or her *own* campaign to the extent permitted by the Election Law (Opinions [01-21](#); [91-68](#); 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](#)).

However, a judicial candidate may not personally solicit or accept campaign contributions or funds (22 NYCRR 100.5[A][1][h]; 100.5[A][5]; *see also, e.g.*, Opinions [16-79](#) [a candidate may not personally distribute palm cards and other campaign materials that asks the public “[t]o volunteer and/or donate to’ the candidate by accessing the campaign committee’s website”]; [92-43](#) [recently elected judge may not personally sell tickets to a political victory celebration]; 2013 CJC Ann. Rep. at 75-94 [“While it is improper for a judicial candidate to personally accept campaign contributions..., a disguised contribution is equally impermissible.”]). Therefore, if a candidate wishes to accept any campaign contributions, he/she must form a campaign committee (22 NYCRR 100.5[A][4][c]; 100.5[A][5]; Opinion [16-79](#) [a candidate may not personally distribute campaign materials that, on their face, invite the public to “donate” to his/her campaign, but may permit his/her campaign committee to do so]). Candidates should, of course, comply with any Election Law requirements with respect to reporting and/or registration of their committee.

4.1 Campaign Committees

A judicial candidate may establish one or more committees of “responsible persons” to solicit and accept reasonable campaign contributions and support from the public (including lawyers), manage the expenditure of funds for the candidate’s campaign and obtain public statements of support for the candidacy (22 NYCRR 100.5[A][5]; Opinions [07-135](#); [95-62](#)).¹¹ The campaign committee may also conduct the candidate’s campaign through media advertisements, brochures, mailings, candidate forums, etc. (22 NYCRR 100.5[A][5]).

Formal Requirements. The Rules Governing Judicial Conduct do not impose any formal filing or registration requirements for the establishment of a campaign committee or designation of a campaign treasurer or finance chair. Such requirements, if any, would be imposed by law or regulation.

Who May Serve on the Campaign Committee. Although the Rules do not set forth a list of qualifications for persons who may serve on a campaign committee, it is the judicial candidate’s obligation to make sure that all individuals serving on the campaign committee are “responsible persons” (22 NYCRR 100.5[A][5]; “Observations and Recommendations,” 2001 CJC Ann. Rep. at 26-27; cf. Opinion [07-64](#) [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate’s behalf]). Attorneys may serve on the campaign committee, and a judge who is a candidate for judicial office may personally ask individual attorneys to join his/her campaign committee (Opinion [92-19](#)), although this must be done in a manner consistent with the

¹¹ A judicial candidate who wishes to solicit or accept campaign contributions must establish a committee to solicit and accept campaign contributions on his/her behalf (22 NYCRR 100.5[A][1][h]; 100.5[A][2][i]; 100.5[A][4][c]; 100.5[A][5]; Opinions [07-135](#); [95-62](#)).

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

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](#)). See generally Section 7, [below](#), 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](#); see also Section 4.2, [below](#), regarding joint fund-raising, and Section 5.5, [below](#), regarding joint campaigning). Similarly, a judicial candidate may not participate in a campaign bank account maintained by a political organization, in which contributions received by the organization on behalf of the judge are mingled with contributions received on behalf of other judicial and non-judicial candidates (Opinion [97-80](#)).

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

A judicial candidate should not personally send a letter to persons who contributed funds to his/her election campaign, because such a letter would clearly signify knowledge of those who contributed (Opinion [02-06](#)). The campaign committee, however, may send a letter thanking contributors for their financial support, provided that the committee sends it within the candidate's window period (Opinion [02-06](#)). Such a letter may even include a direct quote from the candidate expressing thanks, but the campaign committee should make clear in the letter that the candidate has not been informed of the identities of the contributors (*id.*).¹²

¹² The Committee has recognized that a judge or judicial candidate may inadvertently or incidentally become aware of some of his/her campaign contributors through attendance at fund-raisers (Opinions [07-88](#); [04-106](#)), through a litigant's decision to seek the judge's disqualification based on campaign contributions (Opinion [10-135](#)), or through reading a newspaper (Opinion [04-106](#)). Such knowledge, inadvertently gained, does not automatically require a judge's

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](#)).

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](#)).

4.1.1 Specific Fund-Raising Strategies and Techniques

Permissible Methods of Fund-Raising. Although the Rules do not set forth a list of permissible and impermissible methods for a campaign committee to use in raising funds for the judicial candidate’s campaign, any method chosen must be consistent with the dignity, impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). The Committee has provided guidance 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](#)).

disqualification, as long as the judge concludes that he/she can be impartial. See Section 8.4. In 2011, the Administrative Board adopted [Part 151](#), a case assignment rule, to help ensure that cases involving a judge’s larger campaign contributors are not assigned to the judge for a two-year period (22 NYCRR 151). [Part 151](#) is designed to operate at the administrative level, without any involvement by the judge, parties, or counsel.

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

Campaign Committee's Facebook page: The campaign committee may create a Facebook page and make connections with the campaign committees of other candidates on the same slate (Opinion [15-121](#)). The judicial candidate must, however, instruct the campaign committee to refrain from any impermissible speech, such as comments that would create an appearance that the candidate directly or indirectly publicly endorses another candidate or comments on another candidate's qualifications (*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.*).

Cautionary Note: Candidates who wish to authorize or permit their campaign committees to raise money by conducting raffles or other games of chance should carefully check applicable statutes and regulations to determine the lawfulness of the proposed activity.¹³

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](#)).

Providing Free Admission to a Fund-Raising Event. A judicial candidate may permit other individuals to attend his/her fund-raiser without charge, regardless of whether such individuals are currently seeking election to public office (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 4).

Professional Fund-Raising Consultant. A judicial candidate may not hire a professional fund-raising consultant who will be paid on a percentage or commission basis (Opinion [12-129\[A\]-\[G\]](#), at Question 1).

¹³ The Board of Elections has posted an [online brochure](#) which discusses certain issues regarding door prizes and raffles. The brochure suggests contacting “the NYS Racing and Wagering Board (518-395-5400) or the Attorney General (518-474-7330)” for further information.

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](#)). Also, two judicial candidates may permit their campaign committees to host a joint fund-raiser and "accommodate an attendee who supports only one candidate and therefore refuses to pay 50% of the ticket price to each campaign committee, by allowing him/her to pay the full price to one campaign committee," provided the campaign committees shield the candidates from the accommodation details (Opinion [16-75](#)).

