

# Michigan Code of Judicial Conduct

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# MICHIGAN CODE OF JUDICIAL CONDUCT

## CANON 1.

### **A Judge Should Uphold the Integrity and Independence of the Judiciary.**

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judge should always be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary. The provisions of this code should be construed and applied to further those objectives.

## CANON 2.

### **A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities.**

A. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

B. A judge should respect and observe the law. At all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary. Without regard to a person's race, gender, or other protected personal characteristic, a judge should treat every person fairly, with courtesy and respect.

C. A judge should not allow family, social, or other relationships to influence judicial conduct or judgment. A judge should not use the prestige of office to advance personal business interests or those of others, but participation in activities allowed in Canon 4 is not a violation of this principle.

D. A judge should not appear as a witness in a court proceeding unless subpoenaed.

E. A judge may respond to requests for personal references.

F. A judge should not allow activity as a member of an organization to cast doubt on the judge's ability to perform the function of the office in a manner consistent with the Michigan Code of Judicial Conduct, the laws of this state, and the Michigan and United States Constitutions. A judge should be particularly cautious with regard to membership activities that discriminate, or appear to discriminate, on the basis of race, gender, or other protected personal characteristic. Nothing in

this paragraph should be interpreted to diminish a judge's right to the free exercise of religion.

G. No judge may accept any contribution of money, directly or indirectly, for a campaign deficit or for expenses associated with judicial office. Requests for payment of membership dues or fees in a judicial association do not constitute solicitation of funds for purposes of this provision.

### **CANON 3.**

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

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of office prescribed by law. A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. In the performance of these duties, the following standards apply:

##### **A. Adjudicative Responsibilities:**

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge may require lawyers, court personnel, and litigants to be appropriately attired for court and should enforce reasonable rules of conduct in the courtroom.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge may make reasonable efforts, consistent with the law, court rules, and rules of evidence, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

(a) In the interest of ensuring fairness and access to justice, judges may make reasonable efforts that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law. The judge should be careful that the reasonable efforts do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. In some circumstances, particular efforts for self-represented litigants are required by decisional or other law. In other circumstances, potential efforts are within the judge's discretion.

(b) Reasonable efforts that a judge may take in the exercise of such discretion include, but are not limited to:

(i) Construe pleadings to facilitate consideration of the issues raised.

- (ii) Provide brief information or explanation about the proceedings.
  - (iii) Ask neutral questions to elicit or clarify information.
  - (iv) Modify the traditional manner or order of taking evidence.
  - (v) Refer litigants to any resources available to assist in the preparation of the case or enforcement and compliance with any order.
  - (vi) Inform litigants what will be happening next in the case and what is expected of them.
- (5) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows:
- (a) A judge may allow ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits, provided:
    - (i) the judge reasonably believes that no party or counsel for a party will gain a procedural or tactical advantage as a result of the ex parte communication, and
    - (ii) the judge makes provision promptly to notify all other parties and counsel for parties of the substance of the ex parte communication and allows an opportunity to respond.
  - (b) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.
  - (c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.
  - (d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.
  - (e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.
- (6) A judge should dispose promptly of the business of the court.
- (7) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.
- (8) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that

are inconsistent with the impartial performance of the adjudicative duties of judicial office.

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

(10) Notwithstanding the restrictions in paragraph (6), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(11) Subject to the requirements of paragraph (6), a judge may respond directly or through a third party to allegations in the media or other forms of communication concerning the judge's conduct in a matter.

(12) A judge should prohibit broadcasting, televising, recording, or taking of photographs in or out of the courtroom during sessions of court or recesses between sessions except as authorized by the Supreme Court.

(13) A judge may properly intervene in a trial of a case to promote expedition, and prevent unnecessary waste of time, or to clear up some obscurity, but the judge should bear in mind that undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on the judge's part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the cause, or the ascertainment of truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies that are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, the judge should avoid a controversial manner or tone.

A judge should avoid interruptions of counsel in their arguments except to clarify their positions, and should not be tempted to the unnecessary display of learning or a premature judgment.

(14) A judge should adopt the usual and accepted methods of doing justice; avoid the imposition of humiliating acts or discipline, not authorized by law in sentencing and endeavor to conform to a reasonable standard of punishment and not seek popularity or publicity either by exceptional severity or undue leniency.

(15) Without regard to a person's race, gender, or other protected personal characteristic, a judge shall treat every person fairly, with courtesy and respect, and shall not intentionally or recklessly, in the performance of judicial duties, manifest bias or prejudice, or engage in harassment. To the extent possible, a judge should require staff, court officials, and others who are subject to the

judge's direction and control to adhere to the same standard when interacting with persons who have contact with the court.

(16) The restrictions of subrule (15) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

#### B. Administrative Responsibilities:

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

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

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

(4) A judge should not cause unnecessary expense by making unnecessary appointments. All appointments shall be based upon merit.

