

# Michigan Code of Judicial Conduct - Annotated



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# Introduction to Judicial Ethics

The purpose of this publication is to provide a guide to judicial ethics in Michigan. Each chapter corresponds to a judicial canon, and is organized by sources of authority deriving from Michigan Supreme Court opinions, Judicial Tenure Commission case summaries, and State Bar of Michigan ethics opinions. The text of each chapter is organized by topic and subtopic headings under each source of authority.

[MCR 9.202](#) sets out the Standards for Judicial Conduct as follows:

**(A) Responsibility of Judge.** A judge is personally responsible for the judge's own behavior and for the proper conduct and administration of the court in which the judge presides.

**(B) Grounds for Action.** A judge is subject to censure, suspension with or without pay, retirement, or removal for conviction of a felony, physical or mental disability that prevents the performance of judicial duties, misconduct in office, persistent failure to perform judicial duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. A judge may not be ordered to pay the costs, fees, and expenses incurred by the commission in prosecuting the complaint.

(1) Misconduct in office includes, but is not limited to:

- (a) persistent incompetence in the performance of judicial duties;
- (b) persistent neglect in the timely performance of judicial duties;
- (c) persistent failure to treat persons fairly and courteously;
- (d) treatment of a person unfairly or discourteously because of the person's race, gender, or other protected personal characteristic;

(e) misuse of judicial office for personal advantage or gain, or for the advantage or gain of another; and

(f) failure to cooperate with a reasonable request made by the commission in its investigation of a respondent.

(2) Conduct in violation of the Code of Judicial Conduct or the Rules of Professional Conduct may constitute a ground for action with regard to a judge, whether the conduct occurred before or after the respondent became a judge or was related to judicial office.

(3) In deciding whether action with regard to a judge is warranted, the commission shall consider all the circumstances, including but not limited to the age of the allegations and the possibility of unfair prejudice to the judge because of the staleness of the allegations or unreasonable delay in pursuing the matter and whether respondent has corrected the behavior.

Regarding judicial misconduct, the Michigan Supreme Court has instructed that, “everything else being equal:

(1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;

(2) misconduct on the bench is usually more serious than the same misconduct off the bench;

(3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of impropriety;

(4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;

(5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;

(6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;

(7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship.” *In re Brown*, 461 Mich 1291, 1292-1293 (2000).

"[M]isconduct may be proven by evidence of an accumulation of small and ostensibly innocuous incidents which, when considered together, emerge as a pattern of hostile conduct unbecoming a member of the judiciary." *In re Moore*, 464 Mich 98, 132 (2001) (quotation marks and citations omitted). "The vast majority of misconduct found by the Judicial Tenure Commission is not fatal; rather, it reflects oversight or poor judgment on the part of a fallible human being who is a judge." *In re Justin*, 490 Mich 394, 424 (2012) (quotation marks and citation omitted). "The power to discipline a judge resides exclusively in [the Michigan Supreme Court], but it is exercised on recommendation of the [Judicial Tenure Commission]." *Id.* at 413. "The purpose of these proceedings is not to impose punishment on the respondent judge, . . . but to protect the people from corruption and abuse on the part of those who wield judicial power." *In re James*, 492 Mich 553, 569 (2012) (quotation marks and citation omitted). "In determining appropriate sanctions, [the Michigan Supreme Court] seek[s] to restore and maintain the dignity and impartiality of the judiciary and to protect the public." *Id.* (quotation marks and citation omitted).

Regarding the disciplinary process, if the evidence following an investigation shows that something is ethically amiss, the Judicial Tenure Commission takes one of three types of private action or recommends that the Michigan Supreme Court take some combination of three types of public action.

***Private actions undertaken by Judicial Tenure Commission:***

- ***Dismiss with explanation.*** In general, the evidence does not clearly show that the judge violated any Canons, but it also shows that there is something ethically problematic occurring; or it appears that the judge may be unaware of an ethical line, even though the judge did not actually cross it; or the judge came very close to crossing an ethical line; or perhaps the evidence shows that there was a minor and unintentional Canon violation. The JTC will dismiss the investigation in a letter that explains the potentially problematic behavior, so the judge is alerted to it for the future.
- ***Dismiss with caution.*** In general, the evidence shows that the judge violated a Canon, but perhaps did so unintentionally, or the violation is minor or isolated. The JTC will dismiss the investigation in a letter that explains what the JTC found problematic and caution the judge not to engage in that behavior in the future.
- ***Dismiss with admonition.*** In general, the evidence shows that the judge violated one or more Canons in a way that had a negative impact, or perhaps the violation is not isolated, and the situation is such that the judge should have known better. The JTC will dismiss in a letter that admonishes the judge to cease the behavior at issue. An admonition is intended to communicate that the ethical violation was more serious than a caution, and that the JTC was perhaps close to bringing a public complaint.

***Public actions recommended by Judicial Tenure Commission and undertaken by Michigan Supreme Court:***

- ***Recommend public censure.*** This is the least serious action that the JTC can recommend that the Supreme Court take, usually in conjunction with one of the additional sanctions listed below. Note: while recommending private censure is an available option, it is not something exercised in practice.
- ***Recommend suspension with or without pay.*** The period of suspension can be for any duration. In general, the JTC recommends suspension without pay for sustained and serious misconduct, or for particularly flagrant and impactful misconduct, or for conviction of a misdemeanor.
- ***Recommend retirement.*** The JTC may recommend that the judge retire.
- ***Recommend removal.*** The JTC may recommend, pursuant to Const 1963, art 6, § 30(2), removal of a judge for conviction of a felony, physical or mental disability which prevents the performance of judicial duties, misconduct in office, persistent failure to perform their duties, habitual intemperance, or conduct that is clearly prejudicial to the administration of justice. The JTC recommends removal for the most serious violations, often including false statements under oath during the JTC investigation or another proceeding, a series of other false statements, or other egregious conduct.

**Note:** A judge's resignation terminates the JTC's jurisdiction, and at that point, the JTC can elect to refer its investigative materials to the Attorney Grievance Commission for its consideration with respect to the judge's license to practice law. An amendment to [MCR 9.116](#) is currently pending which would "allow the Attorney Grievance Commission to initiate disciplinary proceedings against a former judge who, but for his or her departure from the bench, would have been removed from office based on misconduct that was the subject of judicial disciplinary proceedings." Staff Comment to ADM File No. 2021-11, issued March 9, 2022.

***A Note on the Michigan Rules of Professional Conduct.*** "[J]udges are also lawyers and subject to the Michigan Rules of Professional Conduct to the extent the Code of Judicial Conduct is not inconsistent with the Rules." [State Bar of Michigan Ethics Opinion, JI-26, June 29, 1990](#). Where the MCJC "contains no explicit judicial directive pertaining to" a particular situation, the MRPC controls; "[i]t is professional misconduct for a *lawyer or a judge* to violate or attempt to violate the Rules of Professional Conduct or knowingly assist or induce another to do so." *Id.*



# Canon 1: A Judge Should Uphold the Integrity and Independence of the Judiciary<sup>1</sup>

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“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.” [Michigan Code of Judicial Conduct, Canon 1](#).

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 1 is featured in this chapter.

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<sup>1</sup>“All judicial candidates are subject to Canon 1 . . . 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.” MCJC 5.



## Michigan Supreme Court Cases

*Engaging in misconduct resulting in removal from office.*

- *Making false statements under oath, tampering with evidence, and failing to disclose relationship.* A judge violated MCJC 1 when she “failed to disclose the extent of her [close, personal] relationship with [a detective, who was a witness in a pending case], to the parties in that case”; “failed to disclose the extent of her [close, personal] relationship with [an attorney and the attorney’s law firm] in several cases over which [she] presided”; “failed to immediately disqualify herself from her own divorce proceeding and destroyed evidence in that divorce proceeding even though she knew that her then-estranged husband had filed an ex parte motion for a mutual restraining order regarding the duty to preserve evidence”; “made false statements (a) during court proceedings over which she presided, (b) to the [Judicial Tenure Commission] while under oath during these proceedings, and (c) while testifying at her deposition under oath in her divorce proceeding”; “was persistently impatient, undignified, and discourteous to those appearing before her” by being “routinely disrespectful to attorneys and litigants,” and hostile toward counsel; “required her staff members to perform personal tasks during work hours”; “allowed her staff to work on her 2014 judicial campaign during work hours”; and “improperly interrupted two depositions that she attended during her divorce proceeding.” *In re Brennan*, 504 Mich 80, 83-84, 93-95, 103-104 (2019). The “multifarious acts of misconduct” warranted “severe sanctions . . . because of [the judge’s] misconduct in making false statements under oath, in tampering with evidence in her divorce proceedings, and in failing to disclose the extent of her relationship with” a detective in a pending case. *Id.* at 85, 85 n 11 (judge removed from office).
- *Making false statements.* A judge “[f]ail[ed] to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when she “falsely told her employer that she required a long-term medical leave of absence due to imminent knee surgeries”; “[a]lthough the medical leave was granted, the surgeries were never performed”; the judge “made numerous intentional misrepresentations to the Judicial Tenure Commission regarding her medical condition and efforts to treat it, including efforts to schedule an independent medical examination”; “made false statements to the

Commission regarding the scheduling of an independent psychiatric examination”; and “made false statements in pleadings filed in federal court and in [district court].” *In re Sanders*, 498 Mich 856, 857-858 (2015) (judge removed from office).

- *Making false statements and improper docket management.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when she “twice made false statements under oath in connection with her divorce proceeding,” “made and solicited other false statements while not under oath, including the submission of fabricated evidence to the Judicial Tenure Commission,” “improperly listed cases on the no-progress docket,” and “was absent excessively and engaged in belated commencement of proceedings, untimely adjournments, and improper docket management.” *In re Nettles-Nickerson*, 481 Mich 321, 322-323, 332 (2008) (judge engaged in other misconduct not relevant to MCJC 1 and was removed from office).
- *Engaging in inappropriate relationship, engaging in ex parte communications, and lying under oath.* A judge violated MCJC 1 “by failing to maintain ‘high standards of conduct so that the integrity and independence of the judiciary may be preserved’” when he “(a) had a sexual relationship with a complaining witness in a case pending before him without recusing himself for several months, (b) engaged in numerous ex parte communications with her concerning the case, as well as concerning another case in which one of her relatives was a party, (c) violated various policies of the courthouse by permitting his mistress to enter the facility through an employee entrance without going through security, allowing her to remain alone in his chambers while he was on the bench, arranging for her to park her vehicle in an area reserved for judges, and sneaking her cell phone into the courthouse for her, (d) transmitted numerous text messages to her while he was on the bench that contained inappropriate and derogatory references to defendants, litigants, and witnesses appearing before him, (e) lied about when and why he finally did recuse himself from the case in which his mistress was the complaining witness, (f) sought to use the prosecuting attorney’s office as leverage against his then ex-mistress by concocting charges of stalking and extortion against her, and (g) lied under oath during the JTC proceedings.” *In re McCree*, 495 Mich 51, 55-56, 72 (2014), quoting MCJC 1. The Michigan Supreme Court noted its “duty to preserve the integrity of the judiciary,” and indicated that the judge “was just recently publicly censured . . . yet continued to engage in misconduct,” which “is strongly suggestive that [the judge] has not yet learned from his mistakes and that the likelihood of his continuing to commit judicial misconduct is high.” *Id.* at 86. “Such a cavalier attitude about serious misconduct is disturbing, and [the judge’s]

apparent failure to comprehend fully the magnitude of his wrongdoing is equally troublesome.” *Id.* at 86-87 (judge removed from office).

- *Committing perjury and falsifying legal documents.* A judge “violated [MCJC 1] by failing to maintain ‘high standards of conduct so that the integrity and independence of the judiciary may be preserved’” when she “(a) committed perjury; (b) signed her former attorney’s name on legal documents without the latter’s permission and filed these documents also without such permission; and (c) made numerous misrepresentations of fact under oath during the JTC proceedings”; “[t]he cumulative effect of [the judge’s] misconduct convince[d] [the Michigan Supreme Court] that [the judge] should not remain in judicial office.” *In re Adams*, 494 Mich 162, 164, 179 (2013), quoting MCJC 1 (judge removed from office).
- *Misappropriating public funds.* A judge’s misconduct violated MCJC 1 when she “misappropriated public funds, some of which were intended for victims of crime”; “inappropriately spent much of this money on self-promoting advertisements and travel expenses for herself and various other court employees”; “treated these funds . . . as her own ‘publicly funded private foundation’”; “denied people access to the court by instituting and enforcing an improper business-attire policy”; “employed a family member in violation of court policy”; and “made numerous misrepresentations of fact under oath during the investigation and hearing of th[e] matter.” *In re James*, 492 Mich 553, 555-556, 558 (2012). “The cumulative effect of [the judge’s] misconduct, coupled with its duration, nature, and pervasiveness, convince[d] [the Michigan Supreme Court] that she [was] unfit for judicial office”; “[a]lthough some of her misconduct, considered in isolation, [did] not justify such a severe sanction, taken as a whole her misconduct r[ose] to a level that require[d] her removal from office.” *Id.* at 556 (judge removed from office).
- *Disregarding the law.* A judge’s misconduct violated MCJC 1 when he engaged in “numerous instances of documented judicial misconduct,” including “‘fixing’ (personally and surreptitiously dismissing) traffic citations issued to himself, his spouse, and his staff; preventing the transmission of or altering court information that was legally required to have been transmitted to the Secretary of State; dismissing cases without conducting hearings or involving the prosecutor; failing to follow plea agreements; and making false statements under oath during the JTC hearing.” *In re Justin*, 490 Mich 394, 396, 398 (2012). “[T]he common themes running throughout [the judge’s] substantiated acts of misconduct [were] a calculated disregard for the law and an intentional effort to undermine the judicial process, as deemed warranted or expedient by the [judge]”; “[s]uch misconduct evince[d] an unacceptable disregard for the role

of judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* at 413. The judge’s “actions [were] completely antithetical to the privilege of being a judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* (judge removed from office).

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***Interfering with the administration of justice.***

- *Misusing authority to influence criminal investigation.* A judge “fail[ed] to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when he “engaged in a *sustained* campaign to prevent [his intern] from facing legal consequences for her actions by interfering with a police investigation and the subsequent prosecution, in addition to providing false information in his answer to the formal complaint.” *In re Simpson*, 500 Mich 533, 555, 564-565 (2017). Specifically, the judge “used his position as a judge in an effort to scuttle a criminal investigation of his intern” by arriving at the scene of the drunk-driving accident, identifying himself to the police as a judge, and interrupting the sobriety-testing process. *Id.* at 546-547. Further, the judge “improperly acted as a legal advocate for [his intern] and used his position as a judge to thwart the township’s criminal prosecution of his intern” and “succeeded for a time in delaying the issuance of the charges.” *Id.* at 548. Finally, the judge “made ‘an intentional misrepresentation or a misleading statement’ when he attributed the ‘vast bulk’ of his communications with [his intern] to [a case they were working on]” because “[t]he sheer number of communications—which were frequently exchanged during the night and on weekends—is inconsistent with [the judge’s] explanation that the communications related to court business.” *Id.* at 553-554 (judge suspended for nine months without pay).
- *Attempting to influence investigation.* Where a judge was involved in an automobile accident and “knew one of the investigating officers who arrived at the scene,” “[t]his existing relationship, coupled with [the judge’s] attempted direction to the officer concerning the type of investigation that he should conduct with regard to the other driver . . . had the potential to erode the public’s confidence in the judiciary” in contravention of MCJC 1. *In re Brown (After Remand)*, 464 Mich 135, 139-141 (2001) (judge suspended for 15 days without pay).
- *Misusing authority to influence case.* A judge “fail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when a county commissioner was arrested for a domestic altercation and the judge “directed his staff to

obtain a copy of the initial police report, which was obtained by accessing [the police department's] computer system at [the courthouse]"; "directed that a fax be sent to the [jail] reporting that he had sent a personal recognizance bond for [the defendant]"; and "did not contact the [police department] for additional information, but relied on the initial investigation report in determining to authorize the bond." *In re Logan*, 486 Mich 1050, 1051-1052 (2010) (judge publicly censured).

- *Example where engaging in extrajudicial contact does not rise to level of misconduct.* A judge did *not* violate MCJC 1 when he failed to terminate a meeting with an individual whose asset acceptance case was assigned to another judge, and faxed a letter on official district court stationery to the individual's attorney; while the judge's actions "reflected poor judgment," they did not constitute judicial misconduct. *In re Hultgren*, 482 Mich 358 (2008) (judge cautioned "to more carefully conform his actions to the rules and provisions that guide judicial conduct").

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### *Engaging in sexual misconduct.*

- *Sexual misconduct including criminal activity.* A judge "[f]ail[ed] to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved as described in [MCJC 1]," when he "[k]issed a female court employee on the lips on several occasions, all of which were not welcome by the employee"; "[m]ade unwelcome physical contact with female court employees, including placing his hands on their buttocks or breasts"; "[m]ade sexually suggestive comments to a female court employee"; "[u]sed court computer equipment to view pornographic web sites via the Internet"; "[r]estricted use of the computer by other court employees in order to cover up his accessing of pornographic web sites"; "[w]as charged with 4th-degree criminal sexual conduct . . . for his physical contacts with female court employees"; and "[w]as charged with common-law misconduct in office . . . for physically assaulting employees while serving in a publicly elected office as a district court judge[.]" *In re Ford*, 469 Mich 1251 (2004) (judge publicly censured, the most severe punishment that may be imposed on a judge who has resigned).
- *Sexual harassment.* A judge "[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1]," when he "engaged in a course of conduct constituting sexual harassment" of his judicial secretary for several years; "[a]lthough his misconduct occurred while off the bench, it was serious and related to his administrative duties as a judge." *In re*



*Iddings*, 500 Mich 1026, 1029-1030 (2017). The judge's deliberate "misconduct created an offensive and hostile work environment that directly affected the job performance of his judicial secretary in her dealings with the public and the court's business and affected the administration of justice." *Id.* at 1030 (judge publicly censured and suspended for six months without pay).

- *Indecent exposure.* A judge "[f]ail[ed] to observe high standards of conduct so that the integrity and independence of the judiciary is preserved, contrary to [MCJC 1]," when he exposed his genitalia to an undercover police officer in an airport bathroom. *In re Halloran*, 466 Mich 1219, 1220 (2002) (judge publicly censured and suspended for 90 days without pay).
- *Inappropriate drawings and comments.* A judge violated MCJC 1 when he "compromised the integrity of the court" by making "lewd drawings—one of female breasts and one of a penis—on notes that were attached to two court files" on two separate occasions, and by commenting on the "small chest size" of a female employee during a retirement party at the courthouse. *In re Servaas*, 484 Mich 634, 638, 641, 651 (2009). While the judge's "conduct concerning the comment and two drawings was unquestionably inappropriate," his actions were viewed as "an aberration given his 35 years of apparent unblemished service" as a district court judge. *Id.* at 637 (judge publicly censured).

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### *Exhibiting lack of judicial temperament.*

- *Using controversial tone and manner.* Where a judge's "conduct demonstrate[d] a pattern of persistent interference in and frequent interruption of the trial of cases; impatient, discourteous, critical, and sometimes severe attitudes toward jurors, witnesses, counsel, and others present in the courtroom; and use of a controversial tone and manner in addressing litigants, jurors, witnesses, and counsel," that "frequently resulted in appellate reversal of trials over which he had presided," "[s]uch behavior undermines public confidence in the integrity and impartiality of the judiciary" in contravention of MCJC 1. *In re Moore*, 464 Mich 98, 132-133 (2001) (judge suspended for six months without pay).
- *Engaging in demeaning conduct.* A judge "[f]aile[d] to observe high standards of conduct so that the integrity and independence of the judiciary is preserved, contrary to [MCJC 1]," by engaging in "demeaning conduct" toward a defendant in a case where he "was rude, and yelled at [the defendant] without provocation," and by "deliberate[ly] fail[ing] to comply with the dictates" of the court rule regarding disqualification in a case in which defense counsel had a

pending grievance against the judge. *In re Bradfield*, 465 Mich 1309, 1310-1313 (2002) (judge publicly censured and suspended for 30 days without pay).

- *Failing to be patient and dignified.* A judge “[f]ail[ed] to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1]” and “[f]ail[ed] to be aware that the judicial system is for the benefit of the litigant and the public, not the judiciary, contrary to [MCJC 1],” when he was not “patient and dignified” and made improper comments to and about a defendant that he sentenced to jail for contempt of court. *In re Post*, 493 Mich 974, 976-977 (2013) (judge publicly censured and suspended for 30 days without pay).
- *Using insulting, demeaning, and humiliating language.* A judge violated MCJC 1 by failing to “observe[] high standards of conduct so that the integrity and independence of the judiciary may be preserved” when, during a “protracted and highly contentious divorce and custody case,” she “failed to act in a patient, dignified, and judicial manner during the contempt proceedings against the three children, aged 9, 10, and 13, directing to them . . . comments and gestures far exceeding the proper bounds of stern language permitted to a judge.” *In re Gorcyca*, 500 Mich 588, 595, 614-615 (2017). The judge “did not observe high standards of conduct and did not preserve the integrity of the judiciary when she mocked the children, threatened them, called them ‘crazy’ and ‘brainwashed,’ exaggerated or lied about the conditions at [an out-of-home care, custody, and treatment center], and generally expressed hostility to the children and their mother,” and “exhibited a lack of judicial temperament during the proceedings in open court when she directed at the three children and their mother language that was insulting, demeaning, and humiliating.” *Id.* at 615, 643 (judge publicly censured).
- *Arriving late to work.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct [so] that the integrity and independence of the judiciary may be preserved, contrary to the [MCJC 1],” when matters were set for hearing and she repeatedly arrived late to the courthouse, because “some of the litigants, attorneys and witnesses may not have been able to have their matter addressed in as timely a fashion as they would have had if [the judge] had arrived at the courthouse by 9 a.m.” *In re Gibson*, 497 Mich 858, 859-860 (2014) (third alteration in original) (judge publicly censured and suspended for 30 days without pay).

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***Failing to fulfill judicial duties.***



- *Engaging in ex parte communications.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when he e-mailed the prosecuting attorney regarding caselaw pertinent to two pending cases, without notifying defense counsel, and proceeded to disparage the prosecutor’s office for alerting defense counsel to the ex parte communications. *In re Filip*, 503 Mich 956, 959 (2019) (judge publicly censured).
- *Failing to properly handle cases and complete work responsibilities.* A judge violated MCJC 1 by improperly handling numerous cases; for example, at an arraignment, the judge inexplicably facilitated a defendant’s release, “plac[ing] the interests of [defendant] and his counsel . . . ahead of all other interests, including protection of the public.” *In re Hathaway*, 464 Mich 672, 674, 676, 678, 681-682, 690 (2001). And “[t]he improper effort to persuade [a defendant] to waive his right to a jury trial [was] another example of a serious one-time breach of [the judge’s] responsibility to use her judicial power lawfully” that “surely was connected to a more serious problem that was ongoing—her prolonged failure to attend in timely fashion to the business of her court.” *Id.* at 690. Another case demonstrated the judge’s “refusal to do her work [that] caused profound suffering for the family of the victim and outrageous inconvenience for the witnesses” where the judge initiated 16 of 21 adjournments and ultimately recused herself from the case, causing further delay, which amply demonstrated “the remarkable extent of [the judge’s] failure to discharge her judicial duties.” *Id.* It was not “a failure to move papers or to file administrative reports” nor “a judge having a ‘bad day’—or several”; rather, the judge “simply declined over an extended period to do her work.” *Id.* at 690-691. “A judge’s whimsical decision whether to work on a particular day, or during particular months, cannot take precedence over the affairs brought to the courthouse by the people for resolution.” *Id.* at 691-692 (judge suspended for six months without pay).
- *Failing to follow the law.* A judge violated MCJC 1 when he engaged in misconduct “arising out of criminal cases in which [he] was the presiding judge,” and “the totality of the evidence . . . paint[ed] a portrait of a judicial officer who was unable to separate the authority of the judicial office he holds from his personal convictions.” *In re Morrow*, 496 Mich 291, 295, 298-299, 299 n 9 (2014) (quotation marks and citation omitted). Specifically, (1) the judge “closed the courtroom to the public and the victim’s family during a postconviction hearing without specifically stating the reasons for the closure or entering a written order as required by [court rule]” and “subsequently ordered his court reporter not to prepare transcripts of the hearing”; (2) “failed to sentence a defendant . . . with the mandatory minimum . . . as

prescribed by [statute], despite the prosecutor's bringing the relevant statute to his attention," and "later discharged the defendant from probation without the defendant having served the mandatory [sentence]"; (3) "refused the prosecutor's request to remand the defendant . . . to jail awaiting sentencing as required by [statute]"; (4) "following the defendant's guilty plea, . . . dismissed the case *sua sponte* on the basis that a previous dismissal order was with prejudice," and "[w]hen the prosecutor informed him that his justification was contradicted by the record[,] . . . [he] stated that the dismissal was 'conditional with prejudice'"; (5) "failed to place a sidebar conference on the record, failed to rule on the defendant's request for a curative instruction, and failed to follow instructions from the Court of Appeals to hold an evidentiary hearing on a contested legal issue, and his ruling on remand was not supported by the trial record"; (6) "at the beginning of a trial over which he was to preside . . . left the bench, shook hands with the defendant, and gave a package of documents to defense counsel"; (7) "*sua sponte* subpoenaed medical records of the defendant without the parties' knowledge or consent"; and (8) "personally retrieved an inmate from lockup, escorted him to his courtroom, and sentenced him without restraints or courtroom security personnel present." *Id.* at 295-297; see also *id.* at 297 n 3. The Michigan Supreme Court noted that "although judicial officers should strive to do justice, they must do so *under the law* and within the confines of their adjudicative role." *Id.* at 300 (judge suspended for 60 days without pay).

- *Failing to follow the law.* A judge "[f]ail[ed] to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1]," when he arraigned a disruptive individual "for contempt of court outside of his presence [(swearing at court staff)], based only on the unsworn conversation he had heard between [court staff], his own observations, and his conversation with [the court clerk]"; "did not disqualify himself, or raise the issue of his possible disqualification, based on his receipt of the information communicated in the . . . conversation with [the court clerk]"; and denied the defendant's motion for disqualification. *In re Wiley*, 495 Mich 963, 965-966, 968 (2014) (judge publicly censured.)
- *Failing to advance case.* A judge "[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1]," when she adjourned a case numerous times and ultimately recused herself, "at which time 18 months had passed after the arraignment, and a trial had not occurred." *In re Moore*, 472 Mich 1207, 1208-1210 (2005) (judge publicly censured).

- *Resolving child custody dispute with coin flip.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when she resolved a disputed child custody issue by the flip of a coin. *In re Brown*, 468 Mich 1228, 1232 (2003). The judge “expresse[d] her deep regret for her conduct . . . and for the resulting negative impact on the public perception of judges, the institutional integrity of the judiciary, and the administration of justice.” *Id.* at 1228, 1231 (judge publicly censured).
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### *Misusing position.*

- *Misusing judicial office for personal benefit.* A judge “[f]ail[ed] to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved as described in [MCJC 1],” when he “used official [court] stationery to solicit donations to produce and implement two educational programs and for business correspondence pertaining to the production of related materials”; “used official stationery to solicit contributions to finance events and activities related to these programs, including prominent placement of his name and judicial status in advertising for a concert to benefit his projects”; and “utilized the funds also to publicize himself.” *In re Thompson*, 470 Mich 1347, 1348 (2004) (judge suspended for 90 days without pay and ordered to pay costs).
- *Misusing judicial office for personal benefit.* A judge “[f]ail[ed] to observe high standards of conduct so that the integrity and independence of the judiciary is preserved, as described in [MCJC 1],” by (1) “engag[ing] in conduct which reasonably could be viewed as sexually offensive toward a subordinate by altering a screen saver message on her computer screen”; (2) “misus[ing] certain court facilities and equipment, property, or personnel for his personal use”; (3) “engag[ing] in a verbal confrontation with the manager of [a local movie theater], identif[ying] himself as a district court judge, and [being] uncooperative when he was asked to leave”; and (4) purchasing a vehicle that he drove for approximately two weeks “without displaying the temporary paper license plates.” *In re Trudel*, 465 Mich 1314, 1314-1315, 1317 (2002) (judge publicly censured and suspended for 90 days without pay).
- *Engaging in inappropriate relationship.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the [MCJC 1],” when he responded to a card from a defendant on court stationery and inquired if she was interested in seeing him romantically, and continued to e-mail with her thereafter; and when he contacted a judge that had been assigned

a criminal case involving a former neighbor. *In re Mazur*, 498 Mich 923, 924-926 (2015) (judge publicly censured and suspended for 30 days without pay).

- *Engaging in inappropriate political activity.* A judge “fail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when she engaged in inappropriate political activity while a judge or judicial candidate by simultaneously running for judge and mayor, and failing to discontinue mayoral campaign activities after she was elected to the position of judge and signed the oath of office for an upcoming six-year term; and when she engaged in inappropriate campaign conduct/soliciting contribution when she identified herself as treasurer of her campaign committee and solicited donations to her campaign on her website. *In re Sanders*, 485 Mich 1045, 1047-1048 (2010) (judge publicly censured and suspended for 21 days without pay).
- *Engaging in imprudent behavior.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when he “used his cell phone to make a digital image of himself after completing a half-marathon and captioned the photograph . . . ‘[f]it in my 50’s’”; “showed the digital image to a number of people, including his family, police officers, and deputies who worked in or passed through his courtroom” including digitally sending the image to a sheriff’s department employee “either at her request or on his own . . . approximately a year after it was made”; when interviewed by a reporter, “conducted himself in a flippant manner and did not give the interview the seriousness he should have,” bringing “shame and obloquy to the judiciary”; and, when discussing the digital image with the reporter, stated “[t]here is no shame in my game.” *In re McCree*, 493 Mich 873, 874-875 (2012) (judge publicly censured).
- *Engaging in imprudent behavior.* A judge “[f]ail[ed] to personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when she sent a letter to a sheriff’s association concerning the association’s endorsement of a candidate in the judicial primary that raised questions about the moral fiber of the candidate and her spouse and “did not undertake to independently verify the truth or falsity of the representations[.]” *In re Fortinberry*, 474 Mich 1203, 1204-1206 (2006) (judge publicly censured).

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*Engaging in misconduct involving alcohol/drugs.*

- *Driving while intoxicated.* A judicial candidate “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1], made applicable to respondent, as a judicial candidate, by [MCJC 5]” when, while running for office, she was arrested on suspicion of driving while intoxicated and littering. *In re McDonald*, 503 Mich 1013, 1016 (2019). Following her election to the bench, she pled guilty to disorderly conduct - littering, with a plea agreement for a delayed sentence and dismissal upon successful completion of probation, and admitted to careless driving. *Id.* (judge suspended for 45 days without pay).
- *Driving while intoxicated.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of [MCJC 1],” when he operated a motor vehicle with a high blood alcohol content “by towing a boat and trailer out of the water at a public launch and parking on the shoulder of a public road,” and ultimately pleaded guilty to a reduced charge of operating a motor vehicle under the influence of alcohol. *In re Tabbey*, 497 Mich 900, 901 (2014) (judge publicly censured and suspended for 90 days without pay).
- *Driving while intoxicated.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, in violation of [MCJC 1],” when he “consumed at least four sixteen-ounce glasses of beer” and then drove “at speeds around or in excess of 100 miles per hour.” *In re Nebel*, 485 Mich 1049, 1049-1050 (2010). The judge’s breath tests “revealed that his bodily alcohol content was 0.09 per 210 liters of breath,” and he was charged with operating a motor vehicle while intoxicated, and ultimately pled guilty to a lesser charge of operating a motor vehicle while impaired. *Id.* at 1050 (judge publicly censured and suspended for 90 days without pay).
- *Using controlled substance.* A judge “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to [MCJC 1],” when he smoked marijuana at a concert and admitted that he used marijuana approximately twice per year during his judicial tenure, because he was simultaneously “trying[,] convicting, and sentencing individuals in his court who had been charged with marijuana offenses.” *In re Gilbert*, 469 Mich 1224, 1225-1227 (2003) (judge publicly censured and suspended for six months without pay, without credit for an earlier leave of absence).