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](#)).

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](#)).

For a discussion of joint campaigning see Section 5.5, [below](#).

4.3 Proper Utilization of Campaign Funds

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

Campaign contributions may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]; Election Law §14-130) and thus should not be used for personal expenses unrelated to the campaign (Opinion [89-152](#)). See Section 7.1.2, [below](#), for a discussion of several prohibited uses of campaign funds.

Campaign funds generally should be used in a manner consistent with the contemplation of donors, such as to fund campaign activities and literature, and after the campaign ends, to fund a modest and reasonable victory party within the window period as part of the election cycle (Opinion [87-16](#)). See Section 3.5, [above](#), regarding attendance at political events; see Section 5, [below](#), regarding campaign advertisements.

4.3.1 *Special Considerations - Payments to Political Committees and Others*

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

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

Nor may the candidate pay for a share of a political party’s headquarters or general campaign mailings, such as those generally encouraging voters to vote for that party’s candidates without specifying the names of particular candidates (*Matter of Raab*, 100 NY2d at 316 [candidate sanctioned for, among other things, paying a substantial sum to a political party without verifying that the payment was used to cover expenditures for his own campaign as opposed to other candidates’ races or general party needs]; Opinions [01-21](#) [candidate may not pay \$2,500 to party to “support the endorsed candidates for town offices in the payment of campaign expenses”]; [92-97](#); *cf.* Opinion [91-94](#) [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](#); [91-94](#)). The Committee has advised 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](#); *see also* Opinion [01-21](#); *Matter of Raab*, 100 NY2d at 316). In general, a judicial candidate may presume the data a political organization provides detailing the costs the candidate incurred is accurate, absent indicia of unreliability (*see* Opinion [14-167](#)). However, where the statement provided by the organization is plainly unreliable or inaccurate on its face, the candidate must request a revised statement of actual costs incurred by the organization (*see id.*).

Payment to Campaign Workers. A judicial candidate may, to the extent legally permissible, compensate responsible persons hired to help the candidate pass petitions and gather signatures or may, where their pay is based on the amount of time spent (Joint Opinion [15-112/15-146](#)). Similarly, a judicial candidate may pay a professional campaign manager on an hourly, or other time basis, or a flat fee for working on the campaign (*see id.*). A candidate may not, however, pay a victory bonus or any other kind of incentive to a campaign worker (*see id.*; Opinion [12-129\[A\]-\[G\]](#) [candidate may not hire consultant who will be paid on a percentage or commission basis]).

4.3.2 *Post-Election Window Period*

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

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

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

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

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

To the extent legally permissible, a judicial candidate may also use campaign funds to attend bar association functions or other events that are not hosted by political organizations throughout his/her window period, provided that his/her attendance is in furtherance of his/her campaign for judicial office and the candidate determines that he/she will receive fair value for the expenditure (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 2).

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](#) [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”]).

4.4 Special Considerations - Candidate Who Anticipates Running for Two Positions in the Same Election Cycle

The Committee has advised that funds raised for one judicial campaign may not, after that campaign has concluded, be transferred or retained for use in another judicial campaign, whether for the same or a different office, even if the donors consent (Opinions [01-81](#); [92-68](#); [90-06](#); [88-89](#)). Of particular note, the Committee reasoned that “the contributions were given for the candidate’s election to a specific judicial office and not for another office,” and that a donor who supported a candidate against one opponent “may not support [him/her] against a different opponent” (Opinions [90-06](#); [88-89](#); cf. 22 NYCRR 100.5[A][4][a]).

Opinion [12-172](#) addresses special considerations for a candidate who has accepted a party’s nomination for one judicial position, but hopes to receive a nomination for Supreme Court later in the same election cycle. A judicial candidate may not use funds raised for one judicial race to make purchases which are exclusively related to his/her campaign for a different judicial

position, but may use those funds to make generically useful purchases which could be used for either judicial campaign (Opinion [12-172](#)).

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](#)).

5.1 Form of Advertisements

Any form of media, including but not limited to radio, television, the Internet, newspapers, periodicals, palm cards, lawn signs, flyers, billboards, posters and handbills, may be used in a judicial campaign (*e.g.*, Opinions [07-135](#); [05-99](#); Joint Opinion [05-23 and 05-24](#)). A judicial candidate may personally appear in media advertisements and may distribute pamphlets and other literature to support his/her candidacy (22 NYCRR 100.5[A][2][i]-[ii]). The Committee has provided guidance 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](#) [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 (Joint Opinion [13-99/13-100 and 13-101/13-102](#); Opinion [99-38](#) [suggesting the possibility that paying \$3,000 for an advertisement might be regarded as an impermissible political contribution]).

However, a judicial candidate may not pay a premium for the increased exposure of an inside cover or other prominent placement of the advertisement (Joint Opinion [13-99/13-100 and 13-101/13-102](#)).

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

A judicial candidate may include a link from his/her campaign website to a political organization's website which contains information promoting the judicial candidate's campaign (Joint Opinion [12-84/12-95\[B\]-\[G\]](#), at Question 5). Specifically, the Committee reasoned that "link[ing] to the website of a political party that has endorsed" the candidate is "a way for the candidate to demonstrate that he/she in fact has obtained the party's support" ([id.](#)). The candidate should be careful that his/her link "is not presented in such a way that it appears to vouch for or adopt the content of the political party's website" ([id.](#)).

Cautionary Note: The Committee suggests that judicial candidates seek guidance from the Subcommittee before including a link from their campaign website to any other partisan political websites beyond the specific circumstances addressed in the Committee's published opinions (*cf.* "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]).

A candidate may use an email signature block on his/her personal email which requests non-financial support from voters and provides links to the campaign committee's social media page and campaign website (Opinion [13-126](#)).

Radio. A judicial candidate may be endorsed for re-election in a radio advertisement by a candidate for elective non-judicial office, provided the radio advertisement does not suggest the judicial candidate is endorsing the other 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](#); *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](#)).

A judicial candidate may not use a photograph taken at a social event with an elected local public official who is not part of the candidate's slate and who has not

endorsed the candidate, unless the official consents to use of the photograph in the judicial candidate's campaign (Opinion [12-114](#)). The Commission on Judicial Conduct publicly admonished a judicial candidate who depicted one of his/her opponents (three candidates vying for two seats) in his/her campaign literature (2012 CJC Ann. Report at 136-37). The CJC stated that such conduct was deceptive and thus ethically impermissible, given that his/her opponent did not grant the respondent permission to use his/her likeness and the literature appeared to suggest that both candidates were endorsed by a newspaper, when only the opponent received such endorsement (*id.*).