(5) A judge should not approve compensation beyond the fair value of services rendered.

#### C. Disqualification:

A judge should raise the issue of disqualification whenever the judge has cause to believe that grounds for disqualification may exist under MCR 2.003(C).

#### D. Waiver of Disqualification.

A disqualification of a judge may be waived as provided by MCR 2.003(E).

### **CANON 4.**

#### **A Judge May Engage in Extrajudicial Activities.**

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. A judge should regulate extrajudicial activities to minimize the risk of conflict with judicial duties.

A judge may engage in the following activities:

#### A. Law-Related Activities.

- (1) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- (2) A judge may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and may otherwise consult with such executive or legislative body or official on such matters.
- (3) A judge may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A judge may participate in the management and investment of such an organization's funds.
- (4) A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

B. Avocational Activities. A judge may write, lecture, teach, speak, and consult on nonlegal subjects, appear before public nonlegal bodies, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of judicial duties.

C. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve and be listed as an officer, director, trustee, or nonlegal advisor of a bona fide educational, religious, charitable, fraternal, or civic organization. A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

D. Fundraising Activities. A judge should not individually solicit funds for any educational, religious, charitable, fraternal, or civic organization or any organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or use or permit the use of the prestige of the office for that purpose. A judge may, however, serve as a member of an honorary committee or may join a general appeal on behalf of such an organization. A judge may speak or receive an award or other recognition in connection with an event of such an organization. A judge may allow his or her name or title to be used in advertising the judge's involvement in an event so long as the judge does not individually solicit funds.

#### E. Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality or judicial office, interfere with the proper performance of judicial duties, exploit the judicial position, or involve the

judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of E(1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as director, officer, manager, advisor, or employee of any business. Provided, however, with respect to a judge holding office and serving as an officer, director, manager, advisor, or employee of any business not prohibited heretofore by law or judicial canon, the effective date of the prohibition contained herein shall be the date of expiration of the judge's current judicial term of office.

(3) A judge should manage investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as it can be done without serious financial detriment, the judge should dispose of investments and other financial interests that require frequent disqualification.

(4) Neither a judge nor a family member residing in the judge's household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) A judge may accept a gift or gifts not to exceed a total value of \$375, incident to a public testimonial; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice.

(b) A judge or a family member residing in the judge's household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.

(c) A judge or a family member residing in the judge's household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and if the aggregate value of gifts received by a judge or family member residing in the judge's household from any source exceeds \$375, the judge reports it in the same manner as compensation is reported in Canon 6C. For purposes of reporting gifts under this subsection, any gift with a fair market value of \$150 or less need not be aggregated to determine if the \$375 reporting threshold has been met.

(5) For the purposes of this section, "family member residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a family member, who resides in the judge's household.

(6) A judge is not required by this code to disclose income, debts, or investments, except as provided in this canon and Canons 3 and 6.



(7) Information acquired by a judge in a judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

F. Fiduciary Activities. A judge should not serve as an executor, administrator, testamentary trustee, or guardian, except for the estate, testamentary trust, or person of a member of the judge's immediate family, and then only if such service will not interfere with the proper performance of judicial duties. As a family fiduciary, a judge is subject to the following restrictions:

(1) A judge should not serve if it is likely that as such fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as such fiduciary, a judge is subject to the same restrictions on financial activities that apply in the judge's personal capacity.

G. Arbitration. A judge should not act as an arbitrator or mediator, except in the performance of judicial duties.

H. Practice of Law. A judge should not practice law for compensation except as otherwise provided by law.

I. Extra-judicial Appointments. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

## **CANON 5.**

### **Applicability of the Code of Judicial Conduct to Judicial Candidates.**

All judicial candidates are subject to Canon 1, Canon 2, Canon 4A-4D and Canon 7 of the Code of Judicial Conduct as applicable during a judicial campaign. A successful candidate, whether or not an incumbent, and an unsuccessful candidate who is a judge, are subject to judicial discipline for campaign misconduct. An unsuccessful candidate who is a lawyer is subject to lawyer discipline for judicial campaign misconduct.

## **CANON 6.**

### **A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities and of Monetary Contributions.**

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. Compensation. Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

B. Expense Reimbursement. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

C. Public Reports. A judge shall report the date, place, and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. The judge's report shall be made at least annually and shall be filed as a public document in the office of the State Court Administrator or other office designated by law.

## **CANON 7.**

### **A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office.**

A. Political Conduct in General:

(1) A judge or candidate for judicial office should not:

- (a) hold any office in a political party;
- (b) make speeches on behalf of a political party or nonjudicial candidate or publicly endorse a candidate for nonjudicial office.