## Judicial Tenure Commission Summaries of Non-Public Resolutions

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### *Grievance investigations concerning various administrative and court-related matters.*

- *Engaging in excessive absenteeism.* A judge had extremely poor work attendance in the preceding two years (66 days and 46 days), in violation of MCJC 1. [JTC Case Summary, 14-4](#) (dismissed with an admonition).
- *Engaging in excessive absenteeism/tardiness.* A judge had a high rate of absenteeism and tardiness that was a long-standing issue relating to their service on the bench, including frequent late arrival to court and failure to take the bench at the time their docket was scheduled to begin, in violation of MCJC 1. [JTC Case Summary, 13-1](#) (dismissed with an admonition).
- *Failing to advance cases.* A judge repeatedly adjourned proceedings, took matters under advisement for much longer periods than allowed under the court rules, and ignored the time frames established by the Court of Appeals to conduct a proceeding on remand, in violation of MCJC 1. [JTC Case Summary, 16-9](#) (dismissed with an admonition).
- *Failing to fulfill administrative responsibilities.* A chief judge did nothing to address the failure of a referee with their court's Friend of the Court to appear, in violation of MCJC 1. [JTC Case Summary, 13-7](#) (dismissed with a caution).
- *Seeking preferential treatment for defendant.* A judicial official asked another judicial official to give preferential treatment to a defendant who was akin to family, in violation of MCJC 1. [JTC Case Summary, 13-5](#) (dismissed with an admonition).

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### *Grievance investigations concerning various matters in court.*

- *Imposing unduly harsh sanction.* A judge imposed an eight-month parenting time prohibition against a party for failing to appear at a hearing in a divorce case, without explanation or justification for the harsh sanction, in violation of MCJC 1. [JTC Case Summary, 13-6](#) (dismissed with an admonition).

- *Making improper remarks.* A judge challenged defense counsel's trial experience in defendant's presence and suggested that defense counsel was urging a jury trial for counsel's own benefit, in violation of MCJC 1. [JTC Case Summary, 19-6](#) (dismissed with an admonishment).
- *Making improper remarks.* A judge used language at sentencing that conveyed to an objective person that it was the judge's desire that the defendant had been killed, rather than arrested and convicted, in violation of MCJC 1. [JTC Case Summary, 18-3](#) (dismissed with a caution).
- *Making improper remarks.* A judge questioned the competency of an attorney in open court, with no foundation for doing so, in violation of MCJC 1. [JTC Case Summary, 16-8](#) (dismissed with a caution).
- *Making improper remarks.* A judge exhibited intense anger during a meeting with a social support agency; told a defendant that, as a judge, they could tell the defendant when to urinate; and told a defendant that police officers may lie to him, in violation of MCJC 1. [JTC Case Summary 16-6](#) (dismissed with an admonition).
- *Making improper remarks.* A judge attempted to intimidate a defendant who failed to appear for a hearing by calling the defendant's cell phone and sarcastically insinuating that the defendant's capture and punishment were the judge's personal goals, in violation of MCJC 1. [JTC Case Summary, 15-1](#) (dismissed with an admonition).

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***Grievance investigations concerning various matters outside of court.***

- *Exhibiting inappropriate behavior.* A judge threw a can at, and used vulgar language toward, volunteers at a public event, in violation of MCJC 1. [JTC Case Summary, 15-2](#) (dismissed with an admonition).



## State Bar of Michigan Ethics Opinions

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***Guidance on engaging in various matters in court.***

- *Permitting plea bargain in which prosecutor requires defendant to pay prosecution fee in exchange for a sentence reduction.* "A judge may not

sanction a plea bargain in a criminal case in which the prosecutor requires the defendant to pay a ‘costs of prosecution’ fee to the prosecutor’s office in return for a reduction or dismissal of the pending criminal offense”; “MCJC 1 requires a judge to maintain the independence of the judiciary, free from outside interests,” and “[t]his practice raises several ethical issues not the least of which is that the judge is asked to condone the position that justice is for sale to those who have the resources to pay for a reduction in charges and detrimental to those who do not have sufficient assets to pay the prosecutor’s assessment.” [State Bar of Michigan Ethics Opinion, JI-117, January 9, 1998.](#)

- *Providing deposition testimony.* “A lawyer may seek the testimony of a sitting judge at deposition if the judge/witness is properly subpoenaed” because “MCJC 1 requires judges to uphold the integrity and independence of the judiciary,” and “[p]roviding requested information within the judge’s knowledge and expertise regarding a dispute before the courts enhances, not detracts, from the integrity of the judiciary, and visibly demonstrates that the judge/witness is participating in legal proceedings the same manner as other citizens.” [State Bar of Michigan Ethics Opinion, JI-57, August 24, 1992.](#)
- *Sitting on case initiated before assuming office.* “A judge, to whom a fee may become due as a result of a case initiated by the judge as a lawyer prior to taking the bench, should not hear any matter prosecuted or defended by a lawyer connected with the law firm to which the case was referred, as long as the judge continues to have a financial interest in the outcome of the referred case”; “[a]n honorable and independent judiciary is an indispensable feature of justice in American society” under MCJC 1 and “[a] judge should always avoid a situation tending to cast a doubt upon judicial integrity.” [State Bar of Michigan Ethics Opinion, C-228, January, 1983.](#)

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***Guidance on engaging in various matters outside of court.***

- *Accepting gifts.* “A judge, judge’s family member, or staff member may accept gifts that are considered ‘ordinary social hospitality’ but should not accept any other gifts from persons who may appear before the judge” because “judges have a duty to uphold the integrity and independence of the judiciary” under MCJC 1, and “[a] court’s acceptance of gifts of appreciation from lawyers who appear before them may cause other professionals and the public to question those fundamental principles.” [State Bar of Michigan Ethics Opinion, JI-146, September 3, 2020.](#)
- *Consulting with another judge.* “A judge may consult with another judge, individually or by way of listservs, to seek guidance in carrying



out the judge's adjudicative responsibilities so long as the judge does not receive factual information that is not part of the record and the judge makes an independent decision in the matter before the judge" because inherent in MCJC 1 "is the understanding that the jurist serving as the trier of fact in a case must individually decide the case, independent of the opinion of others." [State Bar of Michigan Ethics Opinion, JI-149, March 30, 2020.](#)

- *Conducting campaign activity on social media.* "Judicial officers and judicial candidates are not limited to conducting campaign activity on only a judicial campaign social media account"; "[s]ince all social media platforms require a mutual consent or acknowledgment to follow on personal or professional social media accounts, there is a general understanding that those who do not want to see such material are able to easily block, hide, or ignore the postings by judicial officers and judicial candidates on those personal and professional accounts." [State Bar of Michigan Ethics Opinion, JI-147, November 1, 2019.](#) "For that reason, judicial officers and judicial candidates are expected to follow the rules for advertising and solicitation that would apply to in-person interactions, simply transferring these guidelines to social media outlets. Mirroring in-person campaign rules, judicial officers and judicial candidates may use social media to notify and advertise their own campaigns on personal and professional accounts, but solicitation and acceptance of campaign contributions are reserved only for judicial candidates' campaign committees." *Id.* "So long as the tenet [in [MCJC 1](#)] of integrity and independence at the judicial level is upheld, there is no explicit Michigan ethics violation for judicial officers and judicial candidates who use their personal or professional social media account to inform their followers, or friends on social media, that they are in fact running a judicial campaign." EO JI-147.
- *Moderating a forum conducted by a political party.* Because MCJC 1 "obligates all judges . . . at all times to observe high standards of conduct so that the integrity and independence of the judicial system is not compromised in a manner that erodes public confidence in the impartiality of the judiciary, . . . a judicial officer may serve as moderator at a forum on criminal justice initiatives conducted by a political party provided the judge does not comment on pending or impending cases in any court; the judge does not take a position on a legislative initiative that would preclude the judge from later presiding over a case or controversy involving the matter; and, the judge's participation does not interfere with the performance of the judge's judicial duties." [State Bar of Michigan Ethics Opinion, JI-121, April 23, 1999.](#)
- *Sitting with spouse at political event.* "A judge's spouse may serve on the campaign committee of a nonjudicial candidate and appear as a

committee member on campaign letterhead” even though “[o]ccasionally, conduct of members of the judge’s family may be restricted in order to preserve the independence of the judiciary and confidence in the legal system, MCJC 1.” [State Bar of Michigan Ethics Opinion, JI-47, March 6, 1992](#). Further, “[a] judge may sit on the dais with the judge’s spouse who is serving as co-chairperson of a political party social event.” *Id.* “When considering the possibility of any benefit to the sponsoring political organization from the judge’s attendance at a dinner as spouse of an organizer, it seems that the benefit is minimal”; “[t]he judge is a guest like anyone else” and “is not giving any speeches, nor is the judge responsible for organizing the dinner.” *Id.* Accordingly, “[t]he judge is not overstepping boundaries by sitting on the dais with the judge’s spouse at a political gathering.” *Id.*

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*Guidance on serving on various organizations.*

- *Serving on executive agency.* “A district court magistrate may not concurrently serve on a city board of police commissioners.” [State Bar of Michigan Ethics Opinion, JI-94, July 27, 1994](#). “Although the board of police commissioners may serve to facilitate the administration of justice by reviewing and investigating citizen complaints against officers, the fundamental principles of impartiality, independence and integrity of a judge are in conflict with the member’s role on the commission.” *Id.* “MCJC 1 provides that ‘an independent and honorable judiciary is indispensable to justice in our society,’” and “[t]he board of commissioners is an executive agency appointed by the chief executive of the city, *i.e.*, mayor”; “[t]his conflicts with a strict separation of the judiciary.” EO JI-94. “Accordingly, a district court magistrate’s simultaneous service on the city board of police commissioners violates the Michigan Code of Judicial Conduct by destroying the magistrate’s appearance of impartiality.” EO JI-94.
- *Serving on political action committee.* “A judge may not serve on a legislative affairs and political action committee whose mission is to support pro-business oriented candidates to partisan or nonpartisan offices.” [State Bar of Michigan Ethics Opinion, JI-65, February 25, 1993](#). “In regard to the issue of impartiality, the judge must be neutral, and therefore, should refrain from participating in furthering or opposing the interests of business.” *Id.*, citing MCJC 1. “By serving as a member of a committee which has taken a stance in favor of or in opposition to a particular sector of the community, the judge is stripped of impartiality and would face recusal on each occasion that the policy or law affecting that sector was the subject matter being contested in a legal proceeding or when a member of that sector appeared before the judge in question.” *Id.* “It is clear that promoting the interests of the business sector is distinct and apart from the

general ‘improvement of the law, the legal system, or the administration of justice’ as it pertains to the courts.” *Id.*

- *Serving on board of legal aid organization.* “A judge serving on the board of directors of a nonprofit legal aid organization is required to disclose the relationship when one of the parties appearing before the judge is represented by a lawyer from the legal aid organization.” [State Bar of Michigan Ethics Opinion, JI-51, April 3, 1992](#). “[I]f the legal aid organization has a personal interest in the proceeding, pecuniary or otherwise because of commitment to the particular causes or the enforcement of its own policies, then the judge must recuse from hearing the case or deciding the issue,” because “[t]o sit in judgment on such matters would reflect adversely on the judge’s impartiality contrary to MCJC 1.” *Id.*
- *Serving on board of organization with political ties.* “A judge may not serve as a member of the board of directors of a charitable, nonprofit organization which is under the auspices of a political party” because doing so “has the potential of compromising . . . the independence [and] the integrity . . . of the judiciary” in contravention of MCJC 1. [State Bar of Michigan Ethics Opinion, JI-22, May 16, 1990](#). “Even if it is assumed that the organization is well-distanced from the political party, the mere fact that the foundation bears the name of a deceased leader of the party makes it more probable than not that the judge, as a member of the board, will be perceived by the public to endorse the brand or style of politics engaged in by the deceased political leader.” *Id.* “In sum, any accomplishments or misfortunes of the proposed charitable foundation accrue to the benefit or disadvantage of the county democratic party, and the national party in general,” and “[a] judge should not be a party to such an endeavor.” *Id.*

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#### *Guidance on serving in dual roles.*

- *Serving as full-time staff attorney or law clerk and part-time magistrate or part-time referee.* “[A] part-time magistrate or part-time referee is subject to the [MCJC] and therefore, must . . . maintain the independence of the judiciary”; accordingly, under MCJC 1 “it is ethically prohibited for an attorney to simultaneously serve as a full-time judicial law clerk or staff attorney and as a part-time magistrate or referee in the same or different jurisdiction.” [State Bar of Michigan Ethics Opinion, JI-151, May 13, 2021](#).
- *Serving as case evaluator and judge.* “A lawyer who has served as a [case evaluator] under [MCR 2.403](#) may not thereafter preside as judge in a judicial proceeding between the same parties involving the same matter” because [MCR 2.403\(D\)\(3\)](#) specifically provides that a judge “may not preside at the trial of any action in which he or she served as

case evaluator.” [State Bar of Michigan Ethics Opinion, JI-112, March 26, 1997](#).<sup>2</sup> MCJC 1 “requires that all judges maintain high standards of conduct in order to maintain and preserve the integrity and independence of the judiciary” and “cautions judges against conduct that may be prejudicial to the administration of justice”; accordingly, “[h]aving served on a [case evaluation] panel, a judge cannot thereafter preside at the trial of any action in which the judge served as [case evaluator].” EO JI-112.

- *Serving as assistant prosecutor and part-time magistrate.* “An assistant prosecutor may not serve as a part-time magistrate for a district court” because “[a] magistrate is a ‘judge’ whose conduct is governed by the Michigan Code of Judicial Conduct” and “judges should refrain from dealings that tend to reflect adversely on their impartiality, MCJC 1.” [State Bar of Michigan Ethics Opinion, JI-56, July 24, 1992](#). “The dual role of prosecutor one day and magistrate the next could cause the person to be dealing with the same defense lawyer or defendant as an adversary on one occasion and as a trier of fact on another”; “[t]he appearance that an advocate may be less vigorous in representing a party against the prosecutor, knowing that on subsequent days the advocate will be appearing before the prosecutor sitting as a magistrate, will affect public confidence in the system of justice.” *Id.*

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### ***Guidance on lending support.***

- *Supporting charitable organizations on social media.* “Judges may support charitable organizations on social media so long as the organization will not likely be engaged in proceedings that would ordinarily come before the judge, the judge does not coerce participation by others, and the judge does not individually solicit funds for the organization”; however, “[j]udges shall not individually publish their own specific charitable contributions on social media.” [State Bar of Michigan Ethics Opinion, JI-148, November 1, 2019](#). “Judges may allow their names and photographs to be shown on the website or in the social media of a charitable organization if the use does not: (1) appear to be the judge’s personal solicitation for funds; (2) coerce participation from others; or (3) compromise the integrity of the court.” *Id.* “Although judges may participate in the activities described above, judges are strongly advised to ensure that their conduct will not erode the integrity and independence of the judiciary” under MCJC 1. EO JI-148.

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<sup>2</sup> At the time EO JI-112 was written, [MCR 2.403](#) referred to mediation. However, in 2000, the court rule was amended to replace the term “mediation” with the term “case evaluation.” Aside from the change of terms, the provision discussed in EO JI-112 has not changed and is presumably still applicable in this context.

- *Signing resolution endorsing petition.* “A judge may not sign a resolution which requests specific action be taken by the mayor and county board of commissioners regarding business closings of a local employer and the union workers it employs.” [State Bar of Michigan Ethics Opinion, JI-52, April 27, 1992](#). “MCJC 1 requires that a judge ‘participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved’”; accordingly, where “[t]he wording of the [r]esolution is not neutral and impartial” and “[t]he entire thrust of the [r]esolution is to pre-judge the nature of the situation without receiving evidence and without hearing from the [e]mployer’s point of view,” “[f]or a judge to sign the [r]esolution would be showing favoritism and bias for the [u]nion position.” EO JI-52.<sup>3</sup>

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#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)

National Center for State Courts - [Center for Judicial Ethics](#)

State of Michigan - [Judicial Tenure Commission](#)

State Bar of Michigan - [Ethics](#)

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<sup>3</sup> MCJC 1 was amended to replace the word “himself” with “personally.” EO JI-52 quotes the pre-amended version of the canon.



## Canon 2: A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities<sup>1</sup>

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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

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<sup>1</sup>"All judicial candidates are subject to . . . [Canon 2] . . . 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." MCJC 5.

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." [Michigan Code of Judicial Conduct, Canon 2](#).

**Note:** [MCR 2.003\(C\)\(1\)\(b\)\(ii\)](#) provides that judicial disqualification is warranted where "[t]he judge, based on objective and reasonable perceptions, . . . has failed to adhere to the appearance of impropriety standard set forth in [[MCJC 2](#)]"; [MCR 2.003\(C\)\(1\)\(a\)-\(g\)](#) enumerate other situations warranting judicial disqualification. For more information about judicial disqualification, see the Michigan Judicial Institute's *Judicial Disqualification Manual*.

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 2 is featured in this chapter.





## Michigan Supreme Court Cases

### *Engaging in misconduct resulting in removal from office.*

- *Making false statements under oath, tampering with evidence, and failing to disclose relationship.* A judge violated [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#) when she “failed to disclose the extent of her [close, personal] relationship with [a detective, who was a witness in a pending case], to the parties in the case”; “failed to disclose the extent of her [close, personal] relationship with [an attorney and the attorney’s law firm] in several cases over which [she] presided”; “failed to immediately disqualify herself from her own divorce proceeding and destroyed evidence in that divorce proceeding even though she knew that her then-estranged husband had filed an ex parte motion for a mutual restraining order regarding the duty to preserve evidence”; “made false statements (a) during court proceedings over which she presided, (b) to the [Judicial Tenure Commission] while under oath during these proceedings, and (c) while testifying at her deposition under oath in her divorce proceeding”; “was persistently impatient, undignified, and discourteous to those appearing before her” by being “routinely disrespectful to attorneys and litigants,” and hostile toward counsel; “required her staff members to perform personal tasks during work hours”; “allowed her staff to work on her 2014 judicial campaign during work hours”; and “improperly interrupted two depositions that she attended during her divorce proceeding.” *In re Brennan*, 504 Mich 80, 83-84, 93-95, 103-104 (2019). The “multifarious acts of misconduct” warranted “severe sanctions . . . because of [the judge’s] misconduct in making false statements under oath, in tampering with evidence in her divorce proceedings, and in failing to disclose the extent of her relationship with” a detective in a pending case. *Id.* at 85, 85 n 11 (judge removed from office).
- *Making false statements.* A judge engaged in “[i]rresponsible or improper conduct that erodes public confidence in the judiciary” and “[c]onduct involving impropriety and appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “[f]ail[ed] to respect and observe the law and to conduct oneself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when she “falsely told her employer that she required a long-term medical leave of absence due to imminent knee surgeries”; “[a]lthough the medical leave was granted, the surgeries were never performed”; the judge “made numerous intentional misrepresentations to the Judicial Tenure Commission

regarding her medical condition and efforts to treat it, including efforts to schedule an independent medical examination”; “made false statements to the Commission regarding the scheduling of an independent psychiatric examination”; and “made false statements in pleadings filed in federal court and in [district court].” *In re Sanders*, 498 Mich 856, 857-858 (2015) (judge removed from office).

- *Making false statements and improper docket management.* A judge engaged in “[c]onduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary” in violation of MCJC 2(A); “[f]ail[ed] to respect and observe the law and so conduct herself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to MCJC 2(B); “[a]llow[ed] family, social or other relationships to influence judicial conduct or judgment” in violation of MCJC 2(C); and “[u]s[ed] the prestige of office to advance personal business interest” contrary to MCJC 2(C), when she “twice made false statements under oath in connection with her divorce proceeding,” “made and solicited other false statements while not under oath, including the submission of fabricated evidence” to the JTC, “improperly listed cases on the no-progress docket,” “was absent excessively and engaged in belated commencement of proceedings, untimely adjournments, and improper docket management,” “allowed a social relationship to influence the release of a criminal defendant from probation,” and “recklessly flaunted her judicial office.” *In re Nettles-Nickerson*, 481 Mich 321, 322-323, 333 (2008) (judge engaged in other misconduct not relevant to MCJC 2 and was removed from office).
- *Engaging in inappropriate relationship, engaging in ex parte communications, and lying under oath.* A judge violated MCJC 2 “by failing to ‘avoid all impropriety and appearance of impropriety,’ failing to ‘promote public confidence in the integrity and impartiality of the judiciary,’ and allowing a social relationship ‘to influence judicial conduct or judgment’” when he “(a) had a sexual relationship with a complaining witness in a case pending before him without recusing himself for several months, (b) engaged in numerous ex parte communications with her concerning the case, as well as concerning another case in which one of her relatives was a party, (c) violated various policies of the courthouse by permitting his mistress to enter the facility through an employee entrance without going through security, allowing her to remain alone in his chambers while he was on the bench, arranging for her to park her vehicle in an area reserved for judges, and sneaking her cell phone into the courthouse for her, (d) transmitted numerous text messages to her while he was on the bench that contained inappropriate and derogatory references to defendants, litigants, and witnesses appearing before him, (e) lied about when and why he finally did recuse himself from the case in

which his mistress was the complaining witness, (f) sought to use the prosecuting attorney's office as leverage against his then ex-mistress by concocting charges of stalking and extortion against her, and (g) lied under oath during the JTC proceedings." *In re McCree*, 495 Mich 51, 55-56, 72-73 (2014), quoting MCJC 2. The Michigan Supreme Court noted its "duty to preserve the integrity of the judiciary," and indicated that the judge "was just recently publicly censured . . . yet continued to engage in misconduct," which "is strongly suggestive that [the judge] has not yet learned from his mistakes and that the likelihood of his continuing to commit judicial misconduct is high." *Id.* at 86. "Such a cavalier attitude about serious misconduct is disturbing, and [the judge's] apparent failure to comprehend fully the magnitude of his wrongdoing is equally troublesome." *Id.* at 86-87 (judge removed from office).

- *Committing perjury and falsifying legal documents.* A judge violated MCJC 2 "by failing to 'avoid impropriety and the appearance of impropriety' and by failing to 'respect and observe the law'" when she "(a) committed perjury; (b) signed her former attorney's name on legal documents without the latter's permission and filed these documents also without such permission; and (c) made numerous misrepresentations of fact under oath during the JTC proceedings"; "[t]he cumulative effect of [the judge's] misconduct convince[d] [the Michigan Supreme Court] that [the judge] should not remain in judicial office." *In re Adams*, 494 Mich 162, 164, 179 (2013), quoting MCJC 2 (judge removed from office).
- *Misappropriating public funds.* A judge's misconduct violated [MCJC 2\(A\)](#), [MCJC 2\(B\)](#), and [MCJC 2\(C\)](#) when she "misappropriated public funds, some of which were intended for victims of crime"; "inappropriately spent much of this money on self-promoting advertisements and travel expenses for herself and various other court employees"; "treated these funds . . . as her own 'publicly funded private foundation'"; "denied people access to the court by instituting and enforcing an improper business-attire policy"; "employed a family member in violation of court policy"; and "made numerous misrepresentations of fact under oath during the investigation and hearing of th[e] matter." *In re James*, 492 Mich 553, 555-556, 558 (2012). "The cumulative effect of [the judge's] misconduct, coupled with its duration, nature, and pervasiveness, convince[d] [the Michigan Supreme Court] that she [was] unfit for judicial office"; "[a]lthough some of her misconduct, considered in isolation, [did] not justify such a severe sanction, taken as a whole her misconduct r[ose] to a level that require[d] her removal from office." *Id.* at 556 (judge removed from office).
- *Disregarding the law.* A judge's misconduct violated [MCJC 2\(A\)](#), [MCJC 2\(B\)](#), and [MCJC 2\(C\)](#) when he engaged in "numerous instances of

documented judicial misconduct,” including “‘fixing’ (personally and surreptitiously dismissing) traffic citations issued to himself, his spouse, and his staff; preventing the transmission of or altering court information that was legally required to have been transmitted to the Secretary of State; dismissing cases without conducting hearings or involving the prosecutor; failing to follow plea agreements; and making false statements under oath during the JTC hearing.” *In re Justin*, 490 Mich 394, 396, 398 (2012). “[T]he common themes running throughout [the judge’s] substantiated acts of misconduct [were] a calculated disregard for the law and an intentional effort to undermine the judicial process, as deemed warranted or expedient by the [judge]”; “[s]uch misconduct evince[d] an unacceptable disregard for the role of judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* at 413. The judge’s actions [were] completely antithetical to the privilege of being a judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* (judge removed from office).

- *Driving while intoxicated.* A judge engaged in “[i]rresponsible or improper conduct that erodes public confidence in the judiciary” contrary to [MCJC 2\(A\)](#); “[c]onduct involving impropriety and the appearance of impropriety” contrary to [MCJC 2\(A\)](#); and “[f]ail[ed] to respect and observe the law” contrary to [MCJC 2\(B\)](#), when he “was under the influence of alcohol when he ran his car into [a] store”; left the scene of the accident; “attempted to deceive the police about [the timing of his alcohol consumption] because he was motivated by a desire to avoid criminal prosecution”; and “continued to misrepresent the cause of the accident to the JTC and the master, motivated in addition by a desire to avoid professional discipline.” *In re Noecker*, 472 Mich 1, 7, 10 (2005). The judge “misled the police, the public, and the JTC about his drinking,” and his “insistence that he was sober at the time of the accident [was] not credible.” *Id.* at 13. “His misrepresentations about being sober when he caused an automobile accident that carried civil and criminal consequences [were] antithetical to his judicial obligation to uphold the integrity of the judiciary,” and his “repeated deception and the publicity surrounding the incident . . . seriously eroded the public’s confidence in him and in the judiciary.” *Id.* at 13-14 (judge removed from office).

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### *Interfering with the administration of justice.*

- *Misusing authority to influence criminal investigation.* A judge engaged in “irresponsible or improper conduct that erodes public confidence in the judiciary” and “conduct involving impropriety and the appearance of impropriety” contrary to [MCJC 2\(A\)](#), and “a failure to respect and observe the law and to conduct oneself at all times in a manner that would enhance the public’s confidence in the integrity

and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when he “engaged in a *sustained* campaign to prevent [his intern] from facing legal consequences for her actions by interfering with a police investigation and the subsequent prosecution, in addition to providing false information in his answer to the formal complaint.” *In re Simpson*, 500 Mich 533, 555, 564-565 (2017). Specifically, the judge “used his position as a judge in an effort to scuttle a criminal investigation of his intern” by arriving at the scene of the drunk-driving accident, identifying himself to the police as a judge, and interrupting the sobriety-testing process. *Id.* at 546-547. Further, the judge “improperly acted as a legal advocate for [his intern] and used his position as a judge to thwart the township’s criminal prosecution of his intern” and “succeeded for a time in delaying the issuance of the charges.” *Id.* at 548. Finally, the judge “made ‘an intentional misrepresentation or a misleading statement’ when he attributed the ‘vast bulk’ of his communications with [his intern] to [a case they were working on]” because “[t]he sheer number of communications—which were frequently exchanged during the night and on weekends—is inconsistent with [the judge’s] explanation that the communications related to court business.” *Id.* at 553-554 (judge suspended for nine months without pay).

- *Attempting to influence investigation.* Where a judge was involved in an automobile accident and “knew one of the investigating officers who arrived at the scene,” “[t]his existing relationship, coupled with [the judge’s] attempted direction to the officer concerning the type of investigation that he should conduct with regard to the other driver, gave rise to an appearance of impropriety” in contravention of MCJC 2. *In re Brown (After Remand)*, 464 Mich 135, 139-141 (2001) (judge suspended for 15 days without pay).
- *Misusing authority to influence case.* A judge engaged in conduct that “created the appearance of impropriety, which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#), and “fail[ed] to conduct himself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when a county commissioner was arrested for a domestic altercation and the judge “directed his staff to obtain a copy of the initial police report, which was obtained by accessing [the police department’s] computer system at [the courthouse]”; “directed that a fax be sent to the [jail] reporting that he had sent a personal recognizance bond for [the defendant]”; and “did not contact the [police department] for additional information, but relied on the initial investigation report in determining to authorize the bond.” *In re Logan*, 486 Mich 1050, 1051-1052 (2010) (judge publicly censured).
- *Example where engaging in extrajudicial contact does not rise to level of misconduct.* A judge did *not* violate [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#) when



he failed to terminate a meeting with an individual whose asset acceptance case was assigned to another judge, and faxed a letter on official district court stationery to the individual's attorney; while the judge's actions "reflected poor judgment," they did not constitute judicial misconduct. *In re Hultgren*, 482 Mich 358, 361-364 (2008) (judge cautioned "to more carefully conform his actions to the rules and provisions that guide judicial conduct").

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***Engaging in sexual misconduct.***

- *Sexual misconduct including criminal activity.* A judge engaged in "[c]onduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary" contrary to [MCJC 2\(A\)](#); "[f]ailed to respect and observe the law and to conduct oneself at all times in a manner [that] promotes public confidence in the integrity of the judiciary" contrary to [MCJC 2\(B\)](#); and "[f]ailed to treat court employees fairly and respectfully, without regard to gender" in violation of [MCJC 2\(B\)](#), when he "[k]issed a female court employee on the lips on several occasions, all of which were not welcome by the employee"; "[m]ade unwelcome physical contact with female court employees, including placing his hands on their buttocks or breasts"; "[m]ade sexually suggestive comments to a female court employee"; "[u]sed court computer equipment to view pornographic web sites via the Internet"; "[r]estricted use of the computer by other court employees in order to cover up his accessing of pornographic websites"; "[w]as charged with 4th-degree criminal sexual conduct . . . for his physical contacts with female court employees"; and "[w]as charged with common-law misconduct in office . . . for physically assaulting employees while serving in a publicly elected office as a district court judge[.]" *In re Ford*, 469 Mich 1251 (2004) (judge publicly censured, the most severe punishment that may be imposed on a judge who has resigned).
- *Sexual harassment.* A judge violated [MCJC 2\(B\)](#) by his "comments to two women prosecutors during a murder trial"; specifically, "[b]y his unnecessarily crass and sexual language," he "did not 'promote public confidence in the integrity and impartiality of the judiciary,'" and "by guessing the attorneys' heights and weights unbidden while eyeing them," he did not "'treat every person fairly, with courtesy and respect' '[w]ithout regard to a person's . . . gender[.]'" *In re Morrow*, 508 Mich 490, 494, 497-498 (2022) (judge publicly censured and suspended for six months without pay).
- *Sexual harassment.* A judge engaged in "[i]rresponsible or improper conduct which erodes public confidence in the judiciary" and "[c]onduct involving impropriety and the appearance of impropriety" in violation of [MCJC 2\(A\)](#), and "[f]ail[ed] to respect and observe the

law and to conduct himself at all times in a manner which would enhance the public's confidence in the integrity and impartiality of the judiciary" contrary to [MCJC 2\(B\)](#), when he "engaged in a course of conduct constituting sexual harassment" of his judicial secretary for several years; "[a]lthough his misconduct occurred while off the bench, it was serious and related to his administrative duties as a judge." *In re Iddings*, 500 Mich 1026, 1029-1030 (2017). The judge's deliberate "misconduct created an offensive and hostile work environment that directly affected the job performance of his judicial secretary in her dealings with the public and the court's business and affected the administration of justice." *Id.* at 1030 (judge publicly censured and suspended for six months without pay).