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

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

Hosting a Free "Meet and Greet" Event. A judicial candidate may hold a free "meet and greet" event at which modest and reasonable refreshments are served (Opinion [12-129\[A\]-\[G\]](#), at Question 2). However, a judicial candidate may not hold a meet-and-greet campaign event at which the candidate's campaign committee will also collect items to be donated to a not-for-profit organization (Opinion [14-146](#)).

5.2 Use of Judicial Title, Robes, and Courthouse

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

Special Considerations for Candidates Who are Seeking a Position They Do Not Currently Hold. Please see "Reference to Position Sought" (in Section 5.3.4, [below](#)) for the Commission on Judicial Conduct's views on campaign signs that omit the word "for" between the name of the challenger and the name of the position sought.

Who May Use Judicial Title and Robes. An incumbent judge running for re-election or for election to another judicial position may be identified as "judge" (or "justice," as may be appropriate) on campaign signs and other literature (Opinion [94-50](#) [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](#) [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](#) [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](#) [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](#)). 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](#)).

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 video recording 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](#)). 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 Content of Campaign Speech

In general, a judicial candidate must ensure that his/her campaign statements are consistent with the impartiality, integrity, independence and dignity of judicial office (*see* 22 NYCRR 100.5[A][4][a]). Thus, for example, judicial candidates are held to a high standard of truthfulness (22 NYCRR 100.5[A][4][d][iii]; Opinions [12-114](#); [09-162](#)); must avoid pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office (22 NYCRR 100.5[A][4][d][i]-[ii]); and must not publicly endorse or oppose (other than by running against) another candidate (22 NYCRR 100.5[A][1][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 (NYSBA Opinion 289).

5.3.1 Truthfulness

The Committee has advised that there is “no place for distortions in a judicial campaign” (Opinion [12-114](#)). In a footnote, the Committee also quoted with apparent approval the following language from a published disciplinary decision, which in turn relied on and quoted an earlier Court of Appeals opinion:

Distortions and misrepresentations have no place in campaigns for judicial office. Judicial candidates for judicial office are expected to be, and must be, above such tactics. It is especially important for judicial candidates to be truthful because judges are called upon to administer oaths and are sworn to uphold the law and seek the truth.

(*id.* n.1 [internal quotation marks and citations omitted]). In its 2015 Annual Report, the Commission on Judicial Conduct emphasized the importance of truthfulness in judicial campaign advertisements, noting that “judges and judicial candidates have a higher obligation [than candidates for non-judicial office] under the Rules” (“Observations and Recommendations,” 2015 CJC Ann. Rep. at 22). In addition, the CJC provided the following warning:

Public confidence in the courts depends on confidence in the integrity of its judges. The integrity of a candidate who runs

misleading campaign ads is compromised even before he or she takes the oath of office.

The Commission intends to make honest advertising a better known and appreciated ethical obligation. Judges and judicial candidates have fair warning that violations in the future may result in public discipline more readily than before.

(*id.*).

5.3.2 *Pledges and Promises*

All judicial candidates must refrain from making improper pledges or promises (*Matter of Watson*, 100 NY2d 290 [2003]; 22 NYCRR 100.5[A][4][d][i]), and any promises of conduct in office must be consistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.3[B][9][a]; 100.5[A][4][d][i]-[ii]). A candidate must consider the import of his/her statements in the context of the campaign as a whole to determine whether he/she has articulated a pledge or promise that compromises the faithful and impartial performance of judicial duties (*Matter of Watson*, 100 NY2d 290 [candidate sanctioned for explicit and repeated statements that he intended to “work with” and “assist” police and other law enforcement personnel if elected to judicial office]).

For example, a judicial candidate may not:

- Make campaign statements indicating a refusal to participate in the lawful and accepted practice of plea bargaining in criminal cases (Opinion [04-95](#));
- Promise to set up and fund a “legal scholarship” if elected (Opinion [03-28](#));
- Imply a predisposition to decide particular classes of cases in a particular way (Opinion [93-101](#));
- Sign a pledge to support a political party’s platform (Opinion [93-52](#))
- Sign a political organization’s pledge requiring the candidate to support and endorse all other candidates endorsed by the organization and to consult with it on any appointments when in public office (Opinion [16-07](#)).

By contrast, a candidate may sign a “Statement of Principles” pledging that the candidate intends to use fair campaign practices during his/her campaign (Opinion [05-119](#)).

The Commission on Judicial Conduct has publicly admonished a judge for use of campaign literature advertising a lecture the judge planned to give with a “tenant attorney and activist” on how to “beat your landlord, ... and win in court!” (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]). The CJC has also publicly admonished a judge for statements which, when viewed in their entirety, conveyed bias because they “single[d] out a particular class of litigants for special treatment” (2011 CJC Ann. Rep. at 120-24).

Further, if a judicial candidate has made an improper promise during his/her campaign, he/she may be required to disqualify him/herself in certain matters (22 NYCRR 100.3[E][1][f]; *see also* Section 8.2, [below](#)).

5.3.3 Public Endorsement or Opposition

The rule against endorsing other candidates is described further in Section 3.3.3, [above](#) (special considerations for candidates seeking election to Supreme Court), and 5.5, [below](#) (joint campaigning).

5.3.4 Additional Issues and Topics

The Committee has provided guidance on a few specific issues and topics that come up frequently when candidates are considering what to say in their campaign literature.

Comments on Pending or Impending Cases. 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](#)).

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]).

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

Use of Campaign Slogans. Judicial candidates may also use campaign slogans that are consistent with the Rules (*e.g.*, Opinion [05-117](#) ["vote experience not politics"]).

Qualifications. 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](#); 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](#) [noting that the mere listing of the names and titles of these judges does not constitute impermissible participation by those judges in the judicial campaign]).

A judicial candidate should not use quotations from letters written by judges or quasi-judicial officials of the Unified Court System in his/her campaign literature, because it would

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

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

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

The Commission on Judicial Conduct has publicly admonished a judicial candidate for using campaign literature which "conveyed the erroneous impression that respondent had been endorsed" by a particular newspaper (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]; see also 2012 CJC Ann. Rep. at 130-39 [disciplinary determination]).