(2) A judge or candidate for judicial office may:

- (a) attend political gatherings;
- (b) speak to such gatherings on the judge's own behalf or on behalf of other judicial candidates;
- (c) contribute to a political party.

(3) A judge should resign the judicial office before becoming a candidate either in a party primary or in a general election for nonjudicial office.

B. Campaign Conduct:

- (1) A candidate, including an incumbent judge, for a judicial office:
- (a) should maintain the dignity appropriate to judicial office, and should encourage family members to adhere to the same standards of political conduct that apply to the judge;
  - (b) should prohibit public employees subject to the judge's direction or control from doing for the judge what the judge is prohibited from doing under this canon;
  - (c) shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments about conduct in office that are inconsistent with the impartial performance of the adjudicative duties of judicial office.
  - (d) should not knowingly, or with reckless disregard, use or participate in the use of any form of public communication that is false.
- (2) These provisions govern a candidate, including an incumbent judge, for a judicial office:
- (a) A candidate should not personally solicit or accept campaign funds, or solicit publicly stated support by improper use of the judicial office in violation of B(1)(c). A candidate may send a thank-you note to a contributor.
  - (b) A candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support (including support from lawyers) for the candidacy.
  - (c) Such committees may solicit and accept campaign contributions from the public, including lawyers, as permitted by law.
  - (d) A candidate's committee may not directly or indirectly accept funds from any committee that was established in connection with the candidate's attempt to secure any other judicial or nonjudicial office. The committee may solicit funds for the campaign no earlier than February 15 of the year of the election, and may not solicit or accept funds after the date of the general election.
  - (e) A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate's family.
  - (f) If a candidate is not opposed for such judicial office, the candidate or the candidate's committee shall return to the contributors funds raised in excess of the actual costs incurred or contribute such funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election. Likewise, any candidate or committee having funds remaining after payment of all campaign expenses shall either return such funds to the contributors thereof or donate the funds to the client security fund of the State Bar of Michigan, not later than January 1 following the election.

(g) A candidate for judicial office may not pay an endorsing organization for its ranking or endorsement. However, a candidate for judicial office may contribute campaign funds to pay some of the costs associated with the publication of the endorsement or ranking of the candidate, provided the candidate secures from the endorsing organization an assurance, before the endorsement or ranking is made, that the endorsing organization will not:

(i) demand payment from the candidate or the candidate's agent as a condition of the endorsement or favorable ranking,

(ii) seek any assurance from the candidate before the endorsement or ranking is made that it will be paid if it endorses or ranks the candidate favorably,

(iii) add an endorsement or favorable ranking of a different candidate in the event that the initially supported candidate decides not to pay the endorsing organization for publicizing its endorsement and favorable ranking,

(iv) prevent the candidate from publicizing the endorsement or favorable ranking independent of the endorsing organization, regardless of whether the endorsing organization itself publicizes its endorsement or favorable ranking.

(3) No judge should personally sell or permit any court or public employee working for or assigned to any court to sell fund-raising tickets or accept contributions of any kind on the judge's behalf or on behalf of any other judicial candidate.

#### C. Wind up of law practice.

(1) A successful elected candidate who was not an incumbent has until midnight December 31 following the election to wind up the candidate's law practice, and has until June 30 following the election to resign from organizations and activities, and divest interests that do not qualify under Canon 4. If a successful elected candidate has remaining funds in a trust account after June 30 following the election and the funds remain unclaimed, the candidate must promptly transfer control of the funds to the elected candidate's interim administrator in accordance with subchapter 9.300 of the Michigan Court Rules and Rule 21 of the Rules Concerning the State Bar of Michigan. The interim administrator must make reasonable efforts to locate the owner of the property and continue to hold said funds in a trust account for the required statutory period in accordance with the Uniform Unclaimed Property Act, MCL 567.221 *et seq.* This transfer of control to the interim administrator does not create a client-lawyer relationship.

(2) Upon notice of appointment to judicial office, a candidate shall wind up the candidate's law practice prior to taking office, and has six months from the date of taking office to resign from organizations and activities and divest interests

that do not qualify under Canon 4. If an appointee has remaining funds in a trust account six months after taking office and the funds remain unclaimed, the appointee must promptly transfer control of the funds to the appointed candidate's interim administrator in accordance with subchapter 9.300 of the Michigan Court Rules and Rule 21 of the Rules Concerning the State Bar of Michigan. The interim administrator must make reasonable efforts to locate the owner of the property and continue to hold said funds in a trust account for the required statutory period in accordance with the Uniform Unclaimed Property Act, MCL 567.221 *et seq.* This transfer of control to the interim administrator does not create a client-lawyer relationship.

## **CANON 8.**

### **Collective Activity by Judges.**

The canons of this Code concerning the conduct of individual judges and judicial candidates also apply to judges' associations or any other organization consisting exclusively of judges.