- *Indecent exposure.* A judge engaged in "[c]onduct involving impropriety and the appearance of impropriety, which erodes public confidence in the judiciary" contrary to [MCJC 2\(A\)](#), and "[f]ailed to respect and observe the law and to conduct oneself at all times in a manner that promotes public confidence in the integrity of the judiciary" contrary to [MCJC 2\(B\)](#), when he exposed his genitalia to an undercover police officer in an airport bathroom. *In re Halloran*, 466 Mich 1219, 1220 (2002) (judge publicly censured and suspended for 90 days without pay).
- *Inappropriate drawings and comments.* A judge violated [MCJC 2\(A\)](#), [MCJC 2\(B\)](#), and [MCJC 2\(C\)](#), when he "compromised the integrity of the court" by making "lewd drawings—one of female breasts and one of a penis—on notes that were attached to two court files" on two separate occasions, and by commenting on the "small chest size" of a female employee during a retirement party at the courthouse. *In re Servaas*, 484 Mich 634, 639, 641, 651 (2009). While the judge's "conduct concerning the comment and two drawings was unquestionably inappropriate," his actions were viewed as "an aberration given his 35 years of apparent unblemished service" as a district court judge. *Id.* at 637 (judge publicly censured).

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### *Exhibiting lack of judicial temperament.*

- *Using controversial tone and manner.* A judge violated [MCJC 2\(B\)](#), which "provides that '[a]t all times, the conduct and manner of a judge should promote public confidence in the integrity and impartiality of the judiciary' and that 'a judge should treat every person fairly, with courtesy and respect,'" when his "conduct demonstrate[d] a pattern of persistent interference in and frequent interruption of the trial of cases; impatient, discourteous, critical, and sometimes severe attitudes toward jurors, witnesses, counsel, and others present in the courtroom; and use of a controversial tone and manner in addressing litigants, jurors, witnesses, and counsel," that

“frequently resulted in appellate reversal of trials over which he had presided.” *In re Moore*, 464 Mich 98, 131-133 (2001). The judge’s conduct “frequently violated the Code of Judicial Conduct and demonstrate[d], on those occasions, a lack of judicial temperament”; “[s]uch behavior undermines public confidence in the integrity and impartiality of the judiciary and is clearly prejudicial to the administration of justice.” *Id.* at 132-133 (judge suspended for six months without pay).

- *Engaging in demeaning conduct.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” contrary to [MCJC 2\(A\)](#), and “[f]ailed to respect and observe the law and to conduct himself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), by engaging in “demeaning conduct” toward a defendant in a case where he “was rude, and yelled at [the defendant] without provocation,” and by “deliberate[ly] fail[ing] to comply with the dictates” of the court rule regarding disqualification in a case in which defense counsel had a pending grievance against the judge. *In re Bradfield*, 465 Mich 1309, 1310-1313 (2002) (judge publicly censured and suspended for 30 days without pay).
- *Failing to be patient and dignified.* A judge engaged in “[c]onduct involving impropriety and appearance of impropriety” contrary to [MCJC 2\(A\)](#) when he was not “patient and dignified” and made improper comments to and about a defendant that he sentenced to jail for contempt of court; the judge admitted “that some of his comments directed to and about [the defendant] were improper and eroded public confidence in the judiciary” in violation of [MCJC 2\(A\)](#). *In re Post*, 493 Mich 974, 976-977 (2013) (judge publicly censured and suspended for 30 days without pay).
- *Using insulting, demeaning, and humiliating language.* A judge violated [MCJC 2\(A\)](#), which provides that “[p]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges,” and [MCJC 2\(B\)](#), which provides that “a judge should treat every person fairly, with courtesy and respect” when, during a “protracted and highly contentious divorce and custody case,” she “failed to act in a patient, dignified, and judicial manner during the contempt proceedings against the three children, aged 9, 10, and 13, directing to them . . . comments and gestures far exceeding the proper bounds of stern language permitted to a judge.” *In re Gorcyca*, 500 Mich 588, 595, 614-615 (2017). The judge “did not observe high standards of conduct and did not preserve the integrity of the judiciary when she mocked the children, threatened them, called them ‘crazy’ and ‘brainwashed,’ exaggerated or lied about the conditions at [an out-of-home care, custody, and treatment center], and generally expressed hostility to



the children and their mother,” and “exhibited a lack of judicial temperament during the proceedings in open court when she directed at the three children and their mother language that was insulting, demeaning, and humiliating.” *Id.* at 615, 643 (judge publicly censured).

- *Arriving late to work.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), when matters were set for hearing and she repeatedly arrived late to the courthouse because “some of the litigants, attorneys and witnesses may not have been able to have their matter addressed in as timely a fashion as they would have had if [the judge] had arrived at the courthouse by 9 a.m.” *In re Gibson*, 497 Mich 858, 859-860 (2014) (third alteration in original) (judge publicly censured and suspended for 30 days without pay).
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#### ***Failing to fulfill judicial duties.***

- *Engaging in ex parte communications.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “[f]ail[ed] to respect and observe the law and to conduct himself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” and violated the directive to “treat every person fairly, with courtesy and respect” “[w]ithout regard to a person’s race, gender, or other protected personal characteristic” contrary to [MCJC 2\(B\)](#), when he e-mailed the prosecuting attorney regarding caselaw pertinent to two pending cases, without notifying defense counsel, and proceeded to disparage the prosecutor’s office for alerting defense counsel to the ex parte communications. *In re Filip*, 503 Mich 956, 959 (2019) (judge publicly censured).
- *Failing to properly handle cases and complete work responsibilities.* A judge violated MCJC 2 by improperly handling numerous cases; for example, at an arraignment, the judge inexplicably facilitated a defendant’s release, “plac[ing] the interests of [defendant] and his counsel . . . ahead of all other interests, including protection of the public.” *In re Hathaway*, 464 Mich 672, 674, 682, 690 (2001). And “[t]he improper effort to persuade [a defendant] to waive his right to a jury trial [was] another example of a serious one-time breach of [the judge’s] responsibility to use her judicial power lawfully” that “surely was connected to a more serious problem that was ongoing—her prolonged failure to attend in timely fashion to the business of her court.” *Id.* at 690, 692 (judge suspended for six months without pay).

- *Failing to properly handle cases.* A judge violated [MCJC 2\(A\)](#) by engaging in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” when he corresponded with a defendant several times urging the defendant to plead guilty, and when the defendant declined to do so, “knowingly executed and caused to be filed in the [court] records” a judgment of sentence “which falsely stated that [the defendant] had been advised of right to counsel and appointed counsel and had knowingly, intelligently and voluntarily waived that right, and pled guilty to the charged offense”; “[a]s a result of these actions, [the defendant] was denied the opportunity for a hearing and basic due process.” *In re Milhouse*, 461 Mich 1279, 1279-1282 (2000) (judge publicly censured and suspended for 10 days without pay).
- *Failing to follow the law.* A judge engaged in “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#) when she “reduced charges, dismissed charges outright, or modified sentences in at least 20 criminal cases, without holding a hearing and where she had no explicit authority from the prosecutor to do so”; “dismissed at least 32 ticket cases without holding a hearing and where she had no explicit authority from the prosecutor to do so”; “engaged in ex parte communications by considering substantive matters relevant to the merits of the pending proceedings, without the knowledge or consent of the prosecuting attorney”; “engaged in [other] ex parte contacts”; and “declined to appoint a translator for the defendant when she should have.” *In re Church*, 499 Mich 936, 937-940 (2016) (judge publicly censured and suspended for 120 days without pay “in light of [the judge’s] disclosed serious and debilitating medical condition” and “her acceptance of responsibility”).
- *Failing to follow the law.* A judge engaged in “irresponsible or improper conduct that erodes public confidence in the judiciary” and “conduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “fail[ed] to conduct oneself in a manner that promotes public confidence in the integrity and impartiality of the judiciary” in violation of [MCJC 2\(B\)](#), when he engaged in misconduct “arising out of criminal cases in which [he] was the presiding judge,” and “the totality of the evidence . . . paint[ed] a portrait of a judicial officer who was unable to separate the authority of the judicial office he holds from his personal convictions.” *In re Morrow*, 496 Mich 291, 295, 298-299, 299 n 9 (2014) (quotation marks and citation omitted). Specifically, (1) the judge “closed the courtroom to the public and the victim’s family during a postconviction hearing without specifically stating the reasons for the closure or entering a written order as required by [court rule]” and “subsequently ordered his court reporter not to prepare transcripts of the hearing”; (2) “failed to sentence a defendant . . . with the mandatory minimum . . . as

prescribed by [statute], despite the prosecutor’s bringing the relevant statute to his attention,” and “later discharged the defendant from probation without the defendant having served the mandatory [sentence]”; (3) “refused the prosecutor’s request to remand the defendant . . . to jail awaiting sentencing as required by [statute]”; (4) “following the defendant’s guilty plea, . . . dismissed the case *sua sponte* on the basis that a previous dismissal order was with prejudice,” and “[w]hen the prosecutor informed him that his justification was contradicted by the record[,] . . . [he] stated that the dismissal was ‘conditional with prejudice’”; (5) “failed to place a sidebar conference on the record, failed to rule on the defendant’s request for a curative instruction, and failed to follow instructions from the Court of Appeals to hold an evidentiary hearing on a contested legal issue, and his ruling on remand was not supported by the trial record”; (6) “at the beginning of a trial over which he was to preside . . . left the bench, shook hands with the defendant, and gave a package of documents to defense counsel”; (7) “*sua sponte* subpoenaed medical records of the defendant without the parties’ knowledge or consent”; and (8) “personally retrieved an inmate from lockup, escorted him to his courtroom, and sentenced him without restraints or courtroom security personnel present.” *Id.* at 295-297; see also *id.* at 297 n 3. The Michigan Supreme Court noted that “although judicial officers should strive to do justice, they must do so *under the law* and within the confines of their adjudicative role.” *Id.* at 300 (judge suspended for 60 days without pay).

- *Failing to follow the law.* A judge engaged in “[i]rresponsible or improper conduct that erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “[f]ailed to conduct oneself at all times in a manner that would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when he arraigned a disruptive individual “for contempt of court outside of his presence [swearing at court staff], based only on the unsworn conversation he had heard between [court staff], his own observations, and his conversation with [the court clerk]”; “did not disqualify himself, or raise the issue of his possible disqualification, based on his receipt of the information communicated in the . . . conversation with [the court clerk]”; and denied the defendant’s motion for disqualification. *In re Wiley*, 495 Mich 963, 965-966, 968 (2014) (judge publicly censured).
- *Failing to advance case.* A judge “[f]ailed to conduct oneself at all times in a manner which would enhance the public’s confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#), when she adjourned a case numerous times and ultimately recused herself, “at which time 18 months had passed after the arraignment, and a trial had not

occurred.” *In re Moore*, 472 Mich 1207, 1208-1210 (2005) (judge publicly censured).

- *Failing to advance cases.* A judge violated [MCJC 2\(A\)](#) by engaging in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” when he engaged in “unwarranted delay, inaction and failure to timely act” in two domestic relations cases; specifically, in a spousal support/child support case, he did not render a decision until “approximately 11 months after the hearing and more than three years after remand from the Supreme Court,” and in a divorce case, he “persistently failed to act or was persistently neglectful in performance of his duties,” including “failure to timely decide motions or promptly enter orders after matters were decided by the court.” *In re Jelsema*, 463 Mich 1229, 1230-1233 (2001). Additionally, the judge “neither submitted a reply nor requested additional time to respond” to the JTC’s initiation to comment on the two grievances. *Id.* at 1231, 1233 (judge publicly censured).
- *Resolving child custody dispute with coin flip.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#), when she resolved a disputed child custody issue by the flip of a coin. *In re Brown*, 468 Mich 1228, 1232 (2003). The judge “expresse[d] her deep regret for her conduct . . . and for the resulting negative impact on the public perception of judges, the institutional integrity of the judiciary, and the administration of justice.” *Id.* at 1228, 1231 (judge publicly censured).

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### *Misusing position.*

- *Misusing judicial office for personal benefit.* A judge engaged in “[i]mpropriety and the appearance of impropriety, which erodes public confidence in the judiciary” contrary to [MCJC 2\(A\)](#); “[f]ailed to conduct oneself at all times in a manner that promotes public confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#); and abused “the prestige of office to advance personal business interests” contrary to [MCJC 2\(C\)](#), when he “used official [court] stationery to solicit donations to produce and implement two educational programs and for business correspondence pertaining to the production of related materials”; “used official stationery to solicit contributions to finance events and activities related to these programs, including prominent placement of his name and judicial status in advertising for a concert to benefit his projects”; and “utilized the funds also to publicize himself.” *In re Thompson*, 470 Mich 1347, 1347-1348 (2004) (judge suspended for 90 days without pay and ordered to pay costs).

- *Misusing judicial office for personal benefit.* A judge engaged in “[c]onduct involving impropriety and the appearance of impropriety which erodes public confidence in the judiciary” contrary to [MCJC 2\(A\)](#); “[f]ailed to respect and observe the law and to conduct oneself at all times in a manner that promotes public confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#); and “[a]llowed social or other relationships to influence judicial conduct or judgment” in violation of [MCJC 2\(C\)](#), by (1) “engag[ing] in conduct which reasonably could be viewed as sexually offensive toward a subordinate by altering a screen saver message on her computer screen”; (2) “misus[ing] certain court facilities and equipment, property, or personnel for his personal use”; (3) “engag[ing] in a verbal confrontation with the manager of [a local movie theater], identif[y]ing himself as a district court judge, and [being] uncooperative when he was asked to leave”; and (4) purchasing a vehicle that he drove for approximately two weeks “without displaying the temporary paper license plates.” *In re Trudel*, 465 Mich 1314, 1314-1315, 1317 (2002) (judge publicly censured and suspended for 90 days without pay).
- *Engaging in inappropriate relationship.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “[f]ail[ed] to respect and observe the law and to conduct himself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when he responded to a card from a defendant on court stationery and inquired if she was interested in seeing him romantically, and continued to e-mail with her thereafter; and when he contacted a judge that had been assigned a criminal case involving a former neighbor. *In re Mazur*, 498 Mich 923, 924-926 (2015) (judge publicly censured and suspended for 30 days without pay).
- *Misusing judicial office to solicit money from defendants for a charitable cause.* A magistrate was presiding over traffic citations and permitted a police officer to sit at a table next to the podium in the courtroom with a bag of tickets from a local field day, and “dismissed the tickets of defendants pleading responsible or who were found responsible and advised them to purchase tickets from the police officer”; “[s]ome defendants were asked how many children they planned to take and if the number was too low they were told they needed to take more children,” and “[o]thers were told to ‘dig deeper,’ call someone, or go to an ATM machine.” *In re Shannon*, 465 Mich 1304, 1305 (2002). “In one case a defendant was asked how much money he had” and “[w]hen the defendant said he had \$116 on him, [the magistrate] told him to buy \$100 worth of tickets”; “[t]he average ticket purchase was approximately \$50 per person.” *Id.* The magistrate’s “conduct,



whether well intentioned or not, gave the appearance of using the powers of his position as magistrate to solicit money from defendants for a charitable cause” and constituted “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” and “[c]onduct involving the appearance of impropriety,” contrary to [MCJC 2\(A\)](#). *Shannon*, 465 Mich at 1305-1306 (magistrate publicly censured and suspended for 30 days without pay).

- *Engaging in inappropriate political activity.* A judge engaged in “conduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#), “which erodes public confidence in the judiciary,” when she engaged in inappropriate political activity while a judge or judicial candidate by simultaneously running for judge and mayor, and failing to discontinue mayoral campaign activities after she was elected to the position of judge and signed the oath of office for an upcoming six-year term; and when she engaged in inappropriate campaign conduct/soliciting contribution when she identified herself as treasurer of her campaign committee and solicited donations to her campaign on her website. *In re Sanders*, 485 Mich 1045, 1046-1049 (2010) (judge publicly censured and suspended for 21 days without pay).
- *Engaging in imprudent behavior.* A judge violated [MCJC 2\(A\)](#) by engaging in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary,” “[c]onduct involving impropriety and the appearance of impropriety,” and “fail[ing] to willingly and freely accept restrictions on conduct, present due to constant public scrutiny, that might be viewed as burdensome on the ordinary citizen,” when he “used his cell phone to make a digital image of himself after completing a half-marathon and captioned the photograph . . . ‘[f]it in my 50’s’”; “showed the digital image to a number of people, including his family, police officers, and deputies who worked in or passed through his courtroom” including digitally sending the image to a sheriff’s department employee “either at her request or on his own . . . approximately a year after it was made”; when interviewed by a reporter, “conducted himself in a flippant manner and did not give the interview the seriousness he should have,” bringing “shame and obloquy to the judiciary”; and, when discussing the digital image with the reporter, stated “[t]here is no shame in my game.” *In re McCree*, 493 Mich 873, 874-875 (2012) (judge publicly censured).
- *Engaging in imprudent behavior.* A judge “fail[ed] to avoid all impropriety and appearances of impropriety to ensure that public confidence in the judiciary was not eroded” contrary to [MCJC 2\(A\)](#), and “fail[ed] to conduct oneself at all times in a manner which would promote the public confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when she sent a letter to a sheriff’s association concerning the association’s endorsement of a candidate in

the judicial primary that raised questions about the moral fiber of the candidate and her spouse and “did not undertake to independently verify the truth or falsity of the representations[.]” *In re Fortinberry*, 474 Mich 1203, 1204-1206 (2006) (judge publicly censured).

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***Engaging in misconduct involving alcohol/drugs.***

- *Driving while intoxicated.* A judicial candidate engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#); engaged in “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#); and “[f]ail[ed] to respect and observe the law and to conduct herself at all times in a manner which would enhance the public’s confidence in the integrity of the judiciary” contrary to the [MCJC 2\(B\)](#). This conduct was made applicable to respondent, as a judicial candidate, by MCJC 5 when, while running for office, she was arrested on suspicion of driving while intoxicated and littering. *In re McDonald*, 503 Mich 1013, 1016 (2019). Following her election to the bench, she pled guilty to disorderly conduct - littering, with a plea agreement for a delayed sentence and dismissal upon successful completion of probation, and admitted to careless driving. *Id* (judge suspended for 45 days without pay).
- *Driving while intoxicated.* A judge engaged in “[i]rresponsible or improper conduct that erodes public confidence in the judiciary” and “[c]onduct involving the appearance of impropriety” in violation of [MCJC 2\(A\)](#), and “[f]ailed to conduct oneself at all times in a manner that would enhance the public’s confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#), when he operated a motor vehicle with a high blood alcohol content “by towing a boat and trailer out of the water at a public launch and parking on the shoulder of a public road,” and ultimately pleaded guilty to a reduced charge of operating a motor vehicle under the influence of alcohol. *In re Tabbey*, 497 Mich 900, 901-902 (2014) (judge publicly censured and suspended for 90 days without pay).
- *Driving while intoxicated.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#); “[c]onduct involving the appearance of impropriety” in violation of [MCJC 2\(A\)](#); and “[f]ail[ed] to conduct oneself at all times in a manner which would enhance the public’s confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#), when he “consumed at least four sixteen-ounce glasses of beer” and then drove “at speeds around or in excess of 100 miles per hour.” *In re Nebel*, 485 Mich 1049, 1049-1050 (2010). The judge’s breath tests “revealed that his bodily alcohol content was 0.09 per 210 liters of breath,” and he was charged with operating a motor vehicle while

intoxicated, and ultimately pled guilty to a lesser charge of operating a motor vehicle while impaired. *Id.* at 1050 (judge publicly censured and suspended for 90 days without pay).

- *Using controlled substance.* A judge engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#); “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#); and “[f]ailed to conduct oneself at all times in a manner which would enhance the public’s confidence in the integrity and impartiality of the judiciary” contrary to [MCJC 2\(B\)](#), when he smoked marijuana at a concert and admitted that he used marijuana approximately twice per year during his judicial tenure, because he was simultaneously “trying[,] convicting, and sentencing individuals in his court who had been charged with marijuana offenses.” *In re Gilbert*, 469 Mich 1224, 1225-1227 (2003) (judge publicly censured and suspended for six months without pay, without credit for an earlier leave of absence).



## Judicial Tenure Commission Summaries of Non-Public Resolutions

### *Grievance investigations concerning various administrative and court-related matters.*

- *Engaging in excessive absenteeism.* A judge had extremely poor work attendance in the preceding two years (66 days and 46 days), in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 14-4](#) (dismissed with an admonition).
- *Engaging in excessive absenteeism/tardiness.* A judge had a high rate of absenteeism and tardiness that was a long-standing issue relating to their service on the bench, including frequent late arrival to court and failure to take the bench at the time their docket was scheduled to begin, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 13-1](#) (dismissed with an admonition).
- *Engaging in ex parte communications.* A judge had an ex parte conversation with the officer in charge of the case regarding the retention of evidence, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 18-4](#) (dismissed with an admonition).



- *Failing to disclose fee referral relationship.* A part-time municipal judge failed to disclose a fee referral relationship between a private attorney that practiced before the court and the law firm where the judge was a shareholder, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 16-4](#) (dismissed with an admonition).
- *Failing to fulfill judicial responsibilities.* A judge appointed a private attorney as a ‘discovery master/facilitator’ in a case that was assigned to the judge so that the judge would not have to preside over potentially long and tedious motion hearings, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 14-6](#) (dismissed with a caution).
- *Failing to recuse.* A judge who failed to recuse on a case in which another family member, who is also a judge, signed the search warrant, did not violate MCJC 2 because the judge ultimately recognized the duty not to review a search warrant signed by a family member. [JTC Case Summary, 19-3](#) (dismissed).
- *Giving preferential treatment to friend.* A judge considered and granted their friend’s incomplete and misleading request for court-appointed counsel when the friend was a defendant in a criminal case and then appointed the judge’s own child to represent the friend, in violation of [MCJC 2\(A\)](#), [MCJC 2\(B\)](#), and [MCJC 2\(C\)](#). [JTC Case Summary, 14-2](#) (dismissed with an admonition).
- *Making public statement about pending matter.* A judge criticized another judge’s sentence of a defendant one day after the sentencing, and before the defendant had exhausted their remedies before the sentencing judge or their opportunity to appeal, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 18-7](#) (dismissed with an admonition).
- *Responding to disqualification request with form letter.* A judge’s response to a request for disqualification with a form letter advising the individual to file a motion or consult an attorney did not violate [MCJC 2\(A\)](#); however, the judge could have referred the motion for disqualification to the chief judge for review. [JTC Case Summary, 16-5](#) (dismissed).
- *Seeking preferential treatment for defendant.* A judicial official asked another judicial official to give preferential treatment to a defendant who was akin to family, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#). [JTC Case Summary, 13-5](#) (dismissed with an admonition).

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*Grievance investigations concerning various matters in court.*

- *Exhibiting improper behavior.* A judge exhibited dismissive and impatient behavior towards a litigant by using a brusque tone of voice, making accusations that the litigant was lying, not giving the litigant an opportunity to explain their case, and threatening to have the litigant arrested when the litigant attempted to rebut the judge's unfounded accusations, despite no apparent security risk, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 21-1](#) (dismissed with an admonition).
- *Exhibiting improper behavior.* A judge appeared extremely biased by holding an unnecessarily lengthy hearing and ordering costs aimed at punishing the plaintiff rather than fairly compensating the defendant in one case, and knowingly violating a standing disqualification order in another case, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 16-1](#) (dismissed with an admonition).
- *Imposing unduly harsh sanction.* A judge imposed an eight-month parenting time prohibition against a party for failing to appear at a hearing in a divorce case, without explanation or justification for the harsh sanction, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 13-6](#) (dismissed with an admonition).
- *Issuing a bond order after recusal and making improper remarks.* A judge issued a bond order after granting a motion for recusal when they should have refrained from taking any action in the case, and referred to the criminal histories and/or professional disciplinary history of a party and the grievant, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 14-5](#) (dismissed with a caution).
- *Making improper remarks.* A judge made pretrial remarks warning a defendant of additional consequences of exercising the right to a jury trial if convicted after presenting a frivolous defense, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 19-9](#) (dismissed with an admonition).
- *Making improper remarks.* A judge told a defendant that they would send the defendant to jail if convicted following a jury trial, challenged defense counsel's trial experience in defendant's presence, suggested that defense counsel was urging a jury trial for counsel's own benefit, and attempted to dissuade the defendant from proceeding with a jury trial, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 19-6](#) (dismissed with an admonition).
- *Making improper remarks.* A judge used language at sentencing that conveyed to an objective person that it was the judge's desire that the defendant had been killed, rather than arrested and convicted, in

violation of [MCJC 2\(A\)](#). [JTC Case Summary, 18-3](#) (dismissed with a caution).

- *Making improper remarks.* A judge stated during a felony sentencing hearing that it was their practice to sentence a defendant at the top of the guidelines following a jury trial, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 17-2](#) (dismissed with a caution).
- *Making improper remarks.* A judge exhibited intense anger during a meeting with a social support agency; told a defendant that, as a judge, they could tell the defendant when to urinate; told a defendant that police officers may lie to him; and had a lengthy history of using profanities with other judges, attorneys, and court officers, in violation of [MCJC 2\(A\)](#). [JTC Case Summary 16-6](#) (dismissed with an admonition).
- *Making improper remarks.* A judge attempted to intimidate a defendant who failed to appear for a hearing by calling the defendant's cell phone and sarcastically insinuating that the defendant's capture and punishment were the judge's personal goals, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 15-1](#) (dismissed with an admonition).
- *Making improper remarks.* A judge made disrespectful and discourteous comments in two cases, saying they were "a king on [their] throne" and did not have to show the defendant "a damn thing" following a request to see the verified criminal complaint, and telling the defendant to "go away" at the conclusion of a foreclosure hearing, in violation of [MCJC 2\(B\)](#); however, the comments were made in cases with extremely difficult litigants, and the judge expressed remorse and acknowledged their lack of judicial temperament. [JTC Case Summary, 14-3](#) (dismissed with an explanation).
- *Making improper remarks.* A judge publicly referred to a fellow judge in an extremely derogatory manner, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 13-4](#) (dismissed with a caution).
- *Resolving dispute unconventionally.* A judge who resolved a dispute by drawing a name out of a hat did not violate [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#) where that method of resolution was as sound as any other decision under the circumstances; however, the situation created the impression that the judge was being cavalier about their judicial role and abdicating judicial responsibility. [JTC Case Summary, 21-4](#) (dismissed with an explanation).

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*Grievance investigations concerning various matters outside of court.*

- *Executing untruthful document for personal benefit.* A judge executed a document indicating that their rental property was their principal residence thereby wrongfully obtaining the homestead property tax exemption for it, and failed to obtain a landlord's license as required by the municipality in which the rental property was located, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). [JTC Case Summary, 13-3](#) (dismissed with an admonition).
- *Exhibiting inappropriate behavior.* A judge threw a can at, and used vulgar language toward, volunteers at a public event, in violation of [MCJC 2](#). [JTC Case Summary, 15-2](#) (dismissed with an admonition).
- *Failing to identify supporter.* A judge failed to identify the person paying for their printed judicial campaign materials, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 20-3](#) (dismissed with a caution).
- *Financially benefiting from event planned by court staff.* A judge attended an event planned for them by their court staff, at which they accepted a large monetary gift from ticket sales proceeds, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#). [JTC Case Summary, 13-8](#) (dismissed with a caution).
- *Making personal inquiry and request on friend's behalf.* A judge called the arresting officer to make a bond inquiry when their friend was arrested and then called the magistrate to request that their friend be released from jail and given a personal bond, in violation of [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#). [JTC Case Summary, 18-2](#) (dismissed with a caution).
- *Obtaining firearm conviction.* A judge was convicted of carrying a firearm in a sterile area of a commercial airport, in violation of [MCJC 2\(B\)](#). [JTC Case Summary, 16-2](#) (dismissed with an admonition).
- *Obtaining impaired driving conviction.* A judge pleaded guilty to driving while impaired, in violation of [MCJC 2\(B\)](#) (while public action is typically pursued against judicial officers who violate [MCJC 2\(B\)](#) in this way, the judge's resignation rendered any formal action moot). [JTC Case Summary 14-10](#) (dismissed with an admonition).
- *Participating in certain fundraising events.* A judge officiated a game at a fundraiser for an organization that routinely provides several services in cases before the judge's court, and served as an auctioneer for another agency's fundraiser, in violation of [MCJC 2\(B\)](#) and [MCJC 2\(C\)](#). [JTC Case Summary, 20-7](#) (dismissed with a caution).

- *Permitting business entity to use prestige of office for marketing purposes.* A judge permitted a business entity that handled their campaign to utilize the prestige of their judicial office in relation to its marketing efforts, in violation of [MCJC 2\(C\)](#). [JTC Case Summary, 19-1](#) (dismissed with a caution).
- *Publicly endorsing candidate.* A judge gave permission for a sign supporting a candidate for nonjudicial office to be placed on their property which amounted to a highly visible public endorsement, in violation of [MCJC 2\(A\)](#). [JTC Case Summary, 14-9](#) (dismissed with an admonition).
- *Using prestige of office to promote personal business interests.* A judge used the prestige of their office to promote their personal business interests by appearing in a judicial robe, in the judge's courtroom, in a newspaper article and a social media post that highlighted a product the judge was selling, in violation of [MCJC 2\(C\)](#). [JTC Case Summary, 18-6](#) (dismissed with an admonition).



## State Bar of Michigan Ethics Opinions

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### *Guidance on engaging in various matters in court.*

- *Understanding technology including artificial intelligence.* “Judicial officers have an ethical obligation to understand technology, including artificial intelligence, and take reasonable steps to ensure that AI tools on which their judgment will be based are used properly and that the AI tools are utilized within the confines of the law and court rules.” [State Bar of Michigan Ethics Opinion, JI-155, October 27, 2023](#). “Further, as AI rapidly advances, judicial officers have an ethical duty to maintain technological competence and understand AI’s ethical implications to ensure efficiency and quality of justice.” *Id.* [MCJC 2\(B\)](#) and [MCJC 2\(C\)](#) “could be triggered, for example, if a judicial officer uses an AI solution that is considered partial or unfair and may influence the officer’s judgment”; “[t]his could occur if the tool’s algorithm or training data creates bias.” EO JI-155. “Specifically, if an AI tool’s algorithm’s output deviates from accepted norms, would the output influence judicial decisions in violation of [MCJC 2(C)]? EO JI-155. “An algorithm may weigh factors that the law or society deem inappropriate or do so with a weight that is inappropriate in the context presented”; “AI does not understand the world as humans do, and unless instructed otherwise, its results may reflect an ignorance of norms or case law precedent.” *Id.*

- *Disclosing prior relationship between judicial officer and lawyer.* “[I]f a judicial officer and a lawyer appearing before the court have divorced or have terminated their prior dating relationship, disclosure must be provided to all parties in order for the parties to have the opportunity to motion the court for disqualification or for the court to raise the issue of disqualification,” in order to avoid the appearance of impropriety under [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#). [State Bar of Michigan Ethics Opinion, JI-153, November 4, 2022](#).
- *Permitting plea bargain in which prosecutor requires defendant to pay prosecution fee in exchange for a sentence reduction.* “A judge may not sanction a plea bargain in a criminal case in which the prosecutor requires the defendant to pay a ‘costs of prosecution’ fee to the prosecutor’s office in return for a reduction or dismissal of the pending criminal offense”; “[t]his practice raises several ethical issues not the least of which is that the judge is asked to condone the position that justice is for sale to those who have the resources to pay for a reduction in charges and detrimental to those who do not have sufficient assets to pay the prosecutor’s assessment.” [State Bar of Michigan Ethics Opinion, JI-117, January 9, 1998](#). “This on its face is contrary to [[MCJC 2\(A\)](#) and [MCJC 2\(C\)](#)] as the conduct would create in reasonable minds that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired” and “would further reflect that the judge is using the prestige and power of his office to advance the business interests of the prosecutor’s office.” EO JI-117. “It is essential that the public have absolute confidence in the integrity and impartiality of our system of criminal justice” and “[t]his requires that public officials not only in fact properly discharge their responsibilities but also that they avoid, as much as possible, the appearance of impropriety.” *Id.*
- *Sentencing offenders to community service work to compile statistics for election.* “A judge may not sentence offenders to community service work to compile statistics on the number of cases handled in the court by candidates for a vacancy on the court.” [State Bar of Michigan Ethics Opinion, JI-107, June 18, 1996](#). [MCJC 2\(C\)](#) “forbids a judge from using the prestige of judicial office to advance the business interests of the judge or others”; “[w]hile a judge may personally speak as an individual on behalf of or support another candidate for judicial office, the judge may not use the prestige of the judicial office . . . to do so.” EO JI-107.
- *Providing deposition testimony.* “A lawyer may seek the testimony of a sitting judge at deposition if the judge/witness is properly subpoenaed” because [MCJC 2\(D\)](#)<sup>2</sup> “states that a judge should not

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<sup>2</sup> [MCJC 2\(C\)](#) at the time this ethics opinion was written. The canon has been relettered, but remains substantively similar.



appear as a witness in a court proceeding unless subpoenaed” and “[i]n this situation, the judge/witness will be properly subpoenaed.” [State Bar of Michigan Ethics Opinion, JI-57, August 24, 1992](#). Further, [MCJC 2\(B\)](#) “requires judges to respect and observe the law and to conduct themselves to promote public confidence in the integrity and impartiality of the judiciary,” and “[p]roviding requested information within the judge’s knowledge and expertise regarding a dispute before the courts enhances, not detracts, from the integrity of the judiciary, and visibly demonstrates that the judge/witness is participating in legal proceedings the same manner as other citizens.” EO JI-57.