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

Use of Screening Panel Ratings. It is also permissible to refer to ratings by screening panels and independent judicial election qualification commissions; see Section 3.3.2, [above](#), for a discussion of relevant opinions.

Opponent's Conduct. The Committee has advised that a judicial candidate may comment on an opponent's conduct, subject to certain limitations (Opinion [12-129\[A\]-\[G\]](#), at Question 4). A candidate:

should take steps to ensure the accuracy of the information he/she includes about any opponent, and make every effort to avoid misleading the public with mere speculation or innuendo. Moreover, any reference to an opponent must be made in a manner which maintains the dignity appropriate to judicial office.

(Opinion [12-129\[A\]-\[G\]](#)). During a campaign for judicial office, a candidate may bring to the public's attention the fact that his/her opponent has been publicly admonished or censured by the

Commission on Judicial Conduct as long as such reference is made in a manner that maintains the dignity appropriate to judicial office (Opinion [01-98](#)).

By contrast, where a judicial candidate believed that an opponent engaged in unethical conduct, but there was no published finding of misconduct by an official disciplinary body, the Committee advised the inquiring candidate to “take particular care to avoid giving the false impression that such a finding has been issued or is forthcoming” (Opinion [12-129\[A\]-\[G\]](#), at n.5). Likewise, where a candidate wished to comment on historical case assignment statistics in the court to which he/she sought election, but there was no published administrative or disciplinary determination that the incumbent judge was “shirking” his/her judicial duties, the Committee advised the inquiring candidate to “carefully consider whether there may be other reasons for a seemingly imbalanced caseload in a particular court” ([id.](#)).

Response to Attacks. 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]).

Reference to Position Sought. In its 2015 Annual Report, the CJC made the following comment on misleading advertisements it had observed in judicial campaigns:

Despite having rendered some public disciplines and commenting on this subject previously in our Annual Reports, the Commission continues to see judicial campaign signs and literature phrased in such a way as to appear that a challenger already holds the particular office for which he or she is running. For example, the Commission has seen handbills, fliers, campaign posters or other literature that read such as follows -

John Doe
Family Court Judge²
Election Day - November 3rd

- even though candidate "Doe" may actually be a judge of another (typically lower) court or may not be a judge at all.

(“Observations and Recommendations,” 2015 CJC Ann. Rep. at 22 [the text of footnote 2 clarifies that use of “Family Court” in the example is merely “illustrative”]). The CJC further advised that “[a]ll judicial candidates should take steps to make certain that all of the literature, signs and ads that call for their election do not state or imply that they are incumbents of any office that they do not presently hold,” and warned that “violations in the future may result in public discipline more readily than before” (*id.*).

5.4 Judicial Decisions Affecting Campaign Activities and Comments

5.4.1 “Announce Clause” Restrictions Struck Down

In June 2002, the United States Supreme Court 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](#); NYSBA Opinion 289). Following the U.S. Supreme Court opinion, in July 2002, the New York State Court of Appeals determined that it was not misconduct for a candidate for judicial office to refer to himself/herself as a "law and order" candidate (*Matter of Shanley*, 98 NY2d 310 [2002]).

5.4.2 "Pledge and Promise" Restrictions Remain in Effect

The U.S. Supreme Court specifically refrained from addressing or striking down other language in the Minnesota rules that prohibited a candidate for judicial office from making pledges or promises of conduct in office (*White*, 536 US 765).

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 CJC had held that these statements gave the appearance that the newly elected judge would not be impartial, would not decide cases on an individual basis, and would be biased against defendants in criminal cases. The statements at issue included: an exhortation to "put a real prosecutor on the bench"; representations that the candidate (then employed as an assistant district attorney) had "proven experience in the war on crime" and could, if elected, use bail and sentencing to make the municipality "very unattractive" for certain criminal defendants; promises to "work with" and "assist" law enforcement personnel if elected to judicial office; and statements that his opponents were to blame for an increase in crime (*Matter of Watson*, 100 NY2d at 296-97, 299).

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

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

In light of the above-described cases, candidates for judicial office in New York must take great care not to run afoul of existing restrictions on campaign language. Until there has been a dispositive ruling from a court of final jurisdiction, the only prudent course for a judicial candidate to follow is to adhere to the standards called for within New York's existing Rules as interpreted and applied by the Committee 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]).¹⁴ The Committee has stated that a judicial candidate may not indirectly endorse an incumbent judge who is running for re-election by stating that he/she is the unanimous choice to “join the incumbent” judge on the bench (Opinion [05-117](#)). Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion [99-117](#)). Judicial candidates may not make statements directly in support of another candidate (Opinion [91-94](#)), and they are also prohibited from distributing literature on behalf of another candidate (Opinion [91-94](#)), 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, [below](#), 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](#)). 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](#)).

Two judicial candidates may display campaign lawn signs that have both candidates’ names printed on them, but they may not send voters one letter conveying both candidates’ qualifications and bearing both candidates’ signatures that is printed on letterhead comprising both candidates’ names (Opinion [09-176](#)). Additionally, two judicial candidates may send a joint mailing on a postcard that allows each candidate to “separately ‘give a brief summary of [his/her own] credentials and ask the recipient to cast one of their votes in his/her own favor,’” provided they avoid any implication of cross-endorsement (Opinion [16-150](#)).

Joint Advertising. 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](#) [suggesting a disclaimer that neither judicial candidate is endorsing another candidate]).

¹⁴ The Committee has recognized one very limited exception. See Section 3.3.3 (discussing Opinion [08-157](#) and Joint Opinion [10-101/11-01](#)).

Use of the Word “Team.” A judicial candidate’s participation in a joint advertisement, prepared on behalf of a slate of judicial and non-judicial candidates, is not rendered impermissible merely because the advertisement characterizes the slate as a “team” and urges voters to vote for particular row(s) on the ballot on which the slate appears (Joint Opinion [13-137/13-152/13-153](#)).

Use of disclaimer language indicating that the judicial candidate is not publicly endorsing other candidates is not mandatory for any judicial candidate (Joint Opinion [13-137/13-152/13-153](#)).

Joint Appearances. A candidate for Supreme Court who is under consideration for a major political party’s nomination may contribute proportionally to the cost of a pre-primary mailing asking minor party voters to vote for a slate of minor party judicial nominating convention delegates who have pledged to support the candidate if he/she ultimately earns a place on the major party’s ballot line, provided that the mailing makes clear that the judicial candidate’s endorsement is being made solely for the purpose of furthering the judicial candidate’s own candidacy and is otherwise consistent with applicable limitations on judicial speech (Joint Opinion [14-133/14-134](#)).