- *Imposing sentences requiring payment to specific entity.* “A judge may not impose sentences requiring criminal defendants to pay moneys which are allocated to educational, religious, charitable, fraternal, or civic activities, unless the sentencing practice has been authorized by law.” [State Bar of Michigan Ethics Opinion, JI-55, June 22, 1992](#). Judges are allowed “to participate in *educational*, religious, charitable, fraternal or civic activities, but . . . may not personally solicit funds for any civic/charitable organization, nor use the prestige of judicial office for solicitation purposes” under [MCJC 2\(C\)](#). EO JI-55. “Unless a sentencing practice has been authorized by law, a judge’s imposition of that sentence is unethical.” *Id.*
- *Imposing sentences with option of community service or contributing to designated charity.* “A sentencing judge may not give offenders the option of performing a designated number of hours of community service work or making a monetary contribution to a charity designated by the judge.” [State Bar of Michigan Ethics Opinion, JI-48, March 10, 1992](#). Under [MCJC 2\(C\)](#), “[a] judge should not use the prestige of office to advance personal business interests or those of others.” EO JI-48. “If judges are forbidden to solicit for charity, clearly judges cannot direct contributions by requesting or requiring offenders to donate contributions in lieu of fine or jail time to charities designated by the judge.” *Id.* “Just because the option of making cash contributions to the court’s charity in lieu of performing a certain number of hours of community service work is in addition to the more traditional sentences of time and fine does not make the sentencing practice any more acceptable.” *Id.* “The sentencing judge is left open to the accusation that a particular community service alternative is intentionally more burdensome than required in order to encourage monetary contributions to the judge’s charity,” and “[t]he judicial imposition of dollars for hours also discriminates in favor of those more affluent offenders who have the means to buy out of community service work.” *Id.*
- *Preventing unauthorized practice of law.* “Judges have an ethical duty to prevent the unauthorized practice of law,” and under [MCJC 2\(B\)](#),

“[j]udges have a clear duty to uphold the integrity of the judicial process through the observance of law making it unlawful for a person to practice law without a license.” [State Bar of Michigan Ethics Opinion, JI-26, June 29, 1990](#). Additionally:

“Administrative responsibilities of judges require them to instruct court personnel to regularly check pleadings filed with the court for signature and professional identification (“P” number) to assure the person representing a party is a member of the State Bar. Judges must instruct court staff to reject pleadings having no professional identification unless the person is appearing *pro se*.

A judge who knows of unauthorized practice of law activity must take steps to prevent the unauthorized practice and report the incident to authorities empowered to act upon the matter.

When unauthorized practice of law activity occurs within the presence of a judge, the judge must stop the proceeding; place as much information on the record as possible; advise the party to seek the services of a licensed lawyer; and take other remedial action authorized by law.

When unauthorized practice of law activity occurs outside the presence of a judge, the judge must report the incident to the appropriate authority empowered to investigate the matter.

The duty to report unauthorized practice of law activity requires judges to report all relevant information, including but not limited to (a) names and addresses of all persons having information concerning the matter, (b) transcripts of proceedings recorded, and (c) copies of all available pleadings, documents and correspondence.

A judge who suspects that a party has or is receiving legal assistance from an unlicensed person outside the presence of the judge should report the incident to the appropriate authority empowered to investigate the matter.” *Id.*

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***Guidance on engaging in various matters outside of court.***

- *Attending law firm-sponsored events.* “Judicial officers must consider whether attending a law firm event will compromise their duty to avoid impropriety or even the appearance of impropriety as well as whether attendance would lower the public’s confidence in the integrity and impartiality of the judiciary per [MCJC 2(A) and MCJC 2(B)].” [State Bar of Michigan Ethics Opinion, JI-156, February 9, 2024](#).



“Depending on circumstances, attendance at a law firm event may suggest to the public that the law firm has a special relationship or influence over the judicial officer, creating the appearance of partiality of the judicial officer towards the firm.” *Id.* [MCJC 2\(C\)](#) “provides that a judge should not allow ‘social[] or other relationships to influence judicial conduct or judgment.’” EO JI-156. “To determine whether attendance at the law firm event would invite the appearance of impropriety or influence,” “a judicial officer must consider attendance from the perspective of a reasonable objective observer.” *Id.* “Judicial officers must consider whether their attendance carries the prestige of their office and lends credence to the law firm and/or the event in violation of [[MCJC 2\(C\)](#)].” EO JI-156. “While a law firm’s event may be a social affair initially thought to be ordinary social hospitality, judicial officers must be aware that law firm events are often attended by lawyers, spouses, clients, and prospective clients and are typically used to promote the business of the law firm.” *Id.* “Concerning financing, law firms usually consider these events as business expenses.” *Id.* “This consideration should be taken into account when a judicial officer is considering an invitation to an event.” *Id.*

- *Accepting a referral fee earned prior to assuming the bench.* “A judge may accept a referral fee earned prior to assuming the bench provided the judge disqualify herself or himself from all matters involving the law firm or lawyer to which the case was referred until final payment is made, with very limited exceptions”; [MCJC 2](#) “require[s] disqualification on any matter involving the law firm or lawyer from whom the referral fee is owed until full payment of the referral fee,” and “[o]nce final payment is made, the lawyers may appear before the judge.” [State Bar of Michigan Ethics Opinion, JI-150, November 8, 2021.](#)
- *Participating in civic and charitable activities.* “A judge may participate in civic and charitable activities which meet the following limitations and/or criteria:
  1. The activities may not detract from the dignity of the judicial office.
  2. The activities may not interfere with the performance of judicial duties.
  3. The activities may not reflect adversely on the judge’s impartiality.
  4. The activities may not give the appearance of impropriety.
  5. The 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 and serve as a member of an honorary committee or join a general appeal of such an organization only if: (a) it is unlikely that the organization will be engaged in proceedings that would ordinarily come before the judge; (b) it is unlikely the organization will become engaged in adversary proceedings in any court; (c) the judge does not personally solicit funds; and (d) the prestige of the judicial office is not used for solicitation of funds or membership.

6. The judge may speak at or receive an award in connection with an event of a[n] educational, religious, charitable, fraternal or civic organization, and even allow his or her name or title to be used in advertising the event, but may not individually solicit funds.” [State Bar of Michigan Ethics Opinion, J-8, January 31, 2014.](#)

“A judge is permitted to solicit membership in an educational, religious, charitable, fraternal or civic organization as long as the membership solicitation is not included in the same letter as a solicitation of funds.” EO J-8. “But, a judge should not participate in membership solicitation if doing so could be perceived as using the prestige of the judicial office to coerce participation due to [\[MCJC 2\(A\)\]](#).” EO J-8.

- *Hosting a commercially-sponsored program.* “A judge’s hosting of a commercially-sponsored program has the potential 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”; “it is difficult to envision how hosting on a regular basis any commercially-sponsored program would not place the judge in contravention of [\[MCJC 2\(C\)\]](#)’s proscription against the use of the prestige of office to advance personal business interests or those of others.” [State Bar of Michigan Ethics Opinion, JI-137, May 11, 2012.](#)
- *Displaying an attorney’s for-profit educational courses and materials.* “The display of an attorney’s for-profit educational courses and materials should not be allowed in the court clerk’s office or in any area the public may perceive to be under the court clerk’s control or other court staff’s control”; “[n]otwithstanding the educational nature of the materials and even where the author’s name is clearly displayed, display of material the sale of which promotes an attorney’s business interests in such an area could be perceived as violating [\[MCJC 2\(A\)\]](#) concerning a judge avoiding all impropriety and any appearance of impropriety, as well as [\[MCJC 2\(C\)\]](#), concerning judges using their prestige of office to advance personal business interests of others

because the court clerk's office is an arm of or under the control of the court." [State Bar of Michigan Ethics Opinion, JI-135, October 15, 2010](#).

- *Moderating a forum conducted by a political party.* Because MCJC 2 "obligates all judges to avoid impropriety, and the appearance of impropriety, . . . a judicial officer may serve as moderator at a forum on criminal justice initiatives conducted by a political party provided the judge does not comment on pending or impending cases in any court; the judge does not take a position on a legislative initiative that would preclude the judge from later presiding over a case or controversy involving the matter; and, the judge's participation does not interfere with the performance of the judge's judicial duties." [State Bar of Michigan Ethics Opinion, JI-121, April 23, 1999](#).
- *Participating in public protest.* "A judge may not participate in a public protest against a group or organization which advocates against a particular race, ethnic group or religion." [State Bar of Michigan Ethics Opinion, JI-109, August 6, 1996](#). Where "[t]he judge would be appearing in public as a part of a protest against some of the persons, presumably, who may appear before the judge in unrelated matters" and "[t]he protest targets a particular segment of society," it is important to "preserve a forum in which those persons may be fairly and impartially heard." EO JI-109; see also [MCJC 2\(A\)](#), [MCJC 2\(B\)](#), and [MCJC 2\(F\)](#).
- *Taking position on proposal.* "A judge may take a position on a proposal to eliminate adult education in the state to the extent that the position addresses the impact of the proposal on the administration of justice." [State Bar of Michigan Ethics Opinion, JI-108, June 25, 1996](#). "The matters of educational opportunities and educational resources are significant to the legal system and the administration of justice"; "[i]n fact, the impact of education generally on the social and economic factors material to poverty and crime is a serious matter of interest to the justice system," and "[t]he concerns and advice of the judiciary are to be welcome." *Id.* Accordingly, insofar "as a judge's public comments on adult education are limited to its impact on the administration of justice, they are not unethical." *Id.* However, "the subject of education is often fraught with partisan political considerations, and a judge should therefore be especially mindful of the provisions of [[MCJC 2\(A\)](#) and [MCJC 2\(C\)](#)]." EO JI-108.
- *Using jury records for personal election mailings and soliciting support from jurors.* "A judge may not use jury records for the judge's personal election mailings" and "may not personally solicit public statements of support from persons who have served as jurors in the judge's court." [State Bar of Michigan Ethics Opinion, JI-104, October 5, 1995](#). [MCJC 2\(C\)](#) "would prohibit the judge from using judicial office, *i.e.*, access to records because of his judicial position, to enhance personal

election chances”; “[t]herefore the juror information the judge has acquired is not available for the purposes of soliciting campaign support.” EO JI-104.

- *Teaching law course.* “A judge may teach a law course as long as the obligations of teaching do not interfere with the proper performance of judicial duties”; however, “[a] judge may not serve as a contributing editor of a journal of political opinion” because “[i]f the judge is responsible for editing the journal, the judge would probably be soliciting articles and contacting authors about editing changes” and “the prestige of the judge’s judicial office would thus be brought into play for the private interests of the publication, contravening [MCJC 2(C)].” [State Bar of Michigan Ethics Opinion, JI-99, March 15, 1995.](#)
  - *Transferring law practice.* “Whether or not a lawyer may ‘assign’ a law practice is a question of law”; “[a] lawyer may not offer or make an agreement to transfer a law practice when:
    - (a) there is no provision for client consent to the transfer of the client’s file and transfer of lawyer responsibility for the matter;
    - (b) the transferring lawyer assumes judicial office and continues to be actively involved in the law practiced by the transferred firm; or
    - (c) the transferring lawyer assumes judicial office and maintains a continuing financial or business interest in the former law practice.” [State Bar of Michigan Ethics Opinion, JI-89, April 8, 1994.](#)
- “To the extent a transfer perpetuates the name of an elected judge’s former law practice, the practice is not permitted”; “[a] lawyer who assumes judicial office may not allow the judge’s name to remain in the former firm’s name and members of the firm are prohibited from using the judge’s name in the firm name or in professional notices” in accordance with [MCJC 2\(C\)](#). EO JI-89. Further, “[a] judge may not plan to utilize or utilize the library, secretary, conference room, or other assets of the judge’s former law firm on a regular basis after assuming judicial office” because “[s]uch on-going contact and access to a private law practice raises questions regarding judicial impropriety in contravention of [MCJC 2(C)]”; accordingly, “the judge’s ongoing use of the judge’s former private law facility is improper.” EO JI-89.
- *Receiving compensation for legal material.* “A judge may write an article containing general legal information, provide work product for inclusion in an educational pamphlet or cassette tape sold for profit, and receive compensation therefor, provided that the promotion and

sale of the material is not an exploitation of the author's judicial position and the activity does not interfere with the proper performance of judicial duties" under [MCJC 2\(C\)](#). [State Bar of Michigan Ethics Opinion, JI-76, December 9, 1993](#).

- *Accepting scholarships or fellowships to attend professional development seminars.* "A judge may accept scholarships or fellowships in order to attend professional development seminars provided they are awarded on the same terms as applied to nonjudicial applicants and do not adversely reflect upon the judge's impartiality toward persons whose interests come before the judge," and "[a] judge may compete for scholarship funds to attend a professional seminar designed to develop leadership and networking for women." [State Bar of Michigan Ethics Opinion, JI-75, November 16, 1993](#). However, "[t]he underlying purpose for the scholarship or fellowship may . . . be subject to circumspection." *Id.* "For instance, pursuant to [[MCJC 2\(A\)](#)], judges must recognize that they are the subject of constant public scrutiny and must refrain from actions that may be improper or have the appearance of bias." EO JI-75. "The participation in any event that excludes any person based upon a personal characteristic, i.e., gender, may lead an individual to conclude that a particular personal characteristic may be grounds for prejudice or favorable bias by the participating judge in matters before that court." *Id.* "Therefore, it would appear to be prudent for a judge to refrain from association with an organization which admittedly, and in fact, excludes a particular gender from participation." *Id.* Additionally, "[t]o the degree that the association seeks to exclusively promote individuals based upon their gender, a judge must exercise extreme caution before participation in activities which fall under the conduct proscribed by [[MCJC 2\(F\)](#)]." EO JI-75. In sum, "a judge's participation in alumna associations or other organizations whose sole purpose is to promote a particular gender or other personal characteristic to influential positions to the exclusion of others should be carefully considered." *Id.*
- *Providing services as conciliator.* "A judge should not provide services as a conciliator in disputes that are likely subjects of arbitration or litigation" because doing so "might well be viewed as exploitative of the court's prestige and influence and therefore inappropriate" under [MCJC 2\(A\)](#) and [MCJC 2\(C\)](#). [State Bar of Michigan Ethics Opinion, JI-69, June 21, 1993](#).
- *Participating in health education and social awareness activities.* "A judge may participate in health education and social awareness activities such as AIDS prevention, and encourage other persons to support the same cause"; however, "[a] judge should not wear on the judicial robe symbols indicating the judge's support or opposition to a particular political, social, or charitable/civic cause." [State Bar of Michigan](#)



[Ethics Opinion, JI-68, April 26, 1993](#). “Wearing the AIDS ribbon would publicly identify the judge with the AIDS educational program,” and “[t]he wearing of a ribbon for this purpose on street clothes outside the courtroom neither detracts from the integrity and impartiality of office or gives the impression the judge is using the prestige of office to advance the business interests of the judge or others” under [MCJC 2\(C\)](#). EO JI-68. However, “a judge should not wear [such a symbol] on the judicial robe.” *Id.*

- *Sitting with spouse at political event.* “A judge’s spouse may serve on the campaign committee of a nonjudicial candidate and appear as a committee member on campaign letterhead.” [State Bar of Michigan Ethics Opinion, JI-47, March 6, 1992](#). [MCJC 2\(A\)](#) “is broad in its scope, and concerned with any activity that may impair a judge’s perception in the public eye.” EO JI-47. Because “a judge must avoid ‘all impropriety and appearance of impropriety’” under [MCJC 2\(A\)](#), and may not allow the prestige of the judicial office to be used for the personal or business interests of others” under [MCJC 2\(C\)](#), “it is not simply the judge’s conduct which must be restricted.” EO JI-47. However, “[t]he name of the spouse, and not the judge, is simply appearing on stationery in his/her capacity as a committee member” and “[t]his does not reflect any impropriety on the part of the judge, nor does it suggest the judge’s public endorsement of a nonjudicial candidate.” *Id.* “A spouse should not have to hide his/her identity from an election when it is proper for the judge to participate directly in the activities.” *Id.* Further, “[a] judge may sit on the dais with the judge’s spouse who is serving as co-chairperson of a political party social event.” *Id.* “When considering the possibility of any benefit to the sponsoring political organization from the judge’s attendance at a dinner as spouse of an organizer, it seems that the benefit is minimal”; “[t]he judge is a guest like anyone else” and “is not giving any speeches, nor is the judge responsible for organizing the dinner.” *Id.* Accordingly, “[t]he judge is not overstepping boundaries by sitting on the dais with the judge’s spouse at a political gathering.” *Id.*
- *Selling law books.* “A judge may . . . sell his/her law books to a lawyer who is likely to come before the court on which the judge serves if a device [is] used to shield the identity of the purchaser, such as a blind trust” without running afoul of [MCJC 2](#) because “[a]n indirect sale (via a device to shield purchaser identity) would not violate the Michigan Code of Judicial Conduct as long as the identity of the purchaser remains undisclosed to the judge.” [State Bar of Michigan Ethics Opinion, JI-40, July 29, 1991](#).
- *Selling computer program.* “A judge who has developed a computer program which will produce forms for use by lawyers may sell the program to a lawyer or other person as a distributor.” [State Bar of Michigan Ethics Opinion, JI-21, May 11, 1990](#). Under [MCJC 2\(C\)](#), “[a]

judge should not allow his family, social, or other relationships to influence judicial conduct or judgment” and “should not use the prestige of office to advance personal business interests or those of others”; accordingly, “[t]he judge may retain a royalty for the units sold, but may not take part in the marketing of the product or be retained in any advisory capacity as to technical questions concerning the product,” and “should have no ownership in the purchaser entity, nor have any rights in the operation by which the product is distributed.” EO JI-21.

- *Repaying campaign loans.* “A judicial candidate’s campaign committee should first repay loans to other creditors before repaying loans made by the candidate to his committee” because “[t]hough it is proper for a candidate to loan the committee monies and be later reimbursed from its funds,” “establishing first priority to those funds violates the spirit if not the language of . . . MCJC 2 where a judge must ‘. . . avoid all impropriety and appearance of impropriety.’” [State Bar of Michigan Ethics Opinion, JI-7, July 7, 1989](#). “[T]he circumstance of first priority repayment gives the appearance of private benefit to the candidate to the exclusion of other lenders or contributors, particularly where shortfall results.” *Id.*
- *Attending a court proceeding of family member.* “A judge may attend a deposition or hearing in order to provide moral support for a party who is within the third degree of consanguinity or affinity to the judge, or for other persons with whom the judge maintains a close familial relationship.” [State Bar of Michigan Ethics Opinion, JI-15, November 9, 1989](#). “As a public figure and member of the judicial branch of government, a judge’s presence at a hearing or other proceeding will inevitably be noticed and an inference can be drawn that the judge is attempting to influence the outcome of the hearing or the conduct of the deposition.” *Id.* “Whether or not this is true, an appearance of impropriety can arise from the judge’s involvement in a legal matter to which the judge is neither party, nor witness, and otherwise has no legally cognizable interest requiring the judge’s presence at the proceeding”; however, “[t]his inference should be balanced by the concern of the judge when a party in the proceeding is a member of the judge’s family.” *Id.* “Therefore, a judge is precluded from appearing at a proceeding to provide[] emotional support, unless the other person is related to the judge within the third degree of consanguinity or affinity, or is a person with whom the judge maintains a close familial relationship.” *Id.*

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#### *Guidance on serving on various organizations.*

- *Serving on fraternal or advocacy organization.* “A judicial officer may be a member of a fraternal or advocacy organization, including the

Fraternal Order of Police (FOP), so long as such membership does not create an appearance of bias, undermine public confidence in judicial impartiality, or otherwise conflict with the [MCJC]”; “[j]udges must be particularly cautious when joining organizations that advocate for specific legal or political interests, especially if those interests frequently come before the court.” State Bar of Michigan Ethics Opinion, JI-158, August 1, 2025. “When a judge is a member of an advocacy organization like the FOP and that judge regularly presides over cases involving police testimony or interests, the appearance of impropriety is heightened,” and “[f]requently presiding over matters in which police officers are witnesses or have other interests creates the risk that such membership could undermine public confidence in the judiciary’s fairness and objectivity, thereby implicating [MCJC 2(B)].” EO JI-158. “Membership in other advocacy organizations that take strong policy or political positions—such as Planned Parenthood, Right to Life, or public safety advocacy groups like Mothers Against Drunk Driving or Moms Demand Action—raises similar concerns.” *Id.* “When a judge aligns with an organization that advocates strongly for or against issues that may come before the court, there is a risk that the judge’s impartiality—or the public perception of it—could be compromised.” *Id.* “Accordingly, if an organization takes aggressive public stances on controversial legal or political issues—particularly those that are likely to come before the judge—membership could trigger [MCJC 2(F) or MCJC 2(B)].” EO JI-158. “Ultimately, a judge must weigh all relevant factors, and when there is a reasonable likelihood that organizational affiliation could cast doubt on a judge’s impartiality, recusal, disclosure, or reconsideration of the affiliation may be warranted.” *Id.*

- *Serving on charitable or non-profit organization.* “A judge may serve as a member of an honorary committee or may join a general appeal on behalf of a charitable organization and may speak at or receive an award or other recognition in connection with an event of such an organization and 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”; “[a]llowing the use of the prestige of the judge’s office does not create an appearance of impropriety” in violation of MCJC 2. [State Bar of Michigan Ethics Opinion, JI-139, October 21, 2013](#). “[A] judge may not serve as an officer, director, trustee, or nonlegal advisor of a charitable or non-profit organization if the organization is regularly engaged in adversary proceedings before any court or is likely to be engaged in proceedings that would ordinarily come before the particular judge”; *engaged in proceedings* “includes, but is not limited to, providing testimony or documentary evidence to the court or participating in case status conferences in certain types of cases on a regular basis.” EO JI-39. “The Code of Judicial Conduct must be read as a whole and although [MCJC 4] would (with some restrictions as noted) allow a



judge to participate as an officer, director, trustee or nonlegal advisor, if doing so in a particular instance violates the principles of [MCJC 2], the judge may not then participate in that particular instance.” EO JI-139. “Nor may a judge serve as an officer, director, trustee, or nonlegal advisor of a charitable or non-profit organization where the sole purpose of the charitable or non-profit organization is to raise money for the court’s own court-ordered programs” because “[t]o do so would be a violation of [MCJC 2(A) and MCJC 2(C)] as serving in the capacity stated is more than merely allowing the use of the prestige of office permitted under this provision.” EO JI-139. “A judge’s involvement in this capacity with such a charitable or non-profit organization may create an appearance that the judge has a vested interest in requiring parties appearing before the specialty court to participate in programs run by a non-profit or charitable organization of which the judge is an officer, director, trustee or nonlegal advisor—particularly if the court were to order the party to pay a fee to that entity as part of participating in such a program.” *Id.*

- *Serving on executive agency.* “A district court magistrate may not concurrently serve on a city board of police commissioners.” [State Bar of Michigan Ethics Opinion, JI-94, July 27, 1994](#). “Although the board of police commissioners may serve to facilitate the administration of justice by reviewing and investigating citizen complaints against officers, the fundamental principles of impartiality, independence and integrity of a judge are in conflict with the member’s role on the commission”; “[a]ccordingly, a district court magistrate’s simultaneous service on the city board of police commissioners violates [MCJC 2(B)] by destroying the magistrate’s appearance of impartiality.” EO JI-94.
- *Serving as a member of an independent law revision commission.* “A judge may sit as a member of an independent law revision commission providing information and assistance to the Legislature so long as the duties of the commission are limited to the improvement of the law, the legal system, or the administration of justice and so long as the membership of the committee does not interfere with the proper performance of judicial duties.” [State Bar of Michigan Ethics Opinion, JI-67, March 30, 1993](#). “It is clear that a judicial officer is required not only to promote confidence in the integrity and impartiality of the judiciary” under MCJC 2(B), “but also to bear the burden of contributing to the improvement of the law, the legal system and the administration of justice, including the revision of substantive and procedural law and improvement of criminal and juvenile justice.” EO JI-67.
- *Serving on political action committee.* “A judge may not serve on a legislative affairs and political action committee whose mission is to support pro-business oriented candidates to partisan or nonpartisan offices.” [State Bar of Michigan Ethics Opinion, JI-65, February 25,](#)

1993. “In regard to the issue of impartiality, the judge must be neutral, and therefore, should refrain from participating in furthering or opposing the interests of business.” *Id.*, citing [MCJC 2\(C\)](#). EO JI-65. “By serving as a member of a committee which has taken a stance in favor of or in opposition to a particular sector of the community, the judge is stripped of impartiality and would face recusal on each occasion that the policy or law affecting that sector was the subject matter being contested in a legal proceeding or when a member of that sector appeared before the judge in question.” *Id.* “It is clear that promoting the interests of the business sector is distinct and apart from the general ‘improvement of the law, the legal system, or the administration of justice’ as it pertains to the courts.” *Id.*

- *Serving on board of legal aid organization.* “A judge serving on the board of directors of a nonprofit legal aid organization is required to disclose the relationship when one of the parties appearing before the judge is represented by a lawyer from the legal aid organization.” [State Bar of Michigan Ethics Opinion, JI-51, April 3, 1992](#). “[I]f the legal aid organization has a personal interest in the proceeding, pecuniary or otherwise because of commitment to the particular causes or the enforcement of its own policies, then the judge must recuse from hearing the case or deciding the issue,” because “[t]o sit in judgment on such matters . . . could result in the appearance of impropriety contravening [[MCJC 2\(A\)](#)].” EO JI-51.
- *Serving on attorney discipline board.* “A judge may serve as a member of an attorney discipline board hearing panel and participate in a disciplinary proceeding against a lawyer.” [State Bar of Michigan Ethics Opinion, JI-24, May 17, 1990](#). “[[MCJC 2\(A\)](#)] provides that a judge should expect to be the subject of constant public scrutiny, and requires that a judge avoid all appearance of impropriety”; “[a] judge must adhere to restrictions on conduct that might be considered burdensome by the average citizen, but a judge is obligated to accept these limitations freely and willingly.” EO JI-24. “[[MCJC 2\(B\)](#)] requires that a judge conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary”; “[g]enerally MCJC 2 focuses on the need to promote public confidence in the impartiality of the judiciary and the need to avoid impropriety and the appearance of impropriety in all of the judge’s activities.” EO JI-24. “When read together [with [MCJC 4](#)], . . . [there is] no explicit prohibition or underlying philosophy which would require a lawyer to resign from the disciplinary board hearing panel when the lawyer becomes a judge.” *Id.*
- *Serving on board of organization with political ties.* “A judge may not serve as a member of the board of directors of a charitable, nonprofit organization which is under the auspices of a political party” because doing so “has the potential of compromising . . . the integrity and

impartiality of the judiciary” in contravention of MCJC 2. [State Bar of Michigan Ethics Opinion, JI-22, May 16, 1990](#). “Even if it is assumed that the organization is well-distanced from the political party, the mere fact that the foundation bears the name of a deceased leader of the party makes it more probable than not that the judge, as a member of the board, will be perceived by the public to endorse the brand or style of politics engaged in by the deceased political leader.” *Id.* “In sum, any accomplishments or misfortunes of the proposed charitable foundation accrue to the benefit or disadvantage of the county democratic party, and the national party in general,” and “[a] judge should not be a party to such an endeavor.” *Id.*

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### *Serving in dual roles.*

- *Serving as full-time staff attorney or law clerk and part-time magistrate or part-time referee.* “[A] part-time magistrate or part-time referee is subject to the [MCJC] and therefore, must avoid the appearance of impropriety”; accordingly, under [MCJC 2\(A\)](#) “it is ethically prohibited for an attorney to simultaneously serve as a full-time judicial law clerk or staff attorney and as a part-time magistrate or referee in the same or different jurisdiction.” [State Bar of Michigan Ethics Opinion, JI-151, May 13, 2021](#).
- *Serving as part-time referee and attorney.* “Part-time Family Court Referees may not represent private clients in domestic relations matters before the circuit judge who appointed the family court referee and before the family court judges who supervise the referee’s performance and hear appeals from the part-time lawyer/referees decision in domestic relations matters as the judge is disqualified from hearing the matters presented by the family court referee.” [State Bar of Michigan Ethics Opinion, JI-126, January 25, 2002](#). “However, part-time family court referees may represent private clients in domestic relations[] matters in the circuit in which they act as referee if the parties have waived the disqualification of the judge pursuant to [[MCR 2.003\(E\)](#)], or if there is a visiting judge presiding over their matters.” EO JI-126. “Part-time family court referees may represent private clients in all other matters within the jurisdiction of the circuit court” but “[p]art-time family court lawyer[] referees may not represent private clients before other part-time family court referees presiding in the same circuit as the advocate lawyer referee.” *Id.* “As a judicial officer subject to the Michigan Code of Judicial Conduct, a family court referee is subject to public scrutiny and must avoid all impropriety and the appearance of impropriety” under [MCJC 2\(A\)](#); “it is foreseeable that a favorable ruling or recommendation for the lawyer/referee’s client will be perceived as a form of professional courtesy coupled with the expectation of favored treatment if and when the presiding lawyer/referee appears in a representative

capacity before the other part-time lawyer/referee.” EO JI-126. “Thus, it is improper for a part-time lawyer/referee serving in one circuit to represent private clients in proceedings before other part-time family court referees presiding in the same circuit just as it is improper to appear before the judge who employs them.” *Id.*

- *Serving as case evaluator and judge.* “A lawyer who has served as a [case evaluator] under [MCR 2.403](#) may not thereafter preside as judge in a judicial proceeding between the same parties involving the same matter” because [MCR 2.403\(D\)\(3\)](#) specifically provides that a judge “may not preside at the trial of any action in which he or she served as case evaluator.” [State Bar of Michigan Ethics Opinion, JI-112, March 26, 1997](#).<sup>3</sup> [MCJC 2\(B\)](#) provides that “[j]udges must at all times observe and respect the law and conduct themselves in a manner that promotes public confidence in the integrity and impartiality of the judicial system” and [MCJC 2](#) “cautions judges against conduct that may be prejudicial to the administration of justice”; accordingly, “[h]aving served on a [case evaluation] panel, a judge cannot thereafter preside at the trial of any action in which the judge served as [case evaluator].” EO JI-112.
- *Serving as part-time judge and conservator.* “A part-time judge may serve as the conservator of a protected person but should decline if such service would impose on the performance of judicial duties, detract from the dignity of judicial office, or if it would constitute the use of the prestige of office to advance the personal interests of the judge or others”; however, “[a] part-time judge may not serve as conservator of a business or other enterprise.” [State Bar of Michigan Ethics Opinion, JI-88, March 30, 1994](#). “[J]udges and part-time judges alike should not permit the use of ‘the prestige of office to advance personal business interests or those of others’ as proscribed by [[MCJC 2\(C\)](#)]”; “[s]pecial care must be exercised to avoid a violation of the judicial Canons, and therefore, although a part-time judge may serve as a conservator for a protected person, a part-time judge may not act as conservator of a business.” EO JI-88.
- *Serving as assistant prosecutor and part-time magistrate.* “An assistant prosecutor may not serve as a part-time magistrate for a district court.” [State Bar of Michigan Ethics Opinion, JI-56, July 24, 1992](#). “The dual role of prosecutor one day and magistrate the next could cause the person to be dealing with the same defense lawyer or defendant as an adversary on one occasion and as a trier of fact on another,” and “[t]his ability to act as a neutral and detached judicial officer one day a week after advocating for the people as an assistant prosecutor the

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<sup>3</sup> At the time EO JI-112 was written, [MCR 2.403](#) referred to mediation. However, in 2000, the court rule was amended to replace the term “mediation” with the term “case evaluation.” Aside from the change of terms, the provision discussed in EO JI-112 has not changed and is presumably still applicable in this context.

rest of the week is simply too much to expect from the human personality” in accordance with [MCJC 2\(C\)](#). EO JI-56.

- *Serving as retired judge and mediator or arbitrator.* “A retired judge may participate as mediator or arbitrator as long as (a) the retired judge does not participate during the period of any judicial assignment, (b) the retired judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator, and (c) the participation does not reflect adversely on the retired judge’s impartiality or raise an appearance of impropriety.” [State Bar of Michigan Ethics Opinion, JI-28, July 12, 1990](#). “The retired judge should ensure that the mediation activities in which the retired judge participates are not so identified with one party, organization or interest group as to reflect adversely on the judge’s impartiality or to raise questions of bias or the appearance of impropriety” in contravention of [MCJC 2\(A\)](#) and [MCJC 2\(B\)](#). EO JI-28.
- *Serving on census count committee.* “A judge may serve as a member of a census count committee formed to promote census awareness in the judge’s community, if (a) the activities do not detract from the dignity of the judicial office, (b) the activities do not interfere with the performance of judicial duties, (c) the activities do not reflect adversely on the judge’s impartiality, and (d) participation in the activities does not constitute an appearance of impropriety.” [State Bar of Michigan Ethics Opinion, JI-18, March 27, 1990](#). “It is unlikely, if not impossible, for such a ‘blue ribbon committee’ to be involved in proceedings before a state court or federal court judge”; “[t]o serve on the committee would not be a violation of [[MCJC 2](#)].” EO JI-18.
- *Serving as director of nonprofit corporation.* “A judge may serve as director of a nonprofit corporation formed by a university to manage various entrepreneurial activities for the university, if (a) the nonprofit corporation is a *bona fide* educational, religious, charitable, fraternal or civic organization, (b) the nonprofit corporation will not be engaged in proceedings that would ordinarily come before the judge, and (c) the nonprofit corporation will not be regularly engaged in adversary proceedings in any court.” [State Bar of Michigan Ethics Opinion, JI-18, March 27, 1990](#). “Although it would appear unlikely that the nonprofit corporation formed by the state university would become engaged in legal proceedings that would ordinarily come before the judge, or that the organization ‘will be regularly engaged in adversary proceedings in any court,’ if such should occur, the judge should resign from the board of the corporation.” *Id.*

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*Guidance on lending support.*



- *Donating to a nonjudicial candidate's campaign.* "A sitting judge may make a private monetary donation to a nonjudicial candidate's campaign"; "[e]ven though the candidate must publish a financial report of donations, the contribution would not amount to a 'public endorsement' of the candidate." [State Bar of Michigan Ethics Opinion, JI-145, June 15, 2015](#). "Given the [2013] amendments of [MCJC 2] allowing judges to be more involved in fundraising activities" and "relax[ing] some of the previous restrictions on a judge's extrajudicial activities," "a campaign contribution to a nonjudicial candidate, without more, is not ethically prohibited." EO JI-145.
- *Signing resolution endorsing petition.* "A judge may not sign a resolution which requests specific action be taken by the mayor and county board of commissioners regarding business closings of a local employer and the union workers it employs." [State Bar of Michigan Ethics Opinion, JI-52, April 27, 1992](#). MCJC 2(C) provides that "[a] judge should not allow family, social, or other relationships to influence judicial conduct or judgment" and "should not use the prestige of office to advance personal business interests or those of others." EO JI-52. "The judges are not being asked to individually endorse the [r]esolution because they have particular interest in or knowledge of the issues; it seems clear that all judges of the circuit court are being asked to endorse the [r]esolution solely because they are judges, and the prestige of the judicial office will bring great pressure to bear on behalf of the [r]esolution supporters." *Id.* "Use of the judicial office for such purposes is prohibited." *Id.*
- *Providing reference for criminal defendant.* "A judge should not provide a character affidavit for a criminal defendant, because it is a sworn statement, not subject to cross-examination" and "[a] judge should decline to provide a personal or character reference for a criminal defendant, except in response to a formal request, unless the judge has good reason to believe that refusal would bring about a failure of justice." [State Bar of Michigan Ethics Opinion, JI-41, October 1, 1991](#). Although "a judge is explicitly allowed to provide a reference when solicited" under MCJC 2(E), "a judge may not allow the judicial office to be used for the private interests of others" under MCJC 2(C). EO JI-41. "If the judge is being asked to provide the reference or affidavit solely because of the judge's position, the request should be declined"; "[i]f, however, the judge has personal knowledge of the individual or the incident which is the subject of the request, and the knowledge is unrelated to the position which the judge holds, it is not improper to comply." *Id.*

**Additional Resources**

American Bar Association - [\*Judicial Ethics & Regulation\*](#)

National Center for State Courts - [\*Center for Judicial Ethics\*](#)

State of Michigan - [\*Judicial Tenure Commission\*](#)

State Bar of Michigan - [\*Ethics\*](#)





## 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 of the duties of office prescribed by law. 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 should treat every person fairly, with courtesy and respect. To the extent possible, a judge should require staff, court officials, and others who are subject to the judge's direction and control to provide such fair, courteous, and respectful treatment to persons who have contact with the court.

(B) Administrative Responsibilities:

(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 on merit.

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

(C) Disqualification:<sup>[1]</sup>

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\(E\)](#).” [Michigan Code of Judicial Conduct, Canon 3](#).

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 3 is featured in this chapter.

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<sup>1</sup> For more information about judicial disqualification, see the Michigan Judicial Institute’s [Judicial Disqualification Manual](#).



## Michigan Supreme Court Cases

### *Engaging in misconduct resulting in removal from office.*

- Engaging in inappropriate relationship, engaging in ex parte communications, and lying under oath.* A judge violated [MCJC 3\(A\)\(1\)](#) “by failing to ‘be faithful to the law,’” [MCJC 3\(A\)\(5\)](#), “engaging in ex parte communications,” [MCJC 3\(C\)](#), and “failing to ‘raise the issue of disqualification[.]’” when he “(a) had a sexual relationship with a complaining witness in a case pending before him without recusing himself for several months, (b) engaged in numerous ex parte communications with her concerning the case, as well as concerning another case in which one of her relatives was a party, (c) violated various policies of the courthouse by permitting his mistress to enter the facility through an employee entrance without going through security, allowing her to remain alone in his chambers while he was on the bench, arranging for her to park her vehicle in an area reserved for judges, and sneaking her cell phone into the courthouse for her, (d) transmitted numerous text messages to her while he was on the bench that contained inappropriate and derogatory references to defendants, litigants, and witnesses appearing before him, (e) lied about when and why he finally did recuse himself from the case in which his mistress was the complaining witness, (f) sought to use the prosecuting attorney’s office as leverage against his then ex-mistress by concocting charges of stalking and extortion against her, and (g) lied under oath during the JTC proceedings.” *In re McCree*, 495 Mich 51, 55-56, 73-74 (2014), quoting MCJC 3. The Michigan Supreme Court noted its “duty to preserve the integrity of the judiciary,” and indicated that the judge had been “recently publicly censured . . . yet continued to engage in misconduct,” which “is strongly suggestive that respondent ha[d] not yet learned from his mistakes and that the likelihood of his continuing to commit judicial misconduct [was] high.” *Id.* at 86. “Such a cavalier attitude about serious misconduct is disturbing, and respondent’s apparent failure to comprehend fully the magnitude of his wrongdoing is equally troublesome.” *Id.* at 86-87 (judge removed from office).
- Misappropriating public funds.* A judge’s misconduct violated [MCJC 3\(A\)\(1\)](#) (be faithful to the law), [MCJC 3\(A\)\(2\)](#) (require appropriate attire for court), and [MCJC 3\(B\)\(1\)](#) (diligently discharge administrative responsibilities), when she “misappropriated public funds, some of which were intended for victims of crime”; “inappropriately spent much of this money on self-promoting



advertisements and travel expenses for herself and various other court employees”; “treated these funds . . . as her own ‘publicly funded private foundation’”; “denied people access to the court by instituting and enforcing an improper business-attire policy”; “employed a family member in violation of court policy”; and “made numerous misrepresentations of fact under oath during the investigation and hearing of th[e] matter.” *In re James*, 492 Mich 553, 555-556, 558 (2012). “The cumulative effect of [the judge’s] misconduct, coupled with its duration, nature, and pervasiveness, convince[d] [the Michigan Supreme Court] that she [was] unfit for judicial office”; “[a]lthough some of her misconduct, considered in isolation, [did] not justify such a severe sanction, taken as a whole her misconduct r[ose] to a level that require[d] her removal from office.” *Id.* at 556 (judge removed from office).

- *Disregarding the law.* A judge’s misconduct violated [MCJC 3\(A\)\(1\)](#) (be faithful to the law), [MCJC 3\(A\)\(5\)](#) (ex parte communications), and [MCJC 3\(A\)\(6\)](#) (dispose promptly of court business), when he engaged in “numerous instances of documented judicial misconduct,” including “‘fixing’ (personally and surreptitiously dismissing) traffic citations issued to himself, his spouse, and his staff; preventing the transmission of or altering court information that was legally required to have been transmitted to the Secretary of State; dismissing cases without conducting hearings or involving the prosecutor; failing to follow plea agreements; and making false statements under oath during the JTC hearing.” *In re Justin*, 490 Mich 394, 396, 398 (2012). “[T]he common themes running throughout [the judge’s] substantiated acts of misconduct [were] a calculated disregard for the law and an intentional effort to undermine the judicial process, as deemed warranted or expedient by the [judge]”; “[s]uch misconduct evince[d] an unacceptable disregard for the role of judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* at 413. The judge’s actions [were] completely antithetical to the privilege of being a judge as well as disdain for due process and the right of parties to a fair hearing.” *Id.* (judge removed from office).
- *Improper docket management.* A judge “[f]ail[ed] to be faithful to the law and to maintain professional competence in it” contrary to [MCJC 3\(A\)\(1\)](#) when she “improperly listed cases on the no-progress docket[.]” *In re Nettles-Nickerson*, 481 Mich 321, 322-323, 333 (2008) (judge engaged in other misconduct not relevant to MCJC 3 and was removed from office).

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### *Interfering with the administration of justice.*

- *Example where engaging in extrajudicial contact does not rise to level of misconduct.* A judge did not violate [MCJC 3\(A\)](#) (adjudicative

responsibilities) when he failed to terminate a meeting with an individual whose asset acceptance case was assigned to another judge, and faxed a letter on official district court stationery to the individual's attorney; while the judge's actions "reflected poor judgment," they did not constitute judicial misconduct. *In re Hultgren*, 482 Mich 358 (2008) (judge cautioned).

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#### *Engaging in sexual misconduct.*

- *Inappropriate comments.* A judge violated [MCJC 3\(A\)\(3\)](#) and [MCJC 3\(A\)\(15\)](#) by his "comments to two women prosecutors during a murder trial"; specifically, "[b]y his unnecessarily crass and sexual language" and "by guessing the attorneys' heights and weights unbidden while eyeing them," he was not "'patient, dignified, and courteous' to the attorneys, [[MCJC 3\(A\)\(3\)](#)], nor did he treat them 'fairly, with courtesy and respect' without regard to their gender, [[MCJC 3\(A\)\(15\)](#)]." *In re Morrow*, 508 Mich 490, 494, 497 (2022) (judge publicly censured and suspended for six months without pay).
  - *Inappropriate drawings and comments.* A judge violated [MCJC 3\(A\)\(3\)](#) (be patient, dignified, and courteous) when he "compromised the integrity of the court" by making "lewd drawings—one of female breasts and one of a penis—on notes that were attached to two court files" on two separate occasions, and by commenting on the "small chest size" of a female employee during a retirement party at the courthouse. *In re Servaas*, 484 Mich 634, 639, 641, 651 (2009). While the judge's "conduct concerning the comment and two drawings was unquestionably inappropriate," his actions were viewed as "an aberration given his 35 years of apparent unblemished service" as a district court judge. *Id.* at 637 (judge publicly censured).
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#### *Exhibiting lack of judicial temperament.*

- *Using controversial tone and manner.* A judge violated [MCJC 3\(A\)\(3\)](#) (be patient, dignified, and courteous) and [MCJC 3\(A\)\(13\)](#) (intervene in a trial), when his "conduct demonstrate[d] a pattern of persistent interference in and frequent interruption of the trial of cases; impatient, discourteous, critical, and sometimes severe attitudes toward jurors, witnesses, counsel, and others present in the courtroom; and use of a controversial tone and manner in addressing litigants, jurors, witnesses, and counsel," that "frequently resulted in appellate reversal of trials over which he had presided." *In re Moore*, 464 Mich 98, 131-133 (2001). The judge's conduct "frequently violated the Code of Judicial Conduct and demonstrate[d], on those occasions, a lack of judicial temperament"; "[s]uch behavior undermines public

confidence in the integrity and impartiality of the judiciary and is clearly prejudicial to the administration of justice.” *Id.* at 132-133 (judge suspended for six months without pay).

- *Failing to be patient and dignified.* A judge “[f]ailed to be faithful to the law” contrary to [MCJC 3\(A\)\(1\)](#); “[f]ail[ed] to be patient, dignified, and courteous to litigants, lawyers, and others with whom the judge deals in an official capacity” in violation of [MCJC 3\(A\)\(3\)](#); and “[f]ail[ed] to avoid a controversial tone or manner in addressing counsel and fail[ed] to avoid the unnecessary interruption of counsel during arguments” in violation of [MCJC 3\(A\)\(13\)](#), when he was not “patient and dignified” and made improper comments to and about a defendant that he sentenced to jail for contempt of court. *In re Post*, 493 Mich 974, 976-977 (2013) (judge publicly censured and suspended for 30 days without pay).
- *Using insulting, demeaning, and humiliating language.* A judge violated [MCJC 3\(A\)\(3\)](#), which “provides that ‘[a] judge should be patient, dignified, and courteous to litigants . . . and others with whom the judge deals in an official capacity[.]’” when, during a “protracted and highly contentious divorce and custody case,” she “failed to act in a patient, dignified, and judicial manner during the contempt proceedings against the three children, aged 9, 10, and 13, directing to them insulting, demeaning, and humiliating comments and gestures far exceeding the proper bounds of stern language permitted to a judge.” *In re Gorcyca*, 500 Mich 588, 595, 614-615 (2017) (first alteration in original). The judge “did not observe high standards of conduct and did not preserve the integrity of the judiciary when she mocked the children, threatened them, called them ‘crazy’ and ‘brainwashed,’ exaggerated or lied about the conditions at [an out-of-home care, custody, and treatment center], and generally expressed hostility to the children and their mother,” and “exhibited a lack of judicial temperament during the proceedings in open court when she directed at the three children and their mother language that was insulting, demeaning, and humiliating.” *Id.* at 615, 643-644 (judge publicly censured).

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### *Failing to fulfill judicial duties.*

- *Engaging in ex parte communications.* A judge violated [MCJC 3\(A\)\(5\)\(a\)](#) when she “exchanged several e-mails with the [prosecutor] regarding testimony of a Michigan State Police trooper and a Michigan State Police detective” during defendant’s jury trial, “express[ing] concern about mistakes law enforcement had made in its investigation and ask[ing] questions related to why those mistakes had occurred,” and “never notified defendant or defense counsel of these e-mails or their contents.” *People v Loew*, \_\_\_ Mich \_\_\_, \_\_\_ (2024), *aff’g* 340 Mich App

100 (2022) (opinion by CLEMENT, C.J.). “Because the trial judge’s ex parte communications with [the prosecutor] were not made for the purpose of managing or executing a pending or impending proceeding, they violated [MCJC 3(A)(5)(a)].” *Loew*, \_\_\_ Mich at \_\_\_.

- *Engaging in ex parte communications.* A judge “[p]articipat[ed] in ex parte communications, and consider[ed] . . . them outside the presence of all parties concerning pending or impending proceedings, in violation of [MCJC 3(A)(5)],” when he e-mailed the prosecuting attorney regarding caselaw pertinent to two pending cases, without notifying defense counsel, and engaged in “[c]onduct in violation of [MCJC 3(A)(3)] which states that a judge should be patient, dignified, and courteous to attorneys and others,” when he proceeded to disparage the prosecutor’s office for alerting defense counsel to the ex parte communications. *In re Filip*, 503 Mich 956, 959 (2019) (judge publicly censured).
- *Failing to properly handle cases and complete work responsibilities.* A judge violated MCJC 3 (perform the duties of office impartially and diligently) by improperly handling numerous cases; for example, at an arraignment, the judge inexplicably facilitated a defendant’s release, “plac[ing] the interests of [a defendant] and his counsel . . . ahead of all other interests, including protection of the public.” *In re Hathaway*, 464 Mich 672, 674, 676, 678, 681-682, 690 (2001). And “[t]he improper effort to persuade [another defendant] to waive his right to a jury trial [was] another example of a serious one-time breach of [the judge’s] responsibility to use her judicial power lawfully” that “surely was connected to a more serious problem that was ongoing—her prolonged failure to attend in timely fashion to the business of her court.” *Id.* at 690. Another case demonstrated the judge’s “refusal to do her work [that] caused profound suffering for the family of the victim and outrageous inconvenience for the witnesses” where the judge initiated 16 of 21 adjournments and ultimately recused herself from the case, causing further delay, which amply demonstrated “the remarkable extent of [the judge’s] failure to discharge her judicial duties.” *Id.* at 690-691. It was not “a failure to move papers or to file administrative reports” nor “a judge having a ‘bad day’—or several”; rather, the judge “simply declined over an extended period to do her work.” *Id.* “A judge’s whimsical decision whether to work on a particular day, or during particular months, cannot take precedence over the affairs brought to the courthouse by the people for resolution.” *Id.* at 691-692 (judge suspended for six months without pay).
- *Failing to properly handle cases.* A judge violated MCJC 3(A)(6) (dispose promptly of court business) “by failing to dispose promptly of the business of the court” when he “failed to timely adjudicate at least 30 family law cases within the [Michigan Supreme Court’s caseflow]

guidelines”; specifically, the judge “dismissed 30 cases as the guidelines threshold approached in order to avoid those cases being identified as being out of compliance” and “would continue to work on the adjudication of those cases in a conscious design to avoid detection of those cases as being out of compliance.” *In re Halloran*, 486 Mich 1054, 1054-1055 (2010) (judge publicly censured and suspended for 14 days without pay).

- *Failing to properly handle cases.* A judge violated [MCJC 3\(A\)\(1\)](#) by “[r]efus[ing] to be faithful to the law” when he corresponded with a defendant several times urging the defendant to plead guilty, and when the defendant declined to do so, “knowingly executed and caused to be filed in the [court] records” a judgment of sentence “which falsely stated that [the defendant] had been advised of right to counsel and appointed counsel and had knowingly, intelligently and voluntarily waived that right, and pled guilty to the charged offense”; “[a]s a result of these actions, [the defendant] was denied the opportunity for a hearing and basic due process.” *In re Milhouse*, 461 Mich 1279 (2000) (judge publicly censured and suspended for 10 days without pay).
- *Failing to follow the law.* A judge “[f]ail[ed] to be faithful to the law and maintain professional competence in it,” contrary to [MCJC 3\(A\)\(1\)](#); “[p]articipat[ed] in *ex parte* communications, and consider[ed] . . . them outside the presence of all parties concerning pending or impending proceedings,” in violation of [MCJC 3\(A\)\(5\)](#); and “[f]ail[ed] to adopt the usual and accepted methods of doing justice,” in violation of [MCJC 3\(A\)\(13\)](#), when she “reduced charges, dismissed charges outright, or modified sentences in at least 20 criminal cases, without holding a hearing and where she had no explicit authority from the prosecutor to do so”; “dismissed at least 32 ticket cases without holding a hearing and where she had no explicit authority from the prosecutor to do so”; “engaged in *ex parte* communications by considering substantive matters relevant to the merits of the pending proceedings, without the knowledge or consent of the prosecuting attorney”; “engaged in [other] *ex parte* contacts”; and “declined to appoint a translator for the defendant when she should have.” *In re Church*, 499 Mich 936-940 (2016) (judge publicly censured and suspended for 120 days without pay “in light of [the judge’s] disclosed serious and debilitating medical condition” and “her acceptance of responsibility”).
- *Failing to follow the law.* A judge violated [MCJC 3\(A\)\(1\)](#) (be faithful to the law) when he engaged in misconduct “arising out of criminal cases in which [he] was the presiding judge,” and “the totality of the evidence . . . paint[ed] a portrait of a judicial officer who was unable to separate the authority of the judicial office he holds from his personal convictions.” *In re Morrow*, 496 Mich 291, 295, 298-299, 299 n 9 (2014)



(quotation marks and citation omitted). Specifically, (1) the judge “closed the courtroom to the public and the victim’s family during a postconviction hearing without specifically stating the reasons for the closure or entering a written order as required by [court rule]” and “subsequently ordered his court reporter not to prepare transcripts of the hearing”; (2) “failed to sentence a defendant . . . with the mandatory minimum . . . as prescribed by [statute], despite the prosecutor’s bringing the relevant statute to his attention,” and “later discharged the defendant from probation without the defendant having served the mandatory [sentence]”; (3) “refused the prosecutor’s request to remand the defendant . . . to jail awaiting sentencing as required by [statute]”; (4) “following the defendant’s guilty plea, . . . dismissed the case *sua sponte* on the basis that a previous dismissal order was with prejudice,” and “[w]hen the prosecutor informed him that his justification was contradicted by the record[,] . . . [he] stated that the dismissal was ‘conditional with prejudice’”; (5) “failed to place a sidebar conference on the record, failed to rule on the defendant’s request for a curative instruction, and failed to follow instructions from the Court of Appeals to hold an evidentiary hearing on a contested legal issue, and his ruling on remand was not supported by the trial record”; (6) “at the beginning of a trial over which he was to preside . . . left the bench, shook hands with the defendant, and gave a package of documents to defense counsel”; (7) “*sua sponte* subpoenaed medical records of the defendant without the parties’ knowledge or consent”; and (8) “personally retrieved an inmate from lockup, escorted him to his courtroom, and sentenced him without restraints or courtroom security personnel present.” *Id.* at 295-297; see also *id.* at 297 n 3. The Michigan Supreme Court noted that “although judicial officers should strive to do justice, they must do so *under the law* and within the confines of their adjudicative role.” *Id.* at 300 (judge suspended for 60 days without pay).

- *Failing to follow the law.* A judge violated [MCJC 3\(A\)\(1\)](#) “in that he did not faithfully execute the law and maintain his professional competence when he commenced indirect contempt proceedings based only on unsworn conversations with his staff” and violated [MCJC 3\(A\)\(5\)](#) “in that he received communications regarding [a disruptive individual’s] conduct from court staff, after the commencement of proceedings, and directed staff to provide the information to the prosecuting attorney and directed staff to prepare affidavits concerning [the individual’s swearing at court staff] and did not advise [the individual’s] counsel of these communications.” *In re Wiley*, 495 Mich 963, 967-968 (2014) (judge publicly censured).
- *Failing to advance cases.* A judge violated [MCJC 3\(A\)\(6\)](#) by “[f]ail[ing] to dispose promptly of the business of the court” when he engaged in “unwarranted delay, inaction and failure to timely act” in two

domestic relations cases; specifically, in a spousal support/child support case, he did not render a decision until “approximately 11 months after the hearing and more than three years after remand from the Supreme Court,” and in a divorce case, he “persistently failed to act or was persistently neglectful in performance of his duties,” including “failure to timely decide motions or promptly enter orders after matters were decided by the court.” *In re Jelsema*, 463 Mich 1229, 1230-1233 (2001) (judge publicly censured).

- *Resolving child custody dispute with coin flip.* A judge did not adhere to “the usual and accepted methods of doing justice” in accordance with [MCJC 3\(A\)\(14\)](#), when she resolved a disputed child custody issue by the flip of a coin. *In re Brown*, 468 Mich 1228, 1232 (2003). The judge “expresse[d] her deep regret for her conduct . . . and for the resulting negative impact on the public perception of judges, the institutional integrity of the judiciary, and the administration of justice.” *Id.* at 1228, 1231 (judge publicly censured).
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### *Misusing position.*

- *Misusing judicial office for personal benefit.* A judge “fail[ed] to diligently discharge administrative responsibilities” in violation of [MCJC 3\(B\)\(1\)](#) by (1) “engag[ing] in conduct which reasonably could be viewed as sexually offensive toward a subordinate by altering a screen saver message on her computer screen”; (2) “misus[ing] certain court facilities and equipment, property, or personnel for his personal use”; (3) “engag[ing] in a verbal confrontation with the manager of [a local movie theater], identif[ying] himself as a district court judge, and [being] uncooperative when he was asked to leave”; and (4) purchasing a vehicle that he drove for approximately two weeks “without displaying the temporary paper license plates.” *In re Trudel*, 465 Mich 1314, 1314-1315, 1317 (2002) (judge publicly censured and suspended for 90 days without pay).
  - *Engaging in inappropriate relationship.* A judge engaged in “*ex parte* communications with a party and with a judge,” contrary to [MCJC 3\(A\)\(5\)](#), when he responded to a card from a defendant on court stationery and inquired if she was interested in seeing him romantically, and continued to e-mail with her thereafter; and when he contacted a judge that had been assigned a criminal case involving a former neighbor. *In re Mazur*, 498 Mich 923, 924-926 (2015) (judge publicly censured and suspended for 30 days without pay).
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## Judicial Tenure Commission Summaries of Non-Public Resolutions

### *Grievance investigations concerning various administrative and court-related matters.*

- *Closing courtroom without authority.* A judge closed their courtroom to the media in connection with a case against the advice of the chief judge and court legal counsel and failed to comply with the court rule requirements for closure, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 14-4](#) (dismissed with an admonition).
- *Disregarding scheduling court rule.* A judge disregarded the scheduling court rule when handling defense counsel's scheduling requests and motions in a criminal case, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 13-2](#) (dismissed with a caution).
- *Engaging in excessive absenteeism/tardiness.* A judge had a high rate of absenteeism and tardiness that was a long-standing issue relating to their service on the bench, including frequent late arrival to court and failure to take the bench at the time their docket was scheduled to begin, in violation of [MCJC 3](#). [JTC Case Summary, 13-1](#) (dismissed with an admonition).
- *Engaging in ex parte communications.* A judge had an ex parte conversation with a defendant, in violation of [MCJC 3\(A\)\(5\)](#). [JTC Case Summary, 19-2](#) (dismissed with a caution).
- *Engaging in ex parte communications.* A judge had an ex parte conversation with the officer in charge of the case regarding the retention of evidence, in violation of [MCJC 3\(A\)\(5\)](#). [JTC Case Summary, 18-4](#) (dismissed with an admonition).
- *Engaging in ex parte communications.* A judge had two phone conferences with and replied to a letter from a minor in a post-judgment divorce proceeding; replied to a letter from a party in an adoption proceeding with advice; and arranged for an attorney to appear on a party's behalf in a contempt proceeding without ensuring notice, in violation of [MCJC 3\(A\)\(5\)](#). [JTC Case Summary, 16-9](#) (dismissed with an admonition).
- *Engaging in ex parte communications.* A judge had an ex parte conversation with an attorney who was participating in a hearing in person after disconnecting a phone call with opposing counsel who

had been participating by phone, in violation of [MCJC 3\(A\)\(5\)](#). [JTC Case Summary, 16-3](#) (dismissed with an admonition).

- *Failing to advance case.* A judge failed to issue an opinion until two years after the matter was submitted, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 19-7](#) (dismissed with a caution).
- *Failing to advance case.* A judge failed to make a ruling until nine months after the matter was submitted and failed to timely disclose the delay to the State Court Administrative Office, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 19-5](#) (dismissed with a caution).
- *Failing to advance case.* A judge failed to issue an opinion until seven months after the matter was submitted and failed to ensure the accuracy of the staff's work regarding omission of the delayed matters from the judge's delay reports, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 18-1](#) (dismissed with a caution).
- *Failing to advance case.* A referee's six-month delay in issuing a recommendation on a party's modification review request on a child support matter did not violate [MCJC 3\(A\)\(6\)](#) under the particular circumstances of the case. [JTC Case Summary, 17-4](#) (dismissed with an admonition).
- *Failing to advance case.* A judge had a case pending on their docket for over three years, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 17-3](#) (dismissed with an admonition).
- *Failing to advance cases.* A judge repeatedly adjourned proceedings, took matters under advisement for much longer periods than allowed under the court rules, and ignored the time frames established by the Court of Appeals to conduct a proceeding on remand, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 16-9](#) (dismissed with an admonition).
- *Failing to advance case.* A judge failed to rule on a motion challenging a personal protection order for more than four months, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 16-8](#) (dismissed with a caution).
- *Failing to advance case.* A judge took 14 months to resolve an application for leave to appeal, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 16-7](#) (dismissed with an admonition).
- *Failing to advance case.* A judge took 11 months to resolve a motion for summary disposition, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 14-8](#) (dismissed with an admonition).
- *Failing to advance case.* A judge took a year to resolve a motion for relief from judgment, and the delay was unwarranted, particularly

because the defendant's liberty was at issue, in violation of [MCJC 3\(A\)\(6\)](#). [JTC Case Summary, 14-4](#) (dismissed with an admonition).