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](#); [90-166](#)).

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](#)). 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](#); 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](#); 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](#)). See also Section 3.3., [above](#), regarding personally seeking non-financial support, Section 4.1, [above](#), regarding campaign committees, and Opinion [11-65](#) (judge should not ask individual court officer who serve in judge’s court for support).

6.1 Judge’s Staff Participating in the Judge’s Campaign

All nonjudicial court employees, whether or not they are members of a judge’s staff, are subject to Part 50 of the Rules of the Chief Judge governing the political activities of non-judicial

employees. Court employees should contact the Unified Court System’s Office of Court Administration for guidance on how Part 50 applies to their particular circumstances. (Contact: ETHICS HELPLINE: 1-888-28ETHIC.)

Court employees are barred from holding elective office in a political party, club or organization, subject to certain exceptions specified in the rule itself (22 NYCRR 50.5[e]; 100.5[C][1]; Opinions [04-142](#); [00-108](#); [99-95](#); [95-43](#); [94-35](#)).

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 as long as it takes place (a) outside of scheduled work hours and (b) away from the workplace (22 NYCRR 50.1[III][B]; 50.2[c]; 50.5; 100.5[C]; Opinions [12-71](#); [07-11](#); [03-111](#) [circulating, reviewing and drafting petitions]; [94-35](#) [joining political club]; [93-100](#) [political bumper stickers and campaign signs]; [93-36](#) [soliciting and coordinating volunteers, designating persons to organize volunteer efforts, canvassing for signatures on nominating petitions, conducting telephone polls for a candidate]; [91-77](#) [participating in political campaign of law clerk’s spouse]; [90-102](#); [90-85](#) [carrying nominating petitions]; [89-101](#) [attending political fund-raiser]).

They should avoid giving the impression that the judge or the court is involved in political activities (Opinions [10-116](#); [93-100](#); [93-36](#); [90-102](#)).

Court employees may also serve on a judge’s campaign committee, subject to certain limitations depending on their roles in the court system (22 NYCRR 100.5[A][4][b]; 100.5[A][5] [members of a campaign committee must be “responsible persons”]; Opinion [04-10](#) [typist in appellate court may serve as treasurer of trial judge’s campaign committee]).

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

Personal Appointees. An incumbent judge shall prohibit members of the judge’s staff who are the judge’s personal appointees (such as the judge’s law clerk, personal secretary, etc.) from contributing, directly or indirectly, money or other valuable consideration (e.g., non-monetary contributions) in amounts exceeding \$500 in the aggregate during any calendar year, to all political campaigns or other partisan political activity (22 NYCRR 100.5[C][2]; Opinions [12-71](#); [10-76](#); [97-103](#) [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](#) [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 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]; Opinion [90-102](#)).

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](#) [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](#); [95-119](#)).

The Committee has advised that principal law clerks who are appointed to serve part-time as SCAR hearing officers during regular court hours as part of their job responsibilities are subject to the same restrictions as sitting judges with respect to political activities (Opinion [13-133](#)).

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](#); [98-142](#); [98-99](#)). 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](#)). Family members may also serve on a judicial candidate's campaign committee as long as the candidate determines that they are "responsible persons" who will abide by applicable laws and ethics rules (22 NYCRR 100.5[A][5]; *cf.* Opinion [07-64](#) [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). See also Section 4.1, [above](#).

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

Campaign Signs. A judicial candidate should not display campaign signs endorsing another candidate on his/her real property (22 NYCRR 100.5[A][1][c]-[e]), other than a sign listing the candidate as a member of a slate of current candidates (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion [07-167](#)). A judicial candidate should "strongly urge" his/her spouse not to place signs endorsing other political candidates on the real property where the judicial candidate and spouse reside, even if the spouse is the sole titled owner of the property (Opinions [07-169](#); [99-118](#); [96-112](#)). 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](#)). 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](#); [96-29](#)). Any contribution should specify that it is the contribution of the family member and not that of the judicial candidate (Opinion [96-29](#)). 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](#)).

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

A judicial candidate who is on the ballot for the general election in November need not cease all campaign conduct immediately after the election. However, some additional restrictions may apply during the post-election window period.

7.1 Unexpended or Surplus Campaign Funds

A judicial candidate may continue to make certain campaign expenditures throughout his/her post-election window period, including the purchase of tickets to events that will take place during the window period. See Section 4.3.2, [above](#).

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

7.1.1 Permissible Uses and Closing of the Campaign Account

Permissible campaign expenditures are discussed in more detail in Section 4.3, [above](#), and 7.3, [below](#). Judicial candidates should make every reasonable effort to return unexpended campaign funds to contributors on a *pro rata* basis at the conclusion of the window period (Opinions [07-187](#); [93-80](#); [91-12](#); [90-06](#); [89-152](#); [88-89](#); [88-59](#); [87-02](#); *see also* Opinion [92-94](#) [funds left over from prior non-judicial campaign]). A judicial candidate who receives a cross-endorsement may even, if he/she wishes, return most of the funds *pro rata* before the election while retaining a small sum for possible use during the window period (Opinion [05-21](#); *see also* section 2.2.3, [above](#), regarding unopposed candidates).

Nevertheless, if the remaining unexpended funds are *de minimis* (i.e., \$2,500 or less) or otherwise so limited that, under the circumstances, returning the balance to contributors will be significantly unworkable or impracticable, unexpended funds may be, to the extent legally permitted:

- Used to purchase items used by the judge in the performance of judicial duties, “such as the purchase of judicial robes, office supplies, computer software or books” (Opinions [16-29/16-50](#); [12-95\[A\]](#); [06-162](#));
- Donated to the Catalyst Public Service Fellowship Program *only* (Opinion [16-29/16-50](#) [carving out a very narrow exception to the general prohibition on outright donation of campaign funds]);¹⁵
- Subject to necessary administrative approvals, used “to purchase[] books or other reference materials to be donated to the courthouse law libraries” (Opinion [16-29/16-50](#) [carving out a very narrow exception to the general prohibition on use of campaign funds to make in-kind donations]).