- *Failing to disclose fee referral relationship.* A part-time municipal judge failed to disclose a fee referral relationship between a private attorney that practiced before the court and the law firm where the judge was a shareholder, in violation of [MCJC 3\(C\)](#). [JTC Case Summary, 16-4](#) (dismissed with an admonition).
- *Failing to follow remand order.* A judge failed to follow a remand order issued by the Court of Appeals, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 16-9](#) (dismissed with an admonition).
- *Failing to fulfill administrative responsibilities.* A judge failed to issue an opinion until seven months after the matter was submitted and failed to ensure the accuracy of the staff's work regarding omission of the delayed matters from the judge's delay reports, in violation of [MCJC 3\(B\)\(1\)](#). [JTC Case Summary, 18-1](#) (dismissed with a caution).
- *Failing to fulfill administrative responsibilities.* A judge failed to report significant amounts of time off, in violation of [MCJC 3\(B\)\(1\)](#). [JTC Case Summary, 14-4](#) (dismissed with an admonition).
- *Failing to fulfill administrative responsibilities.* A chief judge did nothing to address the failure of a referee with their court's Friend of the Court to appear, in violation of [MCJC 3\(B\)](#). [JTC Case Summary, 13-7](#) (dismissed with a caution).
- *Failing to fulfill judicial responsibilities.* A judge appointed a private attorney as a 'discovery master/facilitator' in a case that was assigned to the judge so that the judge would not have to preside over potentially long and tedious motion hearings, in violation of [MCJC 3\(A\)\(1\)](#) and [MCJC 3\(B\)\(4\)](#). [JTC Case Summary, 14-6](#) (dismissed with a caution).
- *Failing to raise issue of disqualification.* A magistrate failed to raise the issue of disqualification when called as a witness at the trial of a defendant over whose arraignment the magistrate presided, in violation of [MCJC 3\(C\)](#). [JTC Case Summary, 21-2](#) (dismissed with a caution).
- *Failing to raise issue of disqualification.* A judge failed to raise the issue of disqualification when presiding over a case involving a party represented by a law firm that employed the judge's spouse, in violation of [MCJC 3\(C\)](#). [JTC Case Summary, 19-8](#) (dismissed with a caution).

- *Failing to raise issue of disqualification.* A judge knowingly violated a standing disqualification order, in violation of [MCJC 3\(A\)](#). [JTC Case Summary, 16-1](#) (dismissed with an admonition).
- *Failing to obtain written waiver of disqualification.* A judge failed to obtain a written waiver of disqualification, in violation of [MCJC 3\(D\)](#). [JTC Case Summary, 20-4](#) (dismissed with an explanation).
- *Making public statement about pending matter.* A judge posted on social media about a pending case over which they were presiding, in violation of [MCJC 3\(A\)\(8\)](#); however, because the posting would not reasonably be expected to impair the fairness of the matter, the judge did not violate [MCJC 3\(A\)\(7\)](#). [JTC Case Summary, 20-6](#) (dismissed with a caution).
- *Making public statement about pending matter.* A judge made comments to a reporter about a pending case over which they were presiding, referring to the number of times the defendant had appeared before them for the same crime, expressing their opinion that the state law was too lenient towards this type of crime, and indicating to the reporter that they set the defendant's bond high because of the danger the defendant presented to the community, in violation of [MCJC 3\(A\)\(7\)](#). [JTC Case Summary, 20-5](#) (dismissed with a caution).
- *Making public statement about pending matter.* A judge criticized another judge's sentence of a defendant, one day after the sentencing, and before the defendant had exhausted their remedies before the sentencing judge or their opportunity to appeal, in violation of [MCJC 3\(A\)\(7\)](#). [JTC Case Summary, 18-7](#) (dismissed with an admonition).
- *Making public statement about pending matter.* A judge made comments to a newspaper regarding a pending case, endorsed the investigation and resulting charges against the defendant, and stated their belief that it was debatable whether the defendant would get a fair trial in the current venue, in violation of [MCJC 3\(A\)\(7\)](#). [JTC Case Summary, 17-1](#) (dismissed with an admonition).
- *Responding to disqualification request with form letter.* A judge's response to a request for disqualification with a form letter advising the individual to file a motion or consult an attorney did not violate [MCJC 3\(C\)](#); however, the judge could have referred the motion to disqualification to the chief judge for review. [JTC Case Summary, 16-5](#) (dismissed).
- *Seeking preferential treatment for defendant.* A judicial official asked another judicial official to give preferential treatment to a defendant who was akin to family, in violation of [MCJC 3\(A\)\(5\)](#). [JTC Case Summary, 13-5](#) (dismissed with an admonition).

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*Grievance investigations concerning various matters in court.*

- *Exhibiting improper behavior.* A judge exhibited dismissive and impatient behavior towards a litigant by using a brusque tone of voice, making accusations that the litigant was lying, not giving the litigant an opportunity to explain their case, and threatening to have the litigant arrested when the litigant attempted to rebut the judge's unfounded accusations, despite no apparent security risk, in violation of [MCJC 3\(A\)\(3\)](#) and [MCJC 3\(A\)\(15\)](#). [JTC Case Summary, 21-1](#) (dismissed with an admonition).
- *Exhibiting improper behavior.* A judge became angry at a litigant and attempted to control the litigant's conduct by threatening to, or increasing, the litigant's jail sentence, in violation of [MCJC 3\(A\)\(3\)](#) and [MCJC 3\(A\)\(15\)](#). [JTC Case Summary, 17-5](#) (dismissed with a caution).
- *Exhibiting improper behavior.* A judge questioned the competency of an attorney in open court, with no foundation for doing so, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 16-8](#) (dismissed with a caution).
- *Exhibiting improper behavior.* A judge disconnected a phone call with counsel for a party during a hearing in which counsel was participating by phone, in violation of [MCJC 3\(A\)\(3\)](#). [JTC Case Summary, 16-3](#) (dismissed with an admonition).
- *Imposing unduly harsh sanction.* A judge imposed an eight-month parenting time prohibition against a party for failing to appear at a hearing in a divorce case, without explanation or justification for the harsh sanction, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 13-6](#) (dismissed with an admonition).
- *Making improper remarks.* A judge made pretrial remarks warning a defendant of additional consequences of exercising the right to a jury trial if convicted after presenting a frivolous defense, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 19-9](#) (dismissed with an admonition).
- *Making improper remarks.* A judge told a defendant that they would send the defendant to jail if convicted following a jury trial, challenged defense counsel's trial experience in defendant's presence, suggested that defense counsel was urging a jury trial for counsel's own benefit, and attempted to dissuade the defendant from proceeding with a jury trial, in violation of [MCJC 3\(A\)\(1\)](#), [MCJC 3\(A\)\(3\)](#), and [MCJC 3\(A\)\(15\)](#). [JTC Case Summary, 19-6](#) (dismissed with an admonition).

- *Making improper remarks.* A judge used language at sentencing that conveyed to an objective person that it was the judge's desire that the defendant had been killed, rather than arrested and convicted, in violation of [MCJC 3\(A\)\(3\)](#). [JTC Case Summary, 18-3](#) (dismissed with a caution).
- *Making improper remarks.* A judge engaged in inappropriate dialogue with a defendant in an unprofessional temperament, and stated during a felony sentencing hearing that it was their practice to sentence a defendant at the top of the guidelines following a jury trial, in violation of [MCJC 3\(A\)\(3\)](#) and [MCJC 3\(A\)\(10\)](#). [JTC Case Summary, 17-2](#) (dismissed with a caution).
- *Making improper remarks.* A judge exhibited intense anger during a meeting with a social support agency; told a defendant that, as a judge, they could tell the defendant when to urinate; and told a defendant that police officers may lie to him, in violation of [MCJC 3\(A\)\(3\)](#). [JTC Case Summary 16-6](#) (dismissed with an admonition).
- *Making improper remarks.* A judge made disrespectful and discourteous comments in two cases, saying they were "a king on [their] throne" and did not have to show the defendant "a damn thing" following a request to see the verified criminal complaint, and telling the defendant to "go away" at the conclusion of a foreclosure hearing, in violation of [MCJC 3\(A\)\(3\)](#) and [MCJC 3\(A\)\(11\)](#); however, the comments were made in cases with extremely difficult litigants, and the judge expressed remorse and acknowledged their lack of judicial temperament. [JTC Case Summary, 14-3](#) (dismissed with an explanation).
- *Making improper remarks.* A judge publicly referred to a fellow judge in an extremely derogatory manner, in violation of [MCJC 3\(A\)\(3\)](#). [JTC Case Summary, 13-4](#) (dismissed with a caution).
- *Ordering confinement without authority.* A judge ordered a defendant to a holding cell without cause to do so, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 19-2](#) (dismissed with a caution).
- *Ordering confinement without authority.* A judge ordered an attorney taken into custody for contempt following a six-minute hearing during which the attorney was attempting to advocate for his client, in violation of [MCJC 3\(A\)\(1\)](#) and [MCJC 3\(A\)\(15\)](#). [JTC Case Summary, 14-1](#) (dismissed with a caution).
- *Sentencing without authority.* A judge imposed consecutive sentences when there was no authority to do so in the case before them, in violation of [MCJC 3\(A\)\(1\)](#). [JTC Case Summary, 20-2](#) (dismissed with a caution).





## State Bar of Michigan Ethics Opinions

### *Guidance on engaging in various matters in court.*

- *Understanding technology including artificial intelligence.* “Judicial officers have an ethical obligation to understand technology, including artificial intelligence, and take reasonable steps to ensure that AI tools on which their judgment will be based are used properly and that the AI tools are utilized within the confines of the law and court rules.” [State Bar of Michigan Ethics Opinion, JI-155, October 27, 2023](#). “Further, as AI rapidly advances, judicial officers have an ethical duty to maintain technological competence and understand AI’s ethical implications to ensure efficiency and quality of justice.” *Id.* “The increasing use of AI and other technological programs and devices requires judicial officers to understand how these tools will affect their conduct and docket in accordance with [\[MCJC 3\(A\)\(1\)\]](#).” EO JI-155. “Competency with advancing technology is further required by [\[MCJC 3\(B\)\]](#), which requires judicial officers to ‘maintain professional competence in judicial administration.’” EO JI-155. “Legal knowledge, skills, thoroughness, and preparation are required for judicial officers to perform their duties,” and “[t]his includes knowing the benefits and risks associated with the technology that judicial officers and their staff use daily, as well as the technology used by lawyers who come before the bench.” *Id.*
- *Disclosing protected information in connection to a motion to withdraw.* Regarding the information that can ethically be requested by a court, and the means by which that information should be requested, in connection with a motion to withdraw, “[o]rdering disclosure of protected information should be exceptional, rather than normal practice, and narrowly tailored to what is reasonably necessary to allow the court to fulfill its duties of impartiality and diligence as required under [\[MCJC 3\]](#).” [State Bar of Michigan Ethics Opinion, JI-154, February 10, 2023](#). “If the court deems it necessary to order disclosure of protected information, only the court should elicit that information,” and “[t]he court should not allow another party or lawyer to examine the attorney regarding the motion to withdraw,” because “[t]he lawyer is an officer of the court and as such should be questioned by the tribunal only.” *Id.*



- *Disclosing prior relationship between judicial officer and lawyer.* “[I]f a judicial officer and a lawyer appearing before the court have divorced or have terminated their prior dating relationship, disclosure must be provided to all parties in order for the parties to have the opportunity to motion the court for disqualification or for the court to raise the issue of disqualification under [MCJC 3(C)].” [State Bar of Michigan Ethics Opinion, JI-153, November 4, 2022](#). “If all parties agree following disclosure and consultation to the judicial officer presiding, and the judicial officer sees no need to complete an analysis . . . for possible disqualification, the matter may move forward.” *Id.* “Where a judicial officer and attorney appearing before the judge have a child in common, the judge must disclose the relation to all parties and must engage in the disqualification analysis under . . . [MCJC 3(C)] unless parties consent to the judicial officer continuing to preside over the matter”; “[d]isclosure of the child in common must occur regardless of the age of the child.” EO JI-153.
- *Sentencing offenders to community service work to compile statistics for election.* “A judge may not sentence offenders to community service work to compile statistics on the number of cases handled in the court by candidates for a vacancy on the court.” [State Bar of Michigan Ethics Opinion, JI-107, June 18, 1996](#). “The introductory clause of MCJC 3 states that judicial duties include all the duties of office prescribed by law,” and [MCJC 3\(A\)\(14\)](#) “requires a judge to adopt the usual and accepted methods of doing justice, and to avoid the imposition of discipline not authorized by law in sentencing.” EO JI-107. “The sentencing proposal . . . is not specifically authorized by law as contemplated by [\[MCJC 3\(A\)\(14\)\]](#), nor is there general acceptance of the proposition that voter education on judicial candidates is a ‘judicial duty prescribed by law’ under MCJC 3.” EO JI-107. “While a judge may personally speak as an individual on behalf of or support another candidate for judicial office, the judge may not use . . . the judge’s judicial authority in sentencing to do so.” EO JI-107.
- *Imposing sentences requiring payment to specific entity.* “A judge may not impose sentences requiring criminal defendants to pay moneys which are allocated to educational, religious, charitable, fraternal, or civic activities, unless the sentencing practice has been authorized by law.” [State Bar of Michigan Ethics Opinion, JI-55, June 22, 1992](#). [MCJC 3\(A\)\(1\)](#) “provides a judge should be faithful to the law in performing adjudicative responsibilities, and . . . [\[MCJC 3\(A\)\(14\)\]](#) urges judges to ‘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.’” EO JI-55. Where “the court created the educational program, established its parameters, and is consulted regarding its curriculum,” there is no “authority in law which allows the sentencing practices described”; “[u]nless a

sentencing practice has been authorized by law, a judge's imposition of that sentence is unethical." *Id.*

- *Imposing sentences with option of community service or contributing to designated charity.* "A sentencing judge may not give offenders the option of performing a designated number of hours of community service work or making a monetary contribution to a charity designated by the judge." [State Bar of Michigan Ethics Opinion, JI-48, March 10, 1992](#). [MCJC 3\(A\)\(1\)](#) "provides a judge should be faithful to the law in performing adjudicative responsibilities" and [MCJC 3\(A\)\(14\)](#) provides in part that "[a] judge should adopt the usual and accepted methods of doing justice"; however, there is no "authority in law which allows the sentencing practices described." EO JI-48.
- *Preventing unauthorized practice of law.* "Judges have an ethical duty to prevent the unauthorized practice of law." [State Bar of Michigan Ethics Opinion, JI-26, June 29, 1990](#). "During an adjudicative proceeding a 'judge should be faithful to the law'" under [MCJC 3\(A\)\(1\)](#); "[a]dministratively, a judge must not assist a person who is unlicensed in the practice of law" under [MCJC 3\(B\)\(1\)](#), which provides in part that a judge should "'maintain professional competence in judicial administration.'" EO JI-26. Additionally:

"Administrative responsibilities of judges require them to instruct court personnel to regularly check pleadings filed with the court for signature and professional identification ('P' number) to assure the person representing a party is a member of the State Bar. Judges must instruct court staff to reject pleadings having no professional identification unless the person is appearing *pro se*.

A judge who knows of unauthorized practice of law activity must take steps to prevent the unauthorized practice and report the incident to authorities empowered to act upon the matter.

When unauthorized practice of law activity occurs within the presence of a judge, the judge must stop the proceeding; place as much information on the record as possible; advise the party to seek the services of a licensed lawyer; and take other remedial action authorized by law.

When unauthorized practice of law activity occurs outside the presence of a judge, the judge must report the incident to the appropriate authority empowered to investigate the matter.

The duty to report unauthorized practice of law activity requires judges to report all relevant information, including but not limited to (a) names and addresses of all persons having information concerning the matter, (b) transcripts of proceedings recorded, and

(c) copies of all available pleadings, documents and correspondence.

A judge who suspects that a party has or is receiving legal assistance from an unlicensed person outside the presence of the judge should report the incident to the appropriate authority empowered to investigate the matter.” *Id.* (Numbers omitted.)

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*Guidance on engaging in various matters outside of court.*

- *Considering disqualification following threat/attack.* “Security issues for judicial officers not only bring the issue of protection to the forefront but also bring ethical considerations, depending on the circumstances”; however, “[j]udicial officers are not automatically disqualified when receiving a threat or being physically attacked by a litigant or an attorney” because “[t]hreats and physical attacks affect judicial officers differently.” [State Bar of Michigan Ethics Opinion, JI-157, May 10, 2024](#). “Therefore, judicial officers should conduct a disqualification analysis under MCJC 3 . . . to determine if disqualification is necessary.” EO JI-157.
- *Consulting with another judge.* “A judge may consult with another judge, individually or by way of listservs, to seek guidance in carrying out the judge’s adjudicative responsibilities so long as the judge does not receive factual information that is not part of the record and the judge makes an independent decision in the matter before the judge,” because inherent in MCJC 3 “is the understanding that the jurist serving as the trier of fact in a case must individually decide the case, independent of the opinion of others.” [State Bar of Michigan Ethics Opinion, JI-149, March 30, 2020](#).
- *Hosting a commercially-sponsored program.* “A judge’s hosting of a commercially-sponsored program has the potential 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.” [State Bar of Michigan Ethics Opinion, JI-137, May 11, 2012](#). “A judge’s ability to speak publicly about the law and the legal system is tempered by the proscription against publicly commenting about a pending or impending proceeding in any court that is set forth in [MCJC 3(A)(7)]. To the extent that a judge is permitted to engage in financial and business dealings outside the scope of judicial functions, doing so cannot impinge on the integrity of the performance of those functions.” EO JI-137.

- *Participating in public protest.* “A judge may not participate in a public protest against a group or organization which advocates against a particular race, ethnic group or religion.” [State Bar of Michigan Ethics Opinion, JI-109, August 6, 1996](#). [MCJC 3\(A\)\(7\)](#) “prohibits a judge from making public comment about a pending or impending proceeding in any court”; where “[t]he judge would be appearing in public as a part of a protest against some of the persons, presumably, who may appear before the judge in unrelated matters” and “[t]he protest *targets* a particular segment of society,” it is important to “preserve a forum in which those persons may be fairly and impartially heard.” EO JI-109.
- *Teaching law course.* “A judge may teach a law course as long as the obligations of teaching do not interfere with the proper performance of judicial duties”; however, “[a] judge may not serve as a contributing editor of a journal of political opinion” because [MCJC 3\(A\)\(1\)](#) “advises a judge should be unswayed by partisan interests, public clamor, or fear of criticism,” and [MCJC 3\(A\)\(7\)](#) “notes that a judge should abstain from public comment about a pending or impending proceeding in any court.” [State Bar of Michigan Ethics Opinion, JI-99, March 15, 1995](#). “A judge’s identification with a partisan position may raise the question of whether the judge is able to render a fair and unbiased decision on an issue.” *Id.*
- *Engaging in ex parte communications.* “A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities” under [MCJC 3\(A\)\(5\)\(c\)](#). [State Bar of Michigan Ethics Opinion, JI-159, August 1, 2025](#). “The judge is the ultimate decision-maker, while the referee serves in a supporting role by conducting hearings, taking testimony, and preparing recommended orders.” *Id.* “Because the referee’s recommendation is not binding and is subject to judicial review, it is essential that the proposed order aligns with the judge’s interpretation of the law as applied to the specific facts of the case.” *Id.* “Accordingly, a referee seeking the judge’s input or clarification during the drafting process is not an ex parte communication; rather, it promotes efficiency and accuracy by ensuring that the recommendation reflects the judge’s legal reasoning and avoids unnecessary delays or revisions.” *Id.* “Because referees are subject to the [MCJC], all information they receive regarding a case must be handled in accordance with those ethical standards”; “[a]s such, communications are not ex parte so long as both parties have access to the same information, ensuring transparency, fairness, and adherence to due process.” *Id.*
- *Engaging in ex parte communications.* “A lawyer may not communicate with a judge concerning a matter pending before that judge, except for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits” because [MCJC 3\(A\)\(5\)](#) prohibits *ex parte* communications, except in certain

circumstances not applicable in this instance. [State Bar of Michigan Ethics Opinion, RI-243, October 5, 1995](#).

- *Engaging in ex parte communications.* “A judge has an affirmative duty not to permit *ex parte* communications” under [MCJC 3\(A\)\(5\)](#); “[a]ccordingly, a judge should not permit a party or counsel to submit materials allegedly for an *in camera* inspection without counsel providing the opposing counsel notice and an opportunity to be heard prior to the submission.” [State Bar of Michigan Ethics Opinion, JI-85, March 23, 1994](#). [MCJC 3\(B\)\(3\)](#) provides that “[a] judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware”; however, “[i]f an *ex parte* submission is an isolated incident and counsel promptly responds to correct the situation as directed by the judge, the judge may conclude that ‘appropriate’ measures have been taken and that no further action is required.” EO JI-85.
- *Engaging in ex parte communications.* “A judge who attends a program or seminar at which the faculty argues issues which are nearly identical to those in a case pending before the judge is not required to advise the parties and their counsel in the pending case that the judge attended the seminar.” [State Bar of Michigan Ethics Opinion, JI-84, March 7, 1994](#). Under [MCJC 3\(A\)\(5\)](#), “[a] judge is obliged to rule on issues presented only on the evidence presented by the advocates,” and “[t]he judge’s participation in the seminar does not reflect adversely on the judge’s ability to render a decision based upon the record.” EO JI-84.
- *Engaging in ex parte communications.* “A lawyer may not draft findings of fact and conclusions of law in a matter when contacted *ex parte* by the presiding judge to do so” because [MCJC 3\(A\)\(5\)](#) prohibits *ex parte* communications, except in certain circumstances; therefore, “[i]t is improper for the judge to initiate *ex parte* communications between the clerk and the litigant.” [State Bar of Michigan Ethics Opinion, RI-195, March 7, 1994](#). “If the lawyer cannot persuade the judge to correct the *ex parte* contact, the lawyer may have a duty to report the judge’s conduct to the Judicial Tenure Commission”; “the lawyer may wish to bring [[MCJC 3\(A\)\(5\)](#)] . . . to the attention of the judge and urge the judge to notify opposing counsel contemporaneously when such a request is made.” EO RI-195. “If the judge declines the recommendation or if the lawyer knows the judge frequently asks counsel to prepare findings *ex parte*, the lawyer may be required to report the judge’s conduct.” *Id.*
- *Engaging in ex parte communications.* “A lawyer may not contact a judge about the possible recusal of the judge outside the presence of opposing counsel” because [MCJC 3\(A\)\(5\)](#) prohibits *ex parte*



communications, except in certain circumstances. [State Bar of Michigan Ethics Opinion, JI-83, February 25, 1994.](#)

- *Participating in a public forum during an election campaign.* “A judicial candidate may participate in a public forum in the course of an election campaign, provided the candidate does not create the impression that, if elected or re-elected, the candidate would act with bias or partiality toward a particular class or group”; while “[i]t is not unethical, *per se*, for a judicial candidate to make general statements of political philosophy,” [MCJC 3\(A\)\(7\)](#)<sup>2</sup> provides that “[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.” [State Bar of Michigan Ethics Opinion, JI-27, August 1, 1990.](#)
- *Expressing an opinion on a ballot proposal.* “A candidate for judicial office may express an opinion on a ballot proposal”; however, “[c]are should be exercised to avoid identification with any partisan position” and “[s]imilar caution should be observed by a judge who is not currently a candidate for re-election.” [State Bar of Michigan Ethics Opinion, C-237, March 1986.](#) [MCJC 3\(A\)\(14\)](#)<sup>3</sup> provides “that a judge should ‘not seek popularity or publicity either by exceptional severity or undue leniency’”; accordingly, “[t]he candidate for judicial office must avoid statements that would exploit a ballot proposal issue by appealing to passions that may be expressed in the campaign.” [EO C-237.](#) Further, “[i]f a constitutional challenge comes before a judge who has expressed an opinion on the issue, it may require the judge’s recusal.” *Id.*

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***Guidance on serving on various organizations.***

- *Serving on executive agency.* “A district court magistrate may not concurrently serve on a city board of police commissioners” because “a magistrate who is also subject to control by the executive may be swayed by political interest,” contrary to [MCJC 3\(A\)\(1\).](#) [State Bar of Michigan Ethics Opinion, JI-94, July 27, 1994.](#)
- *Serving on board of legal aid organization.* “A judge serving on the board of directors of a nonprofit legal aid organization is required to disclose the relationship when one of the parties appearing before the judge is represented by a lawyer from the legal aid organization.” [State Bar of Michigan Ethics Opinion, JI-51, April 3, 1992.](#) [MCJC 3\(C\)](#) “encourages judges to raise the issue of disqualification whenever a

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<sup>2</sup> The language has been amended but appears to be substantively similar to the language discussed in [EO C-237.](#)

<sup>3</sup> The language has been amended but appears to be substantively similar to the language discussed in [EO C-237.](#)

judge has cause to believe disqualification is required by [MCR 2.003(C)]”; however, there is not any “ethical requirement to *per se* disqualify the judge when one of the parties in a proceeding before the judge is represented by a lawyer from the legal aid organization” because “a reasonable person would [not] conclude that a judge could not fairly and impartially adjudicate a matter in which the organization has no personal interest in the outcome other than to ensure that the staff lawyers provide quality representation for its legal aid clients.” EO JI-51.

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### *Guidance on serving in dual roles.*

- *Serving as case evaluator and judge.* “A lawyer who has served as a [case evaluator] under MCR 2.403 may not thereafter preside as judge in a judicial proceeding between the same parties involving the same matter” because MCR 2.403(D)(3) specifically provides that a judge “may not preside at the trial of any action in which he or she served as case evaluator.” State Bar of Michigan Ethics Opinion, JI-112, March 26, 1997.<sup>4</sup> MCJC 3 “cautions judges against conduct that may be prejudicial to the administration of justice”; accordingly, “[h]aving served on a [case evaluation] panel, a judge cannot thereafter preside at the trial of any action in which the judge served as [case evaluator].” EO JI-112.

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### *Guidance on lending support.*

- *Signing resolution endorsing petition.* “A judge may not sign a resolution which requests specific action be taken by the mayor and county board of commissioners regarding business closings of a local employer and the union workers it employs.” State Bar of Michigan Ethics Opinion, JI-52, April 27, 1992. MCJC 3(A)(7)<sup>5</sup> provides that “[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”; “[t]he text of the [r]esolution reveals that there is much controversy in the community regarding the [e]mployer’s plant closing, and that over 4,000 workers and their families will be affected,” and “[i]t is reasonable to conclude that there may be litigation arising from the matter.” EO JI-52. “Therefore, a judge should not sign a resolution which is intended to be

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<sup>4</sup> At the time EO JI-112 was written, MCR 2.403 referred to mediation. However, in 2000, the court rule was amended to replace the term “mediation” with the term “case evaluation.” Aside from the change of terms, the provision discussed in EO JI-112 has not changed and is presumably still applicable in this context.

<sup>5</sup> The language has been amended but appears to be substantively similar to the language discussed in EO C-237.



disseminated to instigate others to action,” contrary to [MCJC 3\(A\)\(7\)](#).  
EO JI-52.

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#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)

National Center for State Courts - [Center for Judicial Ethics](#)

State of Michigan - [Judicial Tenure Commission](#)

State Bar of Michigan - [Ethics](#)

# Canon 4: A Judge May Engage in Extrajudicial Activities<sup>1</sup>

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“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.

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<sup>1</sup>“All judicial candidates are subject to . . . [Canon 4(A)-4(D)] . . . 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.” MCJC 5.

(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." [Michigan Code of Judicial Conduct, Canon 4.](#)

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 4 is featured in this chapter. In addition, parts of MCJC 4 involve judicial disclosure and disqualification. These topics are comprehensively addressed in the Michigan Judicial Institute's [Judicial Disqualification Benchbook](#).



## Michigan Supreme Court Cases

### *Misusing position.*

- Misusing judicial office for personal benefit.* A judge “used official [court] stationery to solicit donations to produce and implement two educational programs and for business correspondence pertaining to the production of related materials” and “further used official stationery to solicit contributions to finance events and activities related to these programs, including prominent placement of his name and judicial status in advertising for a concert to benefit his projects.” *In re Thompson*, 470 Mich 1347, 1348 (2004).<sup>2</sup> The judge’s “admitted and proven acts of misconduct in this case include . . . [p]articipation in civic and charitable activities that detract from the dignity of office or interfere with performance of judicial duties, in violation of [MCJC 4(C)]”; “[i]ndividual solicitation of funds, in violation of [MCJC 4(D)]”; “[m]isuse of the prestige of judicial office including misuse of court resources such as official [court] letterhead to solicit funds, and for personal advantage or gain, and for the advantage or gain of another, in violation of [MCJC 4(D)]”; and “[e]ngaging in financial and business dealings that tend to reflect adversely on the judge’s impartiality or judicial office, in violation of [MCJC 4(E)(1)].” *Thompson*, 470 Mich at 1347-1349 (judge suspended for 90 days without pay and ordered to pay costs).
- Accepting football tickets.* A judge’s “accept[ance] in open court football tickets from an attorney appearing before him” violated MCJC 4(E)(4), which absent an exception, “prohibits a judge or family member residing in the judge’s household from accepting ‘a gift, bequest, favor, or loan from anyone . . . .’” *In re Haley*, 476 Mich 180, 182-183 (2006).<sup>3</sup> In *Haley*, none of the exceptions to MCJC 4(E)(4) applied: “The first, [MCJC 4(E)(4)(a)], permits specific types of gifts valued under \$100,<sup>4</sup> such as gifts associated with public testimonials, complimentary books provided by publishers for official use, or bar-related functions and activities devoted to the improvement of the law, the legal system, or the administration of justice”; “[t]he football tickets [did] not fit into any of these narrow categories, so this first exception [was] inapposite.” *Haley*, 476 Mich at 191. “Second, [MCJC

<sup>2</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

<sup>3</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

<sup>4</sup> Note that the threshold has since been increased to \$375.



4(E)(4)(c)] permits gifts from a donor that ‘is not a party or other person whose interests have come or are likely to come before the judge . . . .’; “[t]he record established that [the attorney] routinely appeared before [the judge] representing his clients and was actually appearing before [the judge] when he offered the gift.” *Haley*, 476 Mich at 191. Accordingly, MCJC 4(E)(4)(c) was inapposite. *Haley*, 476 Mich at 191. “The remaining provision, [MCJC 4(E)(4)(b)], permits the judge to accept ‘ordinary social hospitality’; “when determining whether the acceptance of a particular gift is consistent with ‘ordinary social hospitality’ [the Court] view[s] the conduct through an objective lens.” *Haley*, 476 Mich at 191-192. “Here, the context of [the judge’s] acceptance of the football tickets was not social, but rather a *judicial*, context”; “[t]he singularizing fact of this case is that [*the judge*] *accepted a gift in open court in the course of executing his judicial duties.*” *Id.* at 193. “That the gift of tickets might well be deemed ‘ordinary’ in other contexts does not make its acceptance in a nonsocial setting consonant with the canon”; “[t]he fact that the gift was offered in open court by a litigant in a pending case excludes the possibility that the event can objectively be characterized as ‘social hospitality.’” *Id.* “[A] reasonable observer would [not] conclude that ‘ordinary social hospitality’ fairly describes an exchange of gifts in open court between a litigant in an immediately pending case and a judge in that same case.” *Id.* Accordingly, the judge “engaged in misconduct by accepting a gift in contravention of [MCJC 4(E)].” *Haley*, 476 Mich at 195-196 (judge publicly censured).

- *Individually soliciting funds on behalf of a charitable organization.* A judge was “the founder and Chairman of the Board of Trustees of the Coalition for Family Preservation,” and a local law firm “held a golf outing fundraiser for that organization”; “[t]he [fundraiser] invitation state[d] that [the judge] sponsored the golf outing,” and “[t]he program[, signage, and handout] for the event prominently identifie[d] [the judge] as the ‘Coalition Founder.’” *In re Brown*, 468 Mich 1228 (2003).<sup>5</sup> Accordingly, the judge’s conduct constituted “[i]ndividual solicitation of funds on behalf of a charitable organization, or permissive use of the prestige of the judicial office for that purpose, contrary to [MCJC 4(D)].” *Brown*, 468 Mich at 1228-1229 (judge publicly censured).
- *Misusing judicial office to solicit money from defendants for a charitable cause.* A magistrate was presiding over traffic citations and permitted a police officer to sit at a table next to the podium in the courtroom with a bag of tickets from a local field day, and “dismissed the tickets of defendants pleading responsible or who were found responsible and advised them to purchase tickets from the police officer”; “[s]ome defendants were asked how many children they planned to take and

<sup>5</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

if the number was too low they were told they needed to take more children,” and “[o]thers were told to ‘dig deeper,’ call someone, or go to an ATM machine.” *In re Shannon*, 465 Mich 1304 (2002).<sup>6</sup> “In one case a defendant was asked how much money he had” and “[w]hen the defendant said he had \$116 on him, [the magistrate] told him to buy \$100 worth of tickets”; “[t]he average ticket purchase was approximately \$50 per person.” *Id.* The magistrate’s “conduct, whether well intentioned or not, gave the appearance of using the powers of his position as magistrate to solicit money from defendants for a charitable cause” and constituted “[u]sing, or giving the appearance of using, the prestige of office to solicit funds for an educational, religious, charitable, fraternal, or civic organization, contrary to [MCJC 4(D)].” *Shannon*, 465 Mich at 1304 (magistrate publicly censured and suspended for 30 days without pay).



## Judicial Tenure Commission Summaries of Non-Public Resolutions

### *Grievance investigations concerning various administrative and court-related matters.*

- *Failing to disclose fee referral relationship.* A part-time municipal judge failed to regulate their extrajudicial activities to minimize the risk of conflict with judicial duties by failing to disclose a fee referral relationship between a private attorney that practiced before the court and the law firm where the judge was a shareholder, in violation of MCJC 4. [JTC Case Summary, 16-4](#) (dismissed with an admonition).

### *Grievance investigations concerning various matters outside of court.*

- *Financially benefiting from event planned by court staff.* A judge attended an event planned for them by their court staff, at which they accepted a large monetary gift from ticket sales proceeds in excess of the gift limit, in violation of [MCJC 4\(E\)\(4\)\(c\)](#). [JTC Case Summary, 13-8](#) (dismissed with a caution).

<sup>6</sup> Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

- *Listing judiciary names as members of campaign fundraising committee.* A judge listed the names of other judges and judicial officers as members of their campaign fundraising committee, in violation of [MCJC 4\(D\)](#). [JTC Case Summary, 14-7](#) (dismissed with an admonition).
- *Participating in certain fundraising events.* A judge officiated a game at a fundraiser for an organization that routinely provides several services in cases before the judge's court, and served as an auctioneer for another agency's fundraiser, in violation of [MCJC 4\(C\)](#) and [MCJC 4\(D\)](#). [JTC Case Summary, 20-7](#) (dismissed with a caution).
- *Soliciting contribution to charitable event.* A judge signed a letter written on court stationery soliciting a contribution for a charitable event that they participated in organizing, in violation of [MCJC 4\(D\)](#). [JTC Case Summary, 14-11](#) (dismissed with an admonition).
- *Soliciting contributions to scholarship.* A judge solicited contributions to a scholarship, in violation of [MCJC 4\(D\)](#). [JTC Case Summary, 20-1](#) (dismissed with a caution).



## State Bar of Michigan Ethics Opinions

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### *Guidance on engaging in various matters in court.*

- *Sentencing offenders to community service work to compile statistics for election.* "A judge may not sentence offenders to community service work to compile statistics on the number of cases handled in the court by candidates for a vacancy on the court." [State Bar of Michigan Ethics Opinion, JI-107, June 18, 1996](#).<sup>7</sup> "Initially, judges may not generally utilize their positions to solicit funds for or generally advance their own privately supported charities" under [MCJC 4\(D\)](#); "[w]hile there is no issue of soliciting money for this 'public service' the utilization of the offender time could be construed as a donation 'in kind' which would run afoul of [[MCJC 4\(D\)](#)]." EO JI-107. "Moreover, the purpose of supplying such information could be misconstrued quite easily"; "[w]hile a judge may personally speak as an individual on behalf of or support another candidate for judicial

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<sup>7</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

office, the judge may not use the prestige of the judicial office and the judge's judicial authority in sentencing to do so." *Id.*

- *Imposing sentences requiring payment to specific entity.* "A judge may not impose sentences requiring criminal defendants to pay moneys which are allocated to educational, religious, charitable, fraternal, or civic activities, unless the sentencing practice has been authorized by law." [State Bar of Michigan Ethics Opinion, JI-55, June 22, 1992.](#)<sup>8</sup> MCJC 4 "allows judges to participate in *educational*, religious, charitable, fraternal or civic activities, but clearly says a judge may not personally solicit funds for any civic/charitable organization, nor use the prestige of judicial office for solicitation purposes." EO JI-55. "Unless a sentencing practice has been authorized by law, a judge's imposition of that sentence is unethical." *Id.* "A sentencing program by which a judge requires parties to pay moneys which are allocated to charitable/civic purposes is akin to a 'solicitation' by the judge for that charitable/civic activity and contravenes [MCJC 4]," and "[a] sentencing program, no matter how laudable the goals, which uses the power of the judicial office to solicit moneys is conduct prejudicial to the administration of justice." EO JI-55.
- *Imposing sentences with option of community service or contributing to designated charity.* "A sentencing judge may not give offenders the option of performing a designated number of hours of community service work or making a monetary contribution to a charity designated by the judge"; "[i]f judges are forbidden to solicit for charity [under [MCJC 4\(D\)](#)], clearly judges cannot direct contributions by requesting or requiring offenders to donate contributions in lieu of fine or jail time to charities designated by the judge." [State Bar of Michigan Ethics Opinion, JI-48, March 10, 1992.](#)<sup>9</sup> "Just because the option of making cash contributions to the court's charity in lieu of performing a certain number of hours of community service work is in addition to the more traditional sentences of time and fine does not make the sentencing practice any more acceptable." *Id.* "The sentencing judge is left open to the accusation that a particular community service alternative is intentionally more burdensome than required in order to encourage monetary contributions to the judge's charity," and "[t]he judicial imposition of dollars for hours also discriminates in favor of those more affluent offenders who have the means to buy out of community service work." *Id.*
- *Permitting artwork display.* "Displaying artwork or other products in a courthouse or courtroom at no charge does not violate judicial ethics" because while [MCJC 4\(E\)\(4\)](#) "prohibits the judge from personally receiving gifts under various circumstances," "in this case the

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<sup>8</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

<sup>9</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

donation is to the local government entity, and not to the judge.” [State Bar of Michigan Ethics Opinion, JI-25, May 25, 1990](#).<sup>10</sup>

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*Guidance on engaging in various matters outside of court.*

- *Attending law firm-sponsored events.* [MCJC 4\(B\)](#) “provides that a judge may engage in ‘social or recreational activities’ as long as the activities do ‘not detract from the dignity of the office or interfere with the performance of judicial duties’” — “[t]here is no outright prohibition from attending law firm events, but there are limitations judicial officers must be aware of.” [State Bar of Michigan Ethics Opinion, JI-156, February 9, 2024](#). “[B]efore accepting any invitation to any type of event, the judicial officer must be vigilant and complete an analysis to ensure compliance” with the MCJC. *Id.* “When judicial officers attend events given by law firms, the judicial officers should:

1. be aware that a broad range of the Bar and the public attend these events;
2. be cognizant that oftentimes these events are photographed and placed in the view of the public and that these photographs may be manipulated and used for the gain of the host or user of the photograph, for example, in print media, social media, et cetera[];
3. avoid situations where lawyers may attempt to engage the judicial officer in ex parte communication on a pending or forthcoming case; and
4. refrain from discussing pending cases with any person.” *Id.*

“This does not mean [judicial officers] are unable to engage in ‘ordinary social hospitality’ activities, but they should complete the analysis to ensure the engagement falls under the ‘ordinary social hospitality’ concept and that attendance at the event does not cross the line of conduct that is prohibited by the [MCJC].” EO JI-156.

- *Accepting gifts.* “A judge, judge’s family member, or staff member may accept gifts that are considered ‘ordinary social hospitality’ but should not accept any other gifts from persons who may appear before the judge.” [State Bar of Michigan Ethics Opinion, JI-146, September 3, 2020](#). MCJC 4 “pertains to extrajudicial activities and requires the judge to uphold the duty of impartiality in other professional and personal activities, and to ensure that the judge’s family members conduct themselves consistent with the judge’s obligation.” EO JI-146. *Ordinary social hospitality* should be viewed

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<sup>10</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

objectively, and “the exchange must be in a social, rather than professional, context”; “[a]dditionally, a history of reciprocal hospitality between the judge and the person offering the gift supports an inference that the gift is ordinary social hospitality.” *Id.* “[E]xamples of gifts that may constitute ordinary social hospitality include:

1. A bottle of wine or a dessert or food item that is presented by a houseguest.
2. The purchase of a meal by a friend or colleague with the reasonable expectation that a future purchase would be reciprocated by the receiving judge.
3. Mutual gift exchanges, such as exchanging of holiday/birthday gifts of comparable value.
4. Produce from a home garden when similar hospitality is reciprocated.

Examples of gifts that would not typically be considered ‘ordinary social hospitality’ include:

1. Any gifts from attorneys, litigants, or persons whose interests have or are likely to come before the judge. Gifts from these sources, regardless of the value, are strictly prohibited.
2. Tickets to concerts, shows, sporting events, or fundraising events.
3. Gifts that are of significant value, such as use of a vacation home or time-share and expensive gifts from a lobbyist or vendor.
4. Gifts that are presented where there is no reasonable expectation of reciprocity. For example, if a judge and her husband were taken out to dinner by a salesperson who was selling a product that may be purchased or utilized by the court, the judge could not ethically allow the salesperson to pick up the dinner tab as there is no reasonable expectation that the expenditure would be reciprocated by the judge. Furthermore, this could be viewed as the judge’s misuse of the prestige of office.

Based on the provisions of [MCJC 4(E)], a judge, judge’s family member, or staff should not accept gifts from persons whose interests are before the judge or are likely to come before the judge.” EO JI-146.

- *Participating in civic and charitable activities.* “A judge may participate in civic and charitable activities which meet the following limitations and/or criteria:



1. The activities may not detract from the dignity of the judicial office.
2. The activities may not interfere with the performance of judicial duties.
3. The activities may not reflect adversely on the judge's impartiality.
4. The activities may not give the appearance of impropriety.
5. The 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 and serve as a member of an honorary committee or join a general appeal of such an organization only if: (a) it is unlikely that the organization will be engaged in proceedings that would ordinarily come before the judge; (b) it is unlikely the organization will become engaged in adversary proceedings in any court; (c) the judge does not personally solicit funds; and (d) the prestige of the judicial office is not used for solicitation of funds or membership.
6. The judge may speak at or receive an award in connection with an event of a[n] educational, religious, charitable, fraternal or civic organization, and even allow his or her name or title to be used in advertising the event, but may not individually solicit funds." [State Bar of Michigan Ethics Opinion, J-8, January 31, 2014](#).

"A judge may be a member of an educational, religious, charitable, fraternal or civic fund-raising committee as long as the judge does not individually solicit money." EO J-8. [MCJC 4\(C\)](#) "permits a judge to serve and be listed as director or trustee of charitable or civic organizations, so long as participation meets the requirements of [[MCJC 2\(A\)](#), [MCJC 4\(B\)](#), [MCJC 4\(C\)](#), and [MCJC 4\(D\)](#)]." EO J-8. "Therefore, a judge may be identified by name and judicial office on letterhead, in circulated literature or in any other communications disseminated by the organization of which the judge is a member." *Id.* "Additionally, if a board or committee sends a general appeal mailing to a variety of people who are known to support the organization, the presence of the judge's name on that letterhead or as one of several signators would not be improper." *Id.*

"A judge is permitted to solicit membership in an educational, religious, charitable, fraternal or civic organization as long as the membership solicitation is not included in the same letter as a solicitation of funds." EO J-8. "But, a judge should not participate in membership solicitation if doing so could be perceived as using the prestige of the judicial office to coerce participation due to [[MCJC 4\(C\)](#)]." EO J-8.



“A judge may not personally solicit membership for an educational, religious, charitable, fraternal or civic organization or cause,” and “[a] judge may not select and invite guests, and host a progressive dinner where the proceeds are given to support an organization because this is tantamount to an individual solicitation, prohibited by [MCJC 4(D)].” EO J-8. “Speeches, broadcasts, or other communications where the judge personally asks others to contribute would therefore be improper,” and “[t]his would apply whether or not the judge is identified by judicial title.” *Id.* “Therefore, participation in a telethon as a special guest offering support of the organization or using the prestige of office to encourage contributions is prohibited by the same Canon.” *Id.*

MCJC 4(B) “allows a judge generally to write, lecture, teach, speak and consult on nonlegal subjects, appear before nonlegal bodies and engage in the arts, sports or other social and recreational activities, as long as the guidelines are not violated.” EO J-8. “Therefore a judge is allowed to participate in a walk-a-thon, softball game, etc., or other educational, religious, charitable, fraternal or civic causes as long as the judge does not personally solicit contributions, does not individually solicit for backers or sponsors of other participants, and does not allow others to use the prestige of the judge’s office to coerce solicitations on the judge’s behalf.” *Id.* “A judge may participate and be listed in promotional materials as a participant in an educational, religious, charitable, fraternal, or civic activities, as long as the participation does not involve the judge individually soliciting funds.” *Id.*

Under MCJC 4(D), “[a] judge may attend a testimonial dinner in the judge’s honor held by a charitable or civic organization where the proceeds of the dinner are allocated to a charitable or civic purpose,” and “[t]he judge may even allow his or her name or title to be used in advertising the judge’s involvement in the event as long as the judge does not individually solicit funds.” EO J-8. “A judge may regularly participate in dinners held by educational, religious or fraternal organizations.” *Id.*

- *Hosting a commercially-sponsored program.* “A judge’s hosting of a commercially-sponsored program has the potential 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.” [State Bar of Michigan Ethics Opinion, JI-137, May 11, 2012](#).<sup>11</sup> “While the notion of educating the public about the law and the legal system is supported in the Code, it is secondary to the performance of judicial

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<sup>11</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

functions”; “[t]o the extent that a judge is permitted to engage in financial and business dealings outside the scope of judicial functions, doing so cannot impinge on the integrity of the performance of those functions.” EO JI-137. “A judge’s ability to speak on ‘nonlegal subjects’ and to participate in ‘civic and charitable activities’ [under [MCJC 4](#)] also has some limitations.” EO JI-137. “[E]ven if the content of the program could conceivably comport with [\[MCJC 4\]](#), it is difficult to envision how hosting on a regular basis any commercially-sponsored program would not place the judge in contravention of [the canon’s] proscription against the use of the prestige of office to advance personal business interests or those of others.” EO JI-137. Moreover, “[a] full-time judge, who is paid to host a commercially-sponsored program, violates [\[MCJC 4\(E\)\(2\)\]](#) if, in doing so, the judge serves as a director, officer, manager, advisor or employee of any business regardless of where the business is located, whether the judge’s compensation from the business is reported to the State Court Administrative Office, or the number of judges seated on the hosting judge’s court.” EO JI-137.

- *Displaying an attorney’s for-profit educational courses and materials.* “The display of an attorney’s for-profit educational courses and materials should not be allowed in the court clerk’s office or in any area the public may perceive to be under the court clerk’s control or other court staff’s control.” [State Bar of Michigan Ethics Opinion, JI-135, October 15, 2010](#).<sup>12</sup> “Allowing a display of the course materials in a common area where non-court personnel may make information available to the public does not constitute the practice of law by a judge in the courthouse in contravention of [\[MCJC 4\(H\)\]](#),” but “[t]o minimize any potential misconception that any judge endorses the course or has authored the materials, the display or informational material should clearly identify the author (which may be an individual, firm, or company).” EO JI-135.
- *Charging a vendor fee at a judicial conference.* “A judicial association may charge a vendor a fee for making space available for the vendor to display services and products at a judicial conference in an amount in excess of \$100<sup>[13]</sup> if the fee charged is either in an amount reasonably calculated to represent the costs incurred by the association in making space available to the vendor or, if there is no additional cost to the association in making space available to the vendors, the fee charged the vendor is not used to offset the cost of the conference itself, but rather is meticulously accounted for as a contribution to the association and used for other functions of the association such as ‘. . . the improvement of the law, the legal system, or the administration of

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<sup>13</sup> Note that the threshold has since been increased to \$375.

justice' in accordance with [MCJC 4(A)(3)]." [State Bar of Michigan Ethics Opinion, JI-136, January 14, 2010](#).<sup>14</sup> "The treasurer of the organization, who is a judge, may receive the fee and handle those funds on behalf of the organization in order to deposit them in the organization's bank account as it would not constitute a solicitation, nor would it tend to adversely reflect on the judge's impartiality or judicial office for the reasons stated previously." EO JI-136.

Where "the vendor approached the association about displaying services and products at the conference" and [MCJC 4\(D\)](#) only prohibits the *solicitation* of funds, and "the association merely offers the vendors the opportunity to display their services and products at the conference and the cost to the vendor is reasonably calculated to offset the cost of resources or space provided to the vendor or is accounted for as a contribution to the association, it would not appear to constitute solicitation of funds and, therefore, could be received by the treasurer of the association, who is a judge." EO JI-136. "On the other hand, consistent with the prohibition against a judge's individual solicitation of funds, a judicial association cannot directly solicit a vendor to attend a conference for the purpose of raising funds for the organization." *Id.*

"The physical receipt of that money by a judge would not constitute solicitation." EO JI-136. As [MCJC 4\(A\)\(3\)](#) states that a "'judge may participate in [the funds'] management and investment of such an organization's funds," it would not violate the Code for that judge to handle and deposit the funds in the association's bank account on behalf of the association." EO JI-136. "Because the Michigan Code of Judicial Conduct does not prohibit the receipt of these monies by a judge, contemplating delegation of the task to court personnel is not necessary." *Id.* "Moreover, delegation of those duties to court personnel, whose conduct might in any event be imputed to the judge, would create a separate but additional problem of asking the employee to perform duties outside the scope of their employment." *Id.*

"[C]ommon experience suggests that most vendors are not regularly or frequently involved in litigation"; "[i]n fact, it is more highly unlikely that such vendors would come before the court or be involved in frequent transactions with the court." EO JI-136. "Absent a circumstance where experience demonstrates that a particular vendor is likely to come before any court whose judge is a member of the association, charging and receiving a fee from a vendor to display its materials or services at a conference would not *per se* adversely reflect on a judge's impartiality or judicial office." *Id.* "Moreover, because one of the purposes of the conference is educational, it can only add to

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judges' ability to perform their duties and fulfill their judicial office to be made aware of services and technologies that may be of assistance to them in the administration of justice." *Id.* "No judge attending the conference is obligated in any way to utilize the products or services of any vendor that may display its materials at the conference; therefore, charging the vendors a fee creates no obligation and does not tend to adversely reflect on a judge's impartiality or judicial office." *Id.*

- *Participating in charity event.* "A judge may not participate in a fundraiser commonly referred to as 'Jail and Bail,' 'The Great American Lockup' or a 'Lockup for Charity,' where the primary involvement of the judge is to set an amount of money that constitutes a target amount for an individual to pay or try to raise as 'bail'; "[w]here the purpose of a judge's involvement is to determine the amount of money to be paid to a charitable organization by donors, such involvement constitutes a direct solicitation for the charity and is not permitted." [State Bar of Michigan Ethics Opinion, JI-125, April 20, 2001](#).<sup>15</sup> "The scenario of this type of fundraising has been found to constitute a direct solicitation and give the appearance of the judicial office being used to give prominence and potential publicity to the proceedings" in contravention of [MCJC 4\(D\)](#). EO JI-125. "The proceedings themselves are, of course, taken in a humorous light, however the individuals brought before the judge, albeit voluntarily, are often citizens, public officials, or professionals, including lawyers who may have official dealings with the judge." *Id.*
- *Moderating a forum conducted by a political party.* Because MCJC 4 "permits, in fact encourages, judges to engage in activities to improve the law, the legal system and the administration of justice," but "[j]udges are not permitted [to] participate in civic activities that reflect adversely on the judge's impartiality or that in any manner inhibit performance of judicial duties, . . . a judicial officer may serve as moderator at a forum on criminal justice initiatives conducted by a political party provided the judge does not comment on pending or impending cases in any court; the judge does not take a position on a legislative initiative that would preclude the judge from later presiding over a case or controversy involving the matter; and, the judge's participation does not interfere with the performance of the judge's judicial duties." [State Bar of Michigan Ethics Opinion, JI-121, April 23, 1999](#).<sup>16</sup>
- *Attending a dinner sponsored by a political party.* "A judge may not attend a testimonial dinner sponsored by a political party where the price of admission exceeds the reasonable cost of attendance" because "[i]t is

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unethical for a judge to use or permit the use of the prestige of judicial office to raise money for a political party.” [State Bar of Michigan Ethics Opinion, JI-115, August 15, 1997](#).<sup>17</sup> “While it is clear that judges may attend political gatherings and make individual contributions to political parties, the Michigan Code of Judicial Conduct does not permit judges to personally solicit money for any purpose—not even for the judge’s own election campaign.” *Id.* Under [MCJC 4\(D\)](#), “[e]ven when the event does not require a judge to actively solicit moneys, it is improper for a judge to use or permit the use of the prestige of judicial office for fund raising purposes.” EO JI-115.

- *Receiving and reporting compensation for speaking engagement or event.* “A judge may serve as ‘track steward’ at an automobile race provided that the judge is not classified as an employee of the race track, race sponsor, race sanctioning body or other organization involved in holding the activity.” [State Bar of Michigan Ethics Opinion, JI-110, November 15, 1996](#).<sup>18</sup> “[P]rovided that the particular activity does not detract from the dignity of the office,” there are “no adverse ethical implications from a judge’s participation in an auto racing activity[.]” *Id.* However, [MCJC 4\(E\)\(2\)](#) “prohibits a judge from serving as a director, officer, manager, advisor, or *employee* of any business”; “[t]herefore, if the judge, by serving as track steward, is classified as an employee of the particular sponsoring or sanctioning organization, the judge could not serve.” EO JI-110.
- *Participating in public protest.* “A judge may not participate in a public protest against a group or organization which advocates against a particular race, ethnic group or religion.” [State Bar of Michigan Ethics Opinion, JI-109, August 6, 1996](#). “MCJC 4 addresses judicial participation in questions of policy, and encourages judges to participate in activities which improve the law, the legal system or the administration of justice, but ‘through a bar association, judicial conference, or other organization dedicated to the improvement of the law.’” EO JI-109. “Because judges are supposed to be impartial, to make decisions based upon the law and the record of a case, and to uphold the law, judges should not declare their personal preferences regarding policy questions.” *Id.* “If a judge has become identified with a particular interest group or position, and that group appears as a party or a similar issue arises before the judge in a pending matter, the judge may have to recuse himself or herself in order to preserve the fairness of the process.” *Id.*
- *Taking position on proposal.* “A judge may take a position on a proposal to eliminate adult education in the state to the extent that the position addresses the impact of the proposal on the administration of justice.”

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[State Bar of Michigan Ethics Opinion, JI-108, June 25, 1996](#). “The matters of educational opportunities and educational resources are significant to the legal system and the administration of justice”; “[i]n fact, the impact of education generally on the social and economic factors material to poverty and crime is a serious matter of interest to the justice system,” and “[t]he concerns and advice of the judiciary are to be welcome” under MCJC 4. *Id.* Accordingly, insofar “as a judge’s public comments on adult education are limited to its impact on the administration of justice, they are not unethical.” *Id.*

- *Accepting pro bono legal services from sibling.* “A judge may accept *pro bono* legal services from the judge’s sibling in the pursuit of a public policy issue pending in a case before another judge.” [State Bar of Michigan Ethics Opinion, JI-106, February 22, 1996](#).<sup>19</sup> “Clearly, a judge may accept a gift or favor from a sibling under [MCJC 4(E)(4)(b)],” and “[t]he ethics provisions do not distinguish between types of gifts and/or favors[.]” EO JI-106. “Were it not for the fraternal relationship, the *pro bono* nature of the services rendered in the case might be considered an improper gift or favor unless they came within the purview of [MCJC 4(E)(4)(c)]”; however, “[t]he circumstance . . . is uniquely characterized by the familial relationship between the judge and the lawyer offering the services,” and “[a]s such, the acceptance of those *pro bono* services is not unethical.” EO JI-106.
- *Using jury records for personal election mailings and soliciting support from jurors.* “A judge may not use jury records for the judge’s personal election mailings” and “may not personally solicit public statements of support from persons who have served as jurors in the judge’s court.” [State Bar of Michigan Ethics Opinion, JI-104, October 5, 1995](#).<sup>20</sup> “Use by a judge in a re-election campaign of information about the identity, addresses or other information about jurors disclosed in their questionnaires or during the jury selection process would violate the provisions of [MCJC 4(E)(7)] and would not be permitted.” EO JI-104.
- *Teaching law course.* “A judge may teach a law course as long as the obligations of teaching do not interfere with the proper performance of judicial duties” in accordance with MCJC 4(E)(1); “[t]he role of a judge teaching a course on the law one evening a week is one of proper utilization of the judge’s skill and knowledge for the advancement of the public’s knowledge of the law, the legal system, and the administration of justice.” [State Bar of Michigan Ethics Opinion, JI-99, March 15, 1995](#).<sup>21</sup> However, under MCJC 4(E)(2), “[a] judge may not serve as a contributing editor of a journal of political

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opinion,” because “[e]ven if the judge is not compensated, the editorial responsibilities involve ‘advising’ the journal regarding what it should publish and in what form.” *Id.*

- *Serving as trustee for relative.* “A judge may not serve as trustee of an *inter vivos* trust for an aunt.” [State Bar of Michigan Ethics Opinion, JI-98, January 18, 1995](#).<sup>22</sup> [MCJC 4\(F\)](#) “prohibits a judge from serving as a *testamentary* trustee for anyone other than their immediate family member,” and “[t]here appears to be no substantive nor fiduciary difference between the function and duty of a *testamentary* trustee versus the trustee of an *inter vivos* trust.” EO JI-98. “The evils to be avoided by prohibiting judges from serving as trustees, namely the appearance of additional prestige or advantage . . . are equally present whether the trust is *testamentary* or created by *inter vivos* document.” *Id.* Accordingly, there is “no relevant difference between a trustee’s function and duties as trustee of an *inter vivos* versus *testamentary* trust, and a judge may not serve as trustee for either trust except for an immediate family member.” *Id.* [MCJC 4\(F\)](#) “allows a judge to serve as a trustee only for an *immediate* family member,” i.e., “only parent and child, husband and wife, or brother and sister.” EO JI-98. “Any other relationship would not be directly connected or next in line to the judge but rather would depend on an intervening relative”; “[a]n aunt, therefore, would not be considered . . . to be a member of the judge’s ‘immediate’ family.” *Id.* “Even where the family relationship is sufficiently close, there are still restrictions on the circumstances under which a judge may serve as a fiduciary as set forth in [[MCJC 4\(F\)\(1\)](#) and [MCJC 4\(F\)\(2\)](#)],” and “[e]xisting policy dictates that the circumstances under which a judge should serve as trustee should be highly limited.” EO JI-98. Accordingly, “[a] judge is prohibited from serving as a trustee under an *inter vivos* trust for a maternal aunt.” *Id.*
- *Transferring law practice.* “Whether or not a lawyer may ‘assign’ a law practice is a question of law”; “[a] lawyer may not offer or make an agreement to transfer a law practice when:
  - (a) there is no provision for client consent to the transfer of the client’s file and transfer of lawyer responsibility for the matter;
  - (b) the transferring lawyer assumes judicial office and continues to be actively involved in the law practice by the transferred firm; or
  - (c) the transferring lawyer assumes judicial office and maintains a continuing financial or business interest in the former law practice.” [State Bar of Michigan Ethics Opinion, JI-89, April 8, 1994](#).<sup>23</sup>

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“A judge may not plan to utilize or utilize the library, secretary, conference room, or other assets of the judge’s former law firm on a regular basis after assuming judicial office.” EO JI-89. “A full time sitting judge is generally prohibited from practicing law” under [MCJC 4\(H\)](#), and “[w]hen elected or appointed to judicial office the lawyer must promptly discontinue the practice of law.” EO JI-89. “It is clear that a lawyer may not unilaterally transfer a client file to another lawyer, whether by sale or assignment, and that the affected clients must consent to any transfer of their file,” and “unless the assignment is irrevocable, the judge continues to have an active, albeit limited, interest in a law practice in violation of [[MCJC 4\(H\)](#)].” EO JI-89.

“[E]thics rules mandate that a full-time judge sever all relations with the judge’s former firm on taking the bench with the exception of payment by the purchaser for the reasonable value of the practice transferred by the seller.” EO JI-89. “Where the arrangement calls for payment of the purchase price over time, the law permits the judge to hold a security interest in the assets, but a title retaining contract” is not permitted by [MCJC 4\(H\)](#). EO JI-89.

“The continued use of the former firm’s library by the judge creates problems,” and “utiliz[ing] the assets of the judge’s former firm on a regular basis” creates “on-going contact” and “raises questions regarding judicial impropriety in contravention of [[MCJC 4\(E\)](#) and [MCJC 4\(H\)](#)].” EO JI-89. Accordingly, “the judge’s ongoing use of the judge’s former private law facility is improper.” EO JI-89.

- *Participating in fundraising activities on behalf of bona fide charitable/civic organizations.* “A judge may participate in a broad range of fundraising activities on behalf of *bona fide* charitable/civic organizations, but only to the extent that the fund raising activities do not involve direct, individual solicitation on the part of the judge”; “[f]urther, such activities may not use the judge’s name or position as a judge to encourage, invite, solicit or otherwise engage in fund raising activities.” [State Bar of Michigan Ethics Opinion, JI-87, March 23, 1994](#).<sup>24</sup> “[W]hen considering whether to participate in such activities and assuming an interest in the particular organization, the judge must decide whether the appeal involves a personal solicitation, and/or whether the anticipated role of the judge would either intentionally or unintentionally use the judge’s prestige and/or position as judge to encourage membership or contribution”; “[i]f either occurs, then the judge must decline participation.” *Id.* “[A] judge participating in a radiothon for the National Association for the Advancement of Colored People (NAACP)” where “[t]he NAACP proposes that the judge serve as a ‘celebrity guest’ on the show to urge listeners to join the organization and explain why the judge is a member of the

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organization and why it is important to join,” violates MCJC 4 in two respects. EO JI-87. “It anticipates the judge pre-recording a public service announcement to be broadcast on the program urging the public to join the organization and/or agreeing to be interviewed about why the judge is a member and why it is important to join”; “[s]uch activities, assuming they identify the individual, amount to personal solicitation.” *Id.* “Moreover, the very thrust of the proposed participation is to use the judge’s prestige and position *as a judge* to encourage contributions”; “[t]he judge would be a ‘celebrity guest’ solely because of the position as a judge,” and “[t]he implication is that people should join and/or contribute because a person as important as a judge or this judge is a member and wants them to do so.” *Id.* “Therefore, although a judge may participate in fundraising activities that include general appeals and do not specifically focus on the judge’s position as a judge, participation by a judge in a radiothon which identifies the judge by name and position, as a celebrity guest who then speaks, either in a pre-recorded announcement or in an interview, to encourage others to join the organization or contribute to it, is precluded by [MCJC 4(D)].” EO JI-87.

- *Giving a speech at a private conference.* “A judge may give a speech concerning nonlegal subjects at a private conference sponsored by a company.” [State Bar of Michigan Ethics Opinion, JI-80, February 16, 1994.](#)<sup>25</sup> MCJC 4(B) “specifically authorizes a judge to speak on nonlegal topics before nonlegal bodies,” and “[s]ince the sponsoring company and the attendees have not in the past had, nor are likely in the future to have matters coming before the district court, the impartiality of the judge when performing judicial duties would not be affected by participation in the program.” EO JI-80. Under MCJC 4(E)(4), “[a] judge may accept an honorarium for speaking in the program if other participants would receive a comparable honorarium, and if the value exceeds \$100,<sup>[26]</sup> the judge reports it to the State Court Administrator.” EO JI-80.
- *Receiving compensation for legal material.* “A judge may write an article containing general legal information, provide work product for inclusion in an educational pamphlet or cassette tape sold for profit, and receive compensation therefor, provided that the promotion and sale of the material is not an exploitation of the author’s judicial position and the activity does not interfere with the proper performance of judicial duties.” [State Bar of Michigan Ethics Opinion, JI-76, December 9, 1993.](#)<sup>27</sup> “Writing an article for an educational pamphlet on divorce qualifies as [permissible] activity . . . under

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<sup>26</sup> Note that the threshold has since been increased to \$375.