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 [16-29/16-50](#); [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, 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.*). If unexpended funds remain in the account after a bona fide effort to return the entire amount of unexpended campaign funds *pro rata* to all contributors and a reasonable amount of time was allowed for checks to be cashed or negotiated, such funds may be used for any purpose consistent with Opinion [16-29/16-50](#) (*see* Opinion [16-97](#)).

Subject to the considerations set forth in Opinions [16-29/16-50](#), [07-65](#) and [06-162](#), unexpended campaign funds may be used to purchase items which the court system or

¹⁵ The Subcommittee understands that Robert A. Spolzino, Esq., a retired Appellate Division justice, is the administrator of the Catalyst Public Service Fellowship Program.

municipality does not otherwise provide, for use by the judge in the performance of judicial duties; for example, 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](#) [office furniture]; [95-36](#) [carpeting in chambers]; [93-56](#) [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 (Opinions [07-187](#); [93-19](#); [89-152](#); [87-16](#) [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](#)). 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 CJC 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](#)) (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”).

Analogously, an unsuccessful judge or non-judge candidate may also use a *de minimis* amount of campaign funds to host a modest and reasonable social event to say “thank you” to persons who volunteered significant time and/or efforts in support of the candidate’s campaign (Opinion [12-129\[A\]-\[G\]](#), at Question 5).

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, campaign funds may not be donated (either directly or through the purchase of gifts) to any:

- Political party or entity (Opinions [90-193](#); [88-59](#); [87-02](#))
- Charitable fund or institution, except as narrowly authorized by Opinion [16-29/16-50](#), even if designated in the State tax return (Opinions [08-151](#); [03-109](#); [90-04](#); [87-02](#))
- Bar association (Opinion [92-29](#))
- Community legal assistance group (Opinion [93-80](#))
- Graduates of the drug court program (Opinion [05-132](#))
- Campaign workers (Opinion [98-06](#) [even “token gifts”]).

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

Similarly, the Committee has advised that the definition of the window period “makes each campaign finite, allowing no campaign fund-raising action between campaigns. Nor does it permit any coalescence of the funds solicited for one campaign with another campaign” (Opinion [94-21](#)). Accordingly, a judicial candidate may not transfer, use or retain any campaign funds to satisfy debts from past campaigns (Opinions [97-04](#); [94-21](#) [repayment of loans made by judge and spouse in prior campaigns]), or 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](#); [90-06](#) [same or other office]; [89-152](#); [88-89](#) [higher judicial office]).

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

The Committee has also advised 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](#); [92-94](#)).

7.1.3 Candidate Running for the Same Position Two Years in a Row

Applying these principles, the Committee advised in Opinion [14-148](#) that a judge whose window period for his/her unsuccessful 2014 Supreme Court campaign will overlap with the

window period for his/her upcoming 2015 Supreme Court campaign:

- may not roll over funds from one campaign to the next but must establish a new campaign account for the 2015 campaign;
- may use the remaining 2014 campaign funds for all permissible purposes relating to his/her 2014 campaign during the remainder of his/her 2014 window period, including generically useful purchases which could be used for either campaign; and
- at the conclusion of his/her 2014 window period, must dispose of any remaining 2014 campaign funds in accordance with applicable rules and opinions.

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 Committee.

Raising Funds to Repay Loans that were Made Before the Election. In addition to the ethical restrictions discussed in the Committee's opinions, please note that there may also be legal issues with respect to repayment of loans after election day (*see* Election Law § 14-114[6]), which the Committee cannot address.

Raising Funds to Satisfy Outstanding Election Debts to Third Parties. A judicial candidate's campaign committee may, within the applicable window period, hold a post-election fund-raising event, the proceeds of which will be used to satisfy outstanding election debts to third parties (Opinions [97-41](#) [legal obligations of the campaign committee for the recently concluded campaign]; [96-31](#) [outstanding campaign debts to third parties]; [87-27](#)). 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](#)). To the extent that any such post-election fund-raiser succeeds in raising more funds than necessary to discharge the debts owed to third party creditors, any such excess funds must be returned to the campaign contributors on a *pro rata* basis (Opinion [03-119](#)).

Raising Funds to Reimburse the Candidate or his/her Spouse. The campaign committee may not raise funds after the election to repay loans made to the committee by the candidate or the candidate's spouse, or to permit the candidate to recoup campaign expenses he/she incurred and paid personally during the campaign period (Opinions [05-136](#); [03-119](#); [96-31](#) [repaying loans made by candidate to campaign committee]; [94-21](#) [Vol. XII] [repaying loans made by candidate and spouse to prior campaigns]; [89-05](#) [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](#)).

The campaign committee may not hold a post-election fund-raiser to reimburse a recently elected judge for expenditures personally made by the judge for an induction party (Opinion [90-195](#)).

Raising Funds to Benefit or Reimburse Political Party. The campaign committee may not hold a post-election fund-raiser to reimburse a political leader for campaign costs incurred by the leader, absent a legal obligation to make such reimbursement (Opinion [90-195](#)). 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](#)).

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](#)).

7.3 Other Post-Election Conduct

During the Post-Election Window Period. 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](#); [91-67](#) [recently elected judge may not attend political event held "six months and one day after the general election"]; [91-24](#); [89-136](#)). The judge's campaign committee may purchase these tickets using campaign funds (Opinion [92-29](#); [91-24](#)). A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion [07-187](#)). See also Sections 4.3, [above](#), and 7.1.1, [above](#), for further discussion of post-election use of campaign funds.

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

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

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 candidate spouse to fund-raising events held for the spouse, even where the judge would not participate in or be introduced at the event (*see* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]; *see also* Opinion [06-147](#)). The restriction applies to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion [99-156](#); *cf.* Opinion [95-109](#)).

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). See also generally Section 9, [below](#).

8. Campaign-Related Disqualifications

The Committee has issued many opinions addressing whether disqualification or disclosure is required in specific factual situations, and whether remittal is available. Although there is no substitute for carefully reviewing these opinions and seeking advice from the Committee or Subcommittee on matters not squarely covered by prior opinions, a brief introduction to these concepts may be helpful in understanding the opinions discussed in the present section of the Handbook.

With respect to disqualification, the Committee has advised:

There are two initial objective tests to determine if disqualification is mandatory: Is disqualification required under a specific provision of the Rules Governing Judicial Conduct (*see* 22 NYCRR 100.3[E][1][a]-[f]) or Judiciary Law § 14? If not, might the judge’s impartiality nonetheless “reasonably be questioned” (22 NYCRR 100.3[E][1])? If disqualification is not mandated under either objective test, the judge “is the sole arbiter of recusal” (*People v Moreno*, 70 NY2d 403, 405 [1987]). Of course, if the judge questions his/her own ability to be impartial in a particular matter, then he/she must not preside (*see* Opinion 11-64).