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[MCJC 4], provided that it comports with [MCJC 4(E)], and provided further, that the product distributed does not constitute the practice of law in contravention of [MCJC 4(H)].” EO JI-76.

- *Accepting scholarships or fellowships to attend professional development seminars.* “A judge may accept scholarships or fellowships in order to attend professional development seminars provided they are awarded on the same terms as applied to nonjudicial applicants and do not adversely reflect upon the judge’s impartiality toward persons whose interests come before the judge,” and “[a] judge may compete for scholarship funds to attend a professional seminar designed to develop leadership and networking for women.” [State Bar of Michigan Ethics Opinion, JI-75, November 16, 1993](#).<sup>28</sup> MCJC 4(B) “provides that a judge may engage in non-legal social, civic, and charitable functions that do not detract from the dignity of their office and that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties, and do not involve individuals or special interests which would likely come before the court.” EO JI-75. A national non-profit leadership development program for women “professes to include lawyers and elected officials based upon their ability to make substantive contributions to seminar discussions,” and “[i]t is at least arguable that a judge could contribute to the promotion of a better understanding and appreciation of the legal system by participation in a seminar of this nature.” EO JI-75. Further, “[u]nlike [MCJC 4(E)(4)(a)] in regard to gifts and loans, there does not appear to be a monetary figure restriction [in MCJC 4(E)(4)(b)] on the amount of the scholarship.” EO JI-75.
- *Participating in fund raising for a political party.* “A judge may not participate in fund raising for a political party and its candidates by calling bingo numbers, selling bingo cards, and handling money at the event.” [State Bar of Michigan Ethics Opinion, JI-73, October 6, 1993](#).<sup>29</sup> “It is well-established that a judge may not personally and directly solicit funds for a civic/charitable purpose [JI-1, JI-33], or for the judge’s campaign for political office.” *Id.* (bracketed information in original). “While [MCJC 4(C)] provides wide latitude for public service by judges, it inferentially restricts such discretion by warning against participation in charitable organizations that adversely reflect upon the impartiality or that interfere with the performance of the judge’s judicial duties.” EO JI-73. Where “the judge would be selling bingo cards and taking money from attendees,” “[t]hese activities are the direct and personal ‘solicitation of funds’ by the judge, and prohibited.” *Id.*

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- *Participating in charity fashion show.* “A judge may participate as a model in a fashion show, the proceeds of which will be allocated to charitable purposes, provided that the judge’s participation does not detract from the dignity of the judicial office or interfere with the judge’s impartiality, and the judge does not solicit funds.” [State Bar of Michigan Ethics Opinion, JI-71, July 2, 1993](#).<sup>30</sup> “Participation in the event, and being listed in promotional literature as participating in the event, is not unethical.” *Id.*
- *Providing services as conciliator.* “A judge should not provide services as a conciliator in disputes that are likely subjects of arbitration or litigation.” [State Bar of Michigan Ethics Opinion, JI-69, June 21, 1993](#).<sup>31</sup> “There seems to be no meaningful distinction to be made of the fact that [MCJC 4(G)] omits the specific use of the term conciliation, but does use the term mediation”; “[t]hese terms and the processes under them aimed at a reconciliation are so clearly connected that reason requires that [MCJC 4(G)] be applied to both of them.” EO JI-69. MCJC 4(G) “contemplates parties engaged in a litigious dispute or about to become so engaged, and bars judges from becoming involved in the process outside of the judge’s formal duties.” EO JI-69. “There must be concern that the disputed matter may come before the judge’s court or in another judicial forum where the actions of the ‘conciliator judge’ are drawn into the controversy or the prestige of the judicial officer is asserted to support or enhance the propriety of a proposed reconciliation.” *Id.*
- *Participating in health education and social awareness activities.* “A judge may participate in health education and social awareness activities such as AIDS prevention, and encourage other persons to support the same cause”; however, “[a] judge should not wear on the judicial robe symbols indicating the judge’s support or opposition to a particular political, social, or charitable/civic cause.” [State Bar of Michigan Ethics Opinion, JI-68, April 26, 1993](#).<sup>32</sup> MCJC 4 “encourages judicial officers to contribute toward the improvement of criminal and juvenile justice and to participate in [law-related activities],” and “[j]udges are allowed to engage in avocational activities provided they do not interfere with or detract from the dignity of judicial office or the performance of judicial duties.” EO JI-68. “Wearing the AIDS ribbon would publicly identify the judge with the AIDS educational program,” and “[t]he wearing of a ribbon for this purpose on street clothes outside the courtroom” is permissible; however, “a judge should not wear [such a symbol] on the judicial robe.” *Id.*

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- *Holding non-fundraising event in honor of nonjudge.* “If the purpose of the event is not fund-raising, a group of judges may hold a testimonial dinner in honor of a nonjudge, invite lawyers and judges to the event, and assess each attendee a *pro rata* share of the actual costs of the event.” [State Bar of Michigan Ethics Opinion, JI-49, March 20, 1992.](#)<sup>33</sup> “It is commonplace for groups to hold meetings in public facilities which rent out private rooms and offer standard menus for various set rates, depending on attendance,” and “[s]ome facilities require an advance deposit or a minimum attendance guarantee.” *Id.* “Advising attendees of their *pro rata* share for attendance at the event is not . . . prohibited ‘solicitation of funds.’” *Id.* “Likewise, if one event organizer has advanced a deposit, it is not improper for the individual to be reimbursed from payments from attendees subsequently received”; “[t]here is no need to create elaborate bookkeeping or separate accounts.” *Id.* “Any reasonable method of determining each attendee’s share and reimbursing the organizer for any advance payments is acceptable.” *Id.* However, “[i]f the purpose of the event is fund-raising, a group of judges holding a testimonial dinner may solicit funds from attendees only if a nonjudge handles the solicitation and the funds, and only if the proceeds are allocated to a *bona fide* educational, religious, charitable, fraternal or civic organization.” *Id.*
- *Accepting a referral fee.* “A full-time referee may not accept a referral fee for referring clients to a lawyer” because “the receipt of a referral fee [constitutes] ‘practicing law for compensation’” within the meaning of [MCJC 4\(H\).](#) [State Bar of Michigan Ethics Opinion, JI-45, December 20, 1991.](#)<sup>34</sup> “The prospective client looks to the referring lawyer for the expertise and knowledge necessary to make an appropriate referral, and the referring lawyer uses legal expertise and skill in making that selection”; “[t]herefore, a full-time referee may not accept a referral fee.” *Id.*
- *Selling law books.* “A judge may sell law books to persons whose interests are unlikely to come before the judge” without violating [MCJC 4\(E\)](#) because “[a] judge is not restricted in negotiating or concluding an agreement for the sale of law books at market value with one whose interests do not come before the judge, or with a lawyer who is not likely to practice before the court on which the judge serves.” [State Bar of Michigan Ethics Opinion, JI-40, July 29, 1991.](#)<sup>35</sup> “If the purchaser is a party or advocate for a party in a matter coming before the judge and the purchase transaction has not been fully completed, i.e., all elements of the purchase agreement fulfilled, the judge must disclose the relationship on the record and recuse

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unless the parties ask the judge to proceed.” *Id.* “A judge may . . . sell his/her law books to a lawyer who is likely to come before the court on which the judge serves if a device [is] used to shield the identity of the purchaser, such as a blind trust” because “[a]n indirect sale (via a device to shield purchaser identity) would not violate the Michigan Code of Judicial Conduct as long as the identity of the purchaser remains undisclosed to the judge.” *Id.*

- *Soliciting funds for judicial organization.* “A judge may not personally solicit funds on behalf of any charitable organization”; however, “[a]n organization of judges may retain a non-judge executive director to solicit funds for the organization’s charitable and educational activities.” [State Bar of Michigan Ethics Opinion, JI-33, December 19, 1990.](#)<sup>36</sup> “If the organization’s fund-raising letter is signed by someone other than one of its members, and the organization’s members do not personally participate in the solicitation, the organization’s solicitation for charitable and educational purposes does not violate [MCJC 4(D)].” EO JI-33.
- *Giving away fundraiser tickets.* “A judge may attend a fundraiser held for a nonjudicial candidate, and may participate in campaign activities which do not constitute a public endorsement of the nonjudicial candidate”; “[t]he same rules apply to a judge’s participation in a campaign for a nonjudicial candidate who is a relative of the judge or a member of the judge’s household.” [State Bar of Michigan Ethics Opinion, JI-30, November 15, 1990.](#)<sup>37</sup> “Similar logic would allow a judge to give away extra fundraising tickets the judge has purchased but cannot use”; “[t]his is distinguished from the judge *receiving* free fundraising tickets, which would fall within [MCJC 4(E)(4)], and from the judge *reselling* tickets, since a judge may not directly solicit funds.” EO JI-30. “A judge may also buy a block of tickets, such as all seats at a specific table for a dinner event, with the intention of giving them away to friends or to ensure good attendance at the event.” *Id.* “As long as the judge does not use the power and prestige of the office in such give-aways and does not suggest the recipient can expect something from the judge in return for attending, such intentional give-aways are not improper.” *Id.*
- *Selling computer program.* “A judge who has developed a computer program which will produce forms for use by lawyers may sell the program to a lawyer or other person as a distributor”; “[t]he judge may retain a royalty for the units sold, but may not take part in the marketing of the product or be retained in any advisory capacity as to technical questions concerning the product” and “should have no ownership in the purchaser entity, nor have any rights in the

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operation by which the product is distributed.” [State Bar of Michigan Ethics Opinion, JI-21, May 11, 1990](#).<sup>38</sup> “Development of a computer program to assist in using state-approved forms qualifies as [appropriate] activity . . . under [MCJC 4], provided that it comports with [MCJC 4(E)].” EO JI-21.

- *Providing legal advice/services.* Whether a judge may provide legal advice or legal services depends on the circumstances.

**Providing legal advice to immediate family member.** “A judge may, without compensation, provide limited legal advice or counseling to members of the judge’s immediate family, but may not act as their advocate or negotiator, or make appearances as counsel for the family members.” [State Bar of Michigan Ethics Opinion, J-2, November 3, 1989](#).<sup>39</sup> Accordingly, “a judge may provide limited legal advice or counseling to a son-in-law concerning a real estate transaction, including drafting or reviewing documents incident to the transaction”; “[h]owever, the judge cannot receive compensation for these services, may not function as advocate or negotiator, and may not make an appearance as counsel.” *Id.*

**Drafting a will.** “A judge may without compensation draft a will for a member of the judge’s immediate family.” EO J-2. “The drafting of wills for close family members, however, may raise attorney-client conflicts of interest,” and “[a] judge engaging in permitted legal work is governed by the same rules as a lawyer and should proceed accordingly.” *Id.*

**Providing legal advice to charitable/civic organizations.** “It is improper for a judge to provide legal advice to charitable/civic organizations on which the judge serves.” EO J-2. [MCJC 4\(C\)](#) “provides that a judge may serve as ‘an officer, director, trustee, or *non-legal advisor* . . .’ of educational, charitable, or civic organizations” – “[b]y this choice of language, the Code authorizes the giving of ‘nonlegal’ advice to such organizations by a judge” and “also clearly forbids a judge to provide ‘legal advice’ to charitable or civic organizations.” EO J-2. The absence of remuneration has no bearing on the propriety of the conduct.” *Id.*

**Appearing in legal proceedings.** “Advocacy is inconsistent with the judicial office and prohibited completely, except for *pro se* matters,” and “[t]he absence of compensation and the locus of the proceeding do not mitigate the prohibition.” EO J-2. “Judges have the same right to represent themselves as other citizens, and may appear *pro se* as a party before tribunals and in negotiations.” *Id.* “[J]udges should be

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able to represent themselves in personal matters before tribunals or in negotiation, as long as this right is not abused and appropriate steps are taken to avoid the appearance of favoritism or impropriety, such as where the matter is in the judge's own court." *Id.* "A judge may not appear as an attorney for family members in proceedings outside the state." *Id.* "While a judge may give legal advice to members of the judge's family (for no compensation), the judge may not make an appearance as counsel for, or function as an advocate or negotiator on behalf of, that family member." *Id.* "The fact that [the appearance is] 'out of state' . . . makes no difference"; "[a]n impartial judiciary, in both fact and appearance, and whether in Michigan or outside the state, is essential to the administration of justice." *Id.*

- *Attending a charity dinner in the judge's honor.* "A judge may attend a testimonial dinner in the judge's honor held by a charitable or civic organization where the proceeds of the dinner are allocated to a charitable or civic purpose"; "the judge's acceptance of such an honorary or testimonial is [not improper], given that [MCJC 4(E)(4)(a)] explicitly allows such testimonials and the judge will not solicit funds or attendance to the event." [State Bar of Michigan Ethics Opinion, JI-9, July 19, 1989.](#)<sup>40</sup>
- *Accepting contributions after election.* "A candidate, successful or not, may not accept contributions after the election from friends or relatives to retire campaign debts" because "contributions from friends or relatives on or after election day may constitute a gift or loan prohibited" by MCJC 4(E)(4). [State Bar of Michigan Ethics Opinion, JI-7, July 7, 1989.](#)<sup>41</sup>
- *Soliciting funds for charity door-to-door or on the street.* "A judge may not participate by going 'door to door' or 'on the street' as part of the sale of items, products or gaining contributions, where the primary purpose is to solicit funds for charitable or philanthropic organizations." [State Bar of Michigan Ethics Opinion, JI-3, February 8, 1989.](#)<sup>42</sup> "[W]hile fund-raising for charitable organizations is not only 'laudable' and should be encouraged to the extent that it is not clearly prohibited by the Code of Judicial Conduct, every reference to person-to-person solicitation of funds rather than a 'general appeal' has been found to be improper." *Id.* "Accordingly, a judge may not individually solicit funds for any educational, religious, charitable, fraternal or civic organization or use or permit the use of the prestige of judicial office for that purpose-which includes selling or soliciting funds for items on the street or going door-to-door." *Id.*

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- *Writing a legal column for a newspaper.* “A judge may write a regular legal column of a general information[al] nature for a newspaper, and may contribute to radio or television programs of a similar nature, provided that such activity does not interfere with the proper performance of judicial duties, and provided that all aspects of such activity conform with the provisions of the code of judicial conduct” because “[a]ctivities which enhance public knowledge about the law, the legal system and the administration of justice are clearly encompassed by the terms of MCJC 4.” [State Bar of Michigan Ethics Opinion, C-217, July 1979](#).

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***Guidance on serving on various organizations.***

- *Serving on charitable or non-profit organization.* “A judge may serve as a member of an honorary committee or may join a general appeal on behalf of a charitable organization and may speak at or receive an award or other recognition in connection with an event of such an organization and 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”; “[a]llowing the use of the prestige of the judge’s office does not create an appearance of impropriety.” [State Bar of Michigan Ethics Opinion, JI-139, October 21, 2013](#).<sup>43</sup> Although “a judge may use the prestige of office for the activities specified in [MCJC 4] without the same being a violation of [MCJC 2], the appearance of impropriety standard of [MCJC 2] still applies to a judge’s participation in other extra-judicial activities under [MCJC 4].” EO JI-139. “Therefore, a judge may not serve as an officer, director, trustee, or nonlegal advisor of a charitable or non-profit organization if the organization is regularly engaged in adversary proceedings before any court or is likely to be engaged in proceedings that would ordinarily come before the particular judge, as to do so would be a violation of [MCJC 4(C)]”; *engaged in proceedings* “includes, but is not limited to, providing testimony or documentary evidence to the court or participating in case status conferences in certain types of cases on a regular basis.” EO JI-39. “Nor may a judge serve as an officer, director, trustee, or nonlegal advisor of a charitable or non-profit organization where the sole purpose of the charitable or non-profit organization is to raise money for the court’s own court-ordered programs.” *Id.* “[I]nasmuch as [MCJC 4(C)] limits a judge’s role as an advisor to a charitable organization to that of a nonlegal advisor, a judge should not perform legal work in connection with the creation or ongoing operation of a charitable organization, including organizations that are created for

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the specific purpose of raising funds for problem-solving court programs.” EO JI-139.

- *Serving on board of community foundation.* “A judge is not ethically prohibited from serving on the board of an area community foundation” where “[t]he foundation appears to qualify as a ‘bona fide’ charitable institution” and the service would not otherwise contravene [MCJC 4\(C\)](#). [State Bar of Michigan Ethics Opinion, JI-103, July 14, 1995.](#)<sup>44</sup>
- *Serving on executive agency.* “A district court magistrate may not concurrently serve on a city board of police commissioners.” [State Bar of Michigan Ethics Opinion, JI-94, July 27, 1994.](#)<sup>45</sup> “The board of police commissioners regularly reviews and investigates citizens’ complaints against officers, serves as a final appeal for officers who have been disciplined, and approves or denies promotions of police officers”; “[a]lthough the board of police commissioners may serve to facilitate the administration of justice [under [MCJC 4\(I\)](#)] by reviewing and investigating citizen complaints against officers, the fundamental principles of impartiality, independence and integrity of a judge are in conflict with the member’s role on the commission.” EO JI-94.
- *Serving on board of directors of corporation for the delivery of health maintenance services.* “Full-time and part-time judges are prohibited from serving on boards of directors of any business with or without compensation”; “[a] judge may not serve on the board of directors of a corporation for the delivery of health maintenance services unless the organization is a bona fide educational, religious, charitable, fraternal, or civic organization, the organization is unlikely to be engaged in proceedings that would ordinarily come before the judge, and the organization is not regularly engaged in adversary proceedings in any court.” [State Bar of Michigan Ethics Opinion, JI-72, July 29, 1993.](#)<sup>46</sup> “The fact that the nonprofit corporation is being operated partly for the laudatory purpose of bettering the lives of migrant patients is not dispositive of the issue” because “[t]he corporation must be considered a bona fide educational, religious, charitable, fraternal, or civic organization before the judge can participate as a board member subject to the conditions of [[MCJC 4\(C\)](#) and [MCJC 4\(D\)](#)], regardless of its not-for-profit status.” EO JI-72. “The fact that the [health maintenance organization] services provide a focus on the migrant population may make the organization tantamount to a ‘civic organization,’” but “[t]he facts presented do not indicate that the nonprofit corporation qualifies under this standard.”

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*Id.* “If the organization is not a *bona fide* educational, religious, charitable, fraternal, or civic organization within the meaning of [MCJC 4(C)] . . . look to [MCJC 4(E)(2)],” and “[i]f the organization falls within [MCJC 4(E)(2)], the judge may not participate on the board.” EO JI-72.

- *Serving on board of directors of golf course.* “Full-time and part-time judges are prohibited from serving on boards of directors of any business with or without compensation,” and “[a] judge may not serve on the board of directors of a golf course operated as a private corporation, even if the golf course is not operated for profit.” [State Bar of Michigan Ethics Opinion, JI-70, June 28, 1993](#).<sup>47</sup> “The fact that the golf course may be operated for the benefit of the community, and is not designed to earn a profit is not dispositive of the question,” because “[n]owhere in [MCJC 4(C) or MCJC 4(E)] is the profitability of the organization a factor.” EO JI-70. “Although it may be true that many not-for-profit organizations are also *bona fide* educational, religious, charitable, fraternal, or civic organizations, that is not always the case”; “[c]onversely, the fact that a *bona fide* educational, religious, charitable, fraternal, or civic organization makes a profit, does not automatically prohibit a judge’s participation.” *Id.* “If the golf course were a *bona fide* educational, religious, charitable, fraternal, or civic organization, the judge could participate on the board as long as the conditions of [MCJC 4(C) and MCJC 4(E)] are met.” EO JI-70. In EO JI-70, there was nothing “that indicate[d] that the golf course qualifie[d] under this standard”--“[t]he fact that the golf course is open to the public does not equate with it being a ‘civic’ organization,” and “[t]he fact that the golf course is the location for sport or leisure activity does not make it any less a business covered by [MCJC 4(E)].” EO JI-70. “Although the judge may have a passive investment in the golf course, the judge may not participate on the board.” *Id.*
- *Serving as a member of an independent law revision commission.* “A judge may sit as a member of an independent law revision commission providing information and assistance to the Legislature so long as the duties of the commission are limited to the improvement of the law, the legal system, or the administration of justice and so long as the membership of the committee does not interfere with the proper performance of judicial duties.” [State Bar of Michigan Ethics Opinion, JI-67, March 30, 1993](#).<sup>48</sup> “It is clear that a judicial officer is required not only to promote confidence in the integrity and impartiality of the judiciary but also to bear the burden of contributing to the improvement of the law, the legal system and the administration of

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justice, including the revision of substantive and procedural law and improvement of criminal and juvenile justice.” *Id.* “At [MCJC 4(A)(2)] a judicial officer is authorized to consult with the executive or legislative body or official on such matters, and at [MCJC 4(A)(3)] a judicial officer is authorized to be a member of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice.” EO JI-67. Further, “[t]he subjects to be considered by the Law Revision Commission all clearly impact and will improve the law, the legal system or the administration of justice—a function clearly permitted by [MCJC 4(I)].” EO JI-67.

- *Serving on political action committee.* “A judge may not serve on a legislative affairs and political action committee whose mission is to support pro-business oriented candidates to partisan or nonpartisan offices.” [State Bar of Michigan Ethics Opinion, JI-65, February 25, 1993](#).<sup>49</sup> “By serving as a member of a committee which has taken a stance in favor of or in opposition to a particular sector of the community, the judge is stripped of impartiality and would face recusal on each occasion that the policy or law affecting that sector was the subject matter being contested in a legal proceeding or when a member of that sector appeared before the judge in question.” *Id.* “It is clear that promoting the interests of the business sector is distinct and apart from the general ‘improvement of the law, the legal system, or the administration of justice’ as it pertains to the courts.” *Id.*
- *Serving on board of legal aid organization.* “A judge serving on the board of directors of a nonprofit legal aid organization is required to disclose the relationship when one of the parties appearing before the judge is represented by a lawyer from the legal aid organization.” [State Bar of Michigan Ethics Opinion, JI-51, April 3, 1992](#).<sup>50</sup> There is no “ethical requirement to *per se* disqualify the judge when one of the parties in a proceeding before the judge is represented by a lawyer from the legal aid organization” because it is doubtful “that a reasonable person would conclude that a judge could not fairly and impartially adjudicate a matter in which the organization has no personal interest in the outcome other than to ensure that the staff lawyers provide quality representation for its legal aid clients.” *Id.* However, “if the legal aid organization has a personal interest in the proceeding, pecuniary or otherwise because of commitment to the particular causes or the enforcement of its own policies, then the judge must recuse from hearing the case or deciding the issue.” *Id.*
- *Serving on attorney discipline board.* “A judge may serve as a member of an attorney discipline board hearing panel and participate in a

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disciplinary proceeding against a lawyer.” [State Bar of Michigan Ethics Opinion, JI-24, May 17, 1990](#). “MCJC 4 explicitly allows judges to participate in a variety of organizations and activities devoted to the improvement of law, the legal system, and the administration of justice,” and there is “no explicit prohibition or underlying philosophy which would require a lawyer to resign from the disciplinary board hearing panel when the lawyer becomes a judge.” EO JI-24. “It would be hard to imagine an activity which would ‘improve the legal system and the administration of justice,’ MCJC 4, more than participation in the bar’s self-regulatory boards and agencies.” EO JI-24. “Participation in discipline proceedings can increase a judge’s appreciation for the demands of law practice, and focus the judge’s attention on checks and balances that the judge could apply in similar fact situations which come before the judge.” *Id.* Accordingly, there is “nothing *per se* improper with a judge serving on lawyer disciplinary panels.” *Id.*

- *Serving on board of organization with political ties.* “A judge may not serve as a member of the board of directors of a charitable, nonprofit organization which is under the auspices of a political party” because doing so “has the potential of compromising not only the independence but also the integrity and impartiality of the judiciary.” [State Bar of Michigan Ethics Opinion, JI-22, May 16, 1990](#).<sup>51</sup> While MCJC 4(C) “provides wide latitude for public service by judges, it inferentially restricts such discretion by warning against participation in charitable organizations that adversely reflect upon the impartiality or that interfere with the performance of the judge’s judicial duties.” EO JI-22. “Even if it is assumed that the organization is well-distanced from the political party, the mere fact that the foundation bears the name of a deceased leader of the party makes it more probable than not that the judge, as a member of the board, will be perceived by the public to endorse the brand or style of politics engaged in by the deceased political leader.” *Id.*
- *Serving on census count committee and on nonprofit corporation.* “A judge may serve as a member of a census count committee formed to promote census awareness in the judge’s community, if (a) the activities do not detract from the dignity of the judicial office, (b) the activities do not interfere with the performance of judicial duties, (c) the activities do not reflect adversely on the judge’s impartiality, and (d) participation in the activities does not constitute an appearance of impropriety.” [State Bar of Michigan Ethics Opinion, JI-18, March 27, 1990](#).<sup>52</sup> “It is unlikely, if not impossible, for such a ‘blue ribbon committee’ to be involved in proceedings before a state court or

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federal court judge”; accordingly, “[t]o serve on the committee would not be a violation of [MCJC 4].” EO JI-18.

- *Serving as director of nonprofit corporation.* “A judge may serve as director of a nonprofit corporation formed by a university to manage various entrepreneurial activities for the university, if (a) the nonprofit corporation is a *bona fide* educational, religious, charitable, fraternal or civic organization, (b) the nonprofit corporation will not be engaged in proceedings that would ordinarily come before the judge, and (c) the nonprofit corporation will not be regularly engaged in adversary proceedings in any court.” [State Bar of Michigan Ethics Opinion, JI-18, March 27, 1990](#). “Although it would appear unlikely that the nonprofit corporation formed by the state university would become engaged in legal proceedings that would ordinarily come before the judge, or that the organization ‘will be regularly engaged in adversary proceedings in any court,’ if such should occur, the judge should resign from the board of the corporation.” *Id.*
- *Serving as director, officer, manager, advisor or employee of any business.* Under [MCJC 4\(E\)\(2\)](#), “full-time and part-time judges are prohibited from serving as director, officer, manager, advisor or employee of any business, with or without compensation.” [State Bar of Michigan Ethics Opinion, J-3, January 26, 1990](#).<sup>53</sup> The prohibition applies “regardless of where the business is located, regardless of whether the judge properly reports compensation from the business to the State Court Administrative Office, and regardless of whether the judge serves on a single-judge or multi-judge court.” *Id.* “A retired judge who serves as visiting judge under special assignment by the State Court Administrative Office may serve as director, officer, manager, advisor or employee of a business, provided that during the period of any judicial assignment, the judge (a) takes a leave of absence as director, officer, manager, advisor or employee of the business, (b) receives no remuneration from the business during the period of judicial service, and (c) is disqualified from hearing any matter related to the interests of the organization on which the judge serves.” *Id.* “A part-time or retired judge may serve as director of a charitable, religious, educational, fraternal or civic organization which is not regularly engaged in adversary proceedings in any court.” *Id.*

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### *Guidance on serving in dual roles.*

- *Serving as part-time magistrate and attorney.* “A part-time magistrate is not *per se* disqualified from representing the funding unit of the magistrate’s court in a civil matter in the circuit court”; “[t]he

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magistrate is required to analyze each situation on a case by case basis to determine whether representation is permitted.” [State Bar of Michigan Ethics Opinion, JI-97, November 21, 1994](#).<sup>54</sup> “Once it is determined that the part-time magistrate may represent a particular client in another court, there are additional ethical principles to consider.” *Id.* “First, [MCJC 4(G)] would preclude a part-time magistrate from serving as ‘an arbitrator or mediator, except in the performance of judicial duties.’” EO JI-97. “Secondly, any information acquired by the lawyer while serving as a part-time magistrate should not be used in financial dealings or for any other purpose not related to the part-time magistrate’s duties as a judicial officer” under [MCJC 4\(E\)](#). EO JI-97. “Thirdly, the part-time magistrate is obligated to ‘screen for conflicts’ before undertaking the private representation of a client, and should not proceed if delivering services regarding that claim will be materially limited by the lawyer’s responsibilities as a part-time magistrate.” *Id.* “If the part-time magistrate is disqualified from handling a private case because of lawyer ethics rules, members of the magistrate’s law firm are also disqualified from handling the matter unless the particular ethics rule disqualifying the part-time magistrate allows other firm members to participate after proper screening, fee apportionment, and notice.” *Id.* “If the part-time magistrate is disqualified from handling a private case because of restrictions applicable only to magistrates and not found in lawyer ethics rules, the disqualification is not imputed to other firm members.” *Id.* “Firm members may handle matters before the part-time magistrate’s court”; however, “[t]he part-time magistrate is disqualified from any matter in which a member of the firm appears.” *Id.*

- *Serving as part-time judge and conservator.* “A part-time judge may serve as the conservator of a protected person but should decline if such service would impose on the performance of judicial duties, detract from the dignity of judicial office, or if it would constitute the use of the prestige of office to advance the personal interests of the judge or others”; however, “[a] part-time judge may not serve as conservator of a business or other enterprise.” [State Bar of Michigan Ethics Opinion, JI-88, March 30, 1994](#).<sup>55</sup> Under [MCJC 4\(F\)](#), it is “not ethical for a full-time judge to serve as conservator except for a member of the judge’s immediate family and under the conditions listed.” EO JI-88. “It is obvious that to the extent [conservator] activity would impose on a part-time judge’s performance of judicial duties or ‘detract from the dignity of the office’ such conduct would violate [MCJC4], and would be prohibited to the same extent as for full-time judges.” EO JI-88. “[It] is clearly foreseeable that litigation could arise from

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conducting the financial affairs of a protected person.” *Id.* “Special care must be exercised to avoid a violation of the judicial Canons, and therefore, although a part-time judge may serve as a conservator for a protected person, a part-time judge may not act as conservator of a business.” *Id.*

- *Serving as assistant prosecutor and part-time magistrate.* “An assistant prosecutor may not serve as a part-time magistrate for a district court” because “[a] magistrate is a ‘judge’ whose conduct is governed by the Michigan Code of Judicial Conduct,” and “judges should refrain from dealings that . . . involve them in frequent transactions with lawyers or persons likely to come before the [c]ourt” in accordance with MCJC 4(E)(1). [State Bar of Michigan Ethics Opinion, JI-56, July 24, 1992.](#)<sup>56</sup>
- *Serving as retired judge and mediator or arbitrator.* “A retired judge may participate as mediator or arbitrator as long as (a) the retired judge does not participate during the period of any judicial assignment” and “(b) the retired judge is disqualified from mediation and arbitration in matters in which the judge served as judge, and is disqualified as judge from matters in which the judge participated as mediator or arbitrator.” [State Bar of Michigan Ethics Opinion, JI-28, July 12, 1990.](#)<sup>57</sup> While “a full-time sitting judge may not serve as arbitrator or mediator in a matter in which the judge is not presiding as a judge” under MCJC 4(G), “this prohibition [is not] strictly applied to retired judges who are subject to call.” *Id.* And while MCJC 4(H) prohibits a full-time sitting judge from engaging in the practice of law, “a retired judge subject to assignment may have formerly engaged in mediation or arbitration activities outside the performance of judicial duties.” *Id.* “Although a retired judge’s participation in mediation and arbitration activities unrelated to the performance of judicial duties will increase the number of cases in which the retired judge will be disqualified from serving as judge . . . this inconvenience is [not] significantly different from the disqualification of a retired judge because of previous participation as a judge in a matter, or previous participation as a lawyer in a matter.” *Id.*

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### *Guidance on lending support