(Opinion [13-47](#)).

Moreover, even where disqualification is mandated, it is possible in many circumstances for the disqualification to be remitted. The Committee has noted that:

Rule 100.3(F) forbids remittal of disqualification in four scenarios. That is, remittal is prohibited if the judge: (1) has a personal bias or prejudice concerning a party (*see* 22 NYCRR 100.3[E][1][a][i]); (2) knows that he/she served as a lawyer in the matter in controversy (*see* 22 NYCRR 100.3[E][1][b][i]); (3) knows that he/she served as a material witness concerning the matter in controversy (*see* 22 NYCRR 100.3[E][1][b][iii]); or (4) knows that the judge or the judge’s spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such person, is a party to the proceeding (*see* 22 NYCRR 100.3[E][1][d][i]). Because remittal is not available in these circumstances, the judge must disqualify him/herself from the proceeding (*see* Opinion 08-15; 100.3[F]).

In addition, the Committee has advised that remittal is not available if any party is appearing without counsel (*see e.g.* Opinions 12-111; 09-138) or if the judge is unwilling or unable to make full disclosure of the basis for disqualification on the record (*see e.g.* Opinions 12-111; 10-86).

* * *

[footnote:] Where permitted, remittal is a three-step process: “First, the judge must fully disclose the basis for disqualification on the record... Second, ... without the judge’s participation, the parties who have appeared and not defaulted and their lawyers must all agree that the judge

should not be disqualified. Third, the judge must independently conclude that he/she can be impartial and be willing to participate in the case. If all three steps are satisfied, the judge may accept remittal of his/her disqualification and must incorporate the parties' and their attorneys' agreement into the record of the proceeding" (Opinion 09-138; 22 NYCRR 100.3[F]).

(Opinion [13-64](#)). The Committee has also advised that disqualification based on a judge's decision to report an attorney to a disciplinary authority is not subject to remittal (Opinion [13-61](#)).

8.1 Campaign Contributions – Legal and Administrative Considerations

Under the Rules Governing Judicial Conduct, the fact that an attorney contributed to a judge's campaign does not, without more, require the judge to disqualify himself/herself when the attorney appears before the judge (Opinions [10-135](#); [07-26](#); [04-106](#); see also Section 8.4, [below](#)). However, candidates should be aware that other laws or rules could apply.

The United States Supreme Court addressed legal disqualification of a judge based on expenditures of a campaign supporter in *Caperton v. A.T. Massey Coal Co.*, 556 US 868, 129 S Ct 2252 (2009) (holding that, for due process reasons, recently elected appellate judge should have disqualified himself from presiding over appeal involving corporation whose president and chief executive officer had spent over \$3 million in support of the judge's campaign). The Court noted that these expenditures were made following the trial court's entry of a \$50 million judgment against the corporation, at a time when it was likely that corporation would be seeking review in the court to which the judge was seeking election. The Court termed *Caperton* an "exceptional" and "extreme" case, which it expected to apply only in "rare instances" (*id.*, 129 S Ct at 2263, 2265, 2267).

As of the date of writing, it appears that there are no published New York State court opinions applying *Caperton* to disqualify judges based on campaign contributions in New York (*see Glatzer v. Bear, Stearns & Co., Inc.*, 95 AD3d 707 [1st Dep't 2012] [noting the "stark contrast" with the facts in *Caperton* and finding no basis to conclude that actual bias or prejudice existed]; *Anderson v. Belke*, 80 AD3d 483 [1st Dep't 2011] [citing *Caperton* for the proposition that "Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal; and this is no 'exceptional case.'"]¹⁶).

¹⁶ At least one New York court has applied *Caperton* in requiring disqualification outside the campaign finance context (*see People v. Suazo*, 120 AD3d 1270 [2d Dep't 2014] [citing *Caperton* for the proposition that "'judges are human,' and not immune from 'psychological' and unconscious influences," and holding that a judge improvidently exercised discretion in presiding over a suppression hearing after "it was revealed that one of the People's witnesses was married to the hearing Justice's law clerk"]).

In 2011, the administrative board of the courts adopted [Part 151](#) (22 NYCRR pt 151). The Unified Court System’s [website](#) states that Part 151 “restricts the assignment of cases where participating litigants, counsel or firms made significant campaign contributions to the assigned judge, for a period of two years from the date the State Board of Elections first publishes a record of the contribution.” Please see <http://www.nycourts.gov/rules/chiefadmin/151-intro.shtml> for additional information and links.

8.2 Pledge or Promise

A judge must disqualify himself/herself in a proceeding if, while a candidate for judicial office, he/she made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or made a public statement not in his/her adjudicative capacity that commits the judge with respect to an issue in the proceeding or the parties or controversy in the proceeding (22 NYCRR 100.3[E][1][f]). (Making such a pledge or promise as a judicial candidate is also prohibited directly, as discussed in Sections 5.3.2, [above](#), and 5.4, [above](#).)

8.3 Endorsements

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

8.4 During the Campaign

Opponent. A judge may preside over a case when one of the attorneys representing a party is the judge’s opponent in the upcoming election, unless the judge doubts his/her own impartiality (Opinion [11-76](#); Joint Opinion [00-78 and 00-80](#) [opponent is chief assistant district attorney]; Opinions [92-82](#) [opponent is attorney]; [92-57](#) [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](#)).

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

Mere Contributor to or Supporter of Judge’s Campaign. A judge running for re-election is not disqualified solely because a party or attorney was present at a fund-raiser held on the judge’s behalf and is now appearing before the judge (Opinion [04-106](#)). Knowledge that an attorney contributed to the judge’s campaign does not, by itself, require the judge to disqualify himself/herself when the attorney appears before the judge (Opinions [10-135](#); [07-26](#); [04-106](#)). Merely being listed as supporting the candidate does not give rise to an inference of partiality (Opinion [03-64](#)).

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

Active Campaign Conduct in Support of Judge. A judge who is running for election should exercise recusal when attorneys who are engaged in fund-raising or in other active conduct in support of the judge's candidacy appear before the judge during the course of the campaign, even for matters the judge considers to be "routine, non-contested or administrative" (Opinions [07-26](#); [03-64](#); [01-07](#) [attorneys involved in planning an initial fund-raiser for the judge, who will not hold any office in the campaign or provide any assistance beyond contacting persons with respect to the initial fund-raiser]; [97-129](#); [94-12](#); [89-107](#) [campaign manager]; *see also Matter of Doyle*, 23 NY2d 656 [2014]).

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 (Opinions [13-64](#); [97-129](#)). 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](#)).

Screening Panel Member Appears as an Attorney. A judge or non-judge candidate for election to judicial office who appears before a bar association's judicial screening committee does not need to recuse himself/herself from cases in which an attorney who sits on the screening panel appears before the judge in a representative capacity, nor must the judge disclose that fact to opposing counsel (Opinions [12-97](#); [94-86](#)). A judge who recently appeared before a political party's screening panel may also preside in a matter in which a member of the panel appears as an attorney, in the absence of any other disqualifying factor and assuming the judge can be impartial (Opinion [11-64](#)).

Screening Panel Member Appears as a Party. A judge who is a candidate for judicial office should disqualify him/herself, subject to remittal, from presiding in a case when an attorney who is a member of a political party's candidate screening panel subcommittee that reviewed the judge's application for the political party's endorsement also is a partner in the plaintiff/law firm in the case (Opinion [10-121](#) [noting that the screening panel member is involved "not as an attorney representing a client but as a partner in a law firm that is the plaintiff in the case"]).

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](#)).

Employee of a Political Party. Absent additional factors, a judge is not disqualified solely because one of the litigants, in his/her capacity as a secretarial employee of a political party, answered the telephone when the judge called the political party's headquarters to discuss his/her own candidacy during the applicable window period (Opinion [13-47](#)).

8.5 After the Campaign: The Two-Year Rule

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](#) [former opponent as litigant]; [90-136](#) [former opponent as attorney]), unless the judge doubts his/her impartiality.

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](#)), or who minimally participated in the judge's campaign by gathering petition signatures (Opinion [90-196](#)) or distributing literature (Opinion [90-196](#)), unless the judge doubts his/her own impartiality (Opinion [07-26](#)). An attorney's appearance in a judge's judicial campaign video does not, without more, require either disclosure or disqualification (*see* Opinion [15-196](#)).

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](#)).

Assuming the judge can be fair and impartial, a judge need not disqualify him/herself when a campaign advisor who was appointed by a county political committee to advise several candidates during a recent election, including the judge, appears before the judge as an attorney, where the advisor did not play an active, significant or pivotal role in the judge's campaign (Opinion [12-28](#)).

More than Minimal Participant, but not a Leadership or Continuing Fund-Raising Role. Where an attorney's participation in a judge's election campaign was more than minimal, but not at the formal leadership level, the judge need not disqualify him/herself when the attorney appears in the judge's court if the judge can be impartial (Opinions [12-164](#); [09-245](#)).

However, for two years after the election, the judge must disclose the nature and extent of the attorney's involvement in the judge's campaign when that attorney appears before the judge (Opinions [12-164](#); [09-245](#)).¹⁷ If a party objects to the judge's continued involvement in the matter, disqualification is left to the judge's discretion (Opinions [12-164](#); [09-245](#)).

The disclosure is personal, involving only the individual attorney who participated in the judge's campaign, and does not extend to his/her partners or associates (Opinion [12-164](#)).

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

¹⁷ Where disclosure is mandated in lieu of disqualification, the judge must disqualify him/herself if a party is appearing without counsel (Opinion [12-164](#) n.1)

the course of the campaign, then the recusal should extend for a two-year period following the election, subject to remittal (Opinions [07-26](#); [03-64](#); [97-129](#) [campaign coordinator or campaign finance chair]; [89-107](#) [campaign manager]). This applies even if the judge's campaign was unsuccessful (Opinion [06-54](#)).

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](#) [campaign coordinator or campaign finance chair]; [91-129](#) [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]).

9. Additional Reminders for Sitting Judges

Comments on Candidates. A newly-elected judge may not engage in any political activity in support of his/her former aide who is a candidate for the vacant office created by the judge's recent election (Opinion 98-142). A sitting judge may respond to an inquiry from a political party's screening panel (Joint Opinion [12-84/12-95\[B\]-\[G\]](#)) or a bar association screening panel (Opinions [08-160](#); [07-130](#)) concerning a judicial candidate, or to an inquiry from a screening committee in connection with the reappointment of sitting judges (Opinion [00-124](#)). The judge "should draw from his/her personal knowledge of the potential judicial candidate" and "should neither urge approval nor disapproval of a candidate" (Joint Opinion [12-84/12-95\[B\]-\[G\]](#); Opinion [08-160](#)).

The Committee has emphasized that, to avoid any appearance that a sitting judge is engaging in impermissible political activity by providing comments to a political party's screening panel, "the judge's comments should be made solely in response to a direct request from the [political] party's screening panel and should be addressed only to the requesting panel" (Joint Opinion [12-84/12-95\[B\]-\[G\]](#)).

However, a judge may not express an opinion to "members of the bar" or "members of the public" about the qualifications of a judicial candidate (Opinion [10-117](#); 22 NYCRR 100.5[A][1][e]).

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 or is held out-of-state ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27; *see also* Opinions [07-169](#); [06-147](#); [99-156](#); 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). 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).

A judge must not meet privately with a local political party regarding the inner workings of the court, including its procedures, personnel or decisions (Opinion [13-92](#)).

Political Contributions. A sitting judge may not make political contributions at any time, even to a U.S. presidential candidate or to a federal congressional candidate outside of New York State (Opinion [11-146](#); 22 NYCRR 100.5[A][1][h]).

A part-time judge who practices law may not permit his/her law firm to make political contributions using the law firm's checking account, "even where the judge is not the signatory on the check" (Opinion [96-29](#)). A part-time judge was disciplined where, among other things, the judge's law firm, apparently without the judge's knowledge, "made \$925 in contributions to political candidates and organizations using firm checks issued from the firm business account" (2012 CJC Ann. Rep. at 113-129 ["The onus was on respondent to ensure that [his/her] law firm was in compliance with the ethical rules."]; *see also* 2015 CJC Ann. Rep. at 89-91).

Political Offices. A sitting judge may not hold the position of a political party "committee person" (Opinion [96-29](#)). Similarly, a judge may not serve as a political party's "area chairman in the town" (Opinion [96-29](#)).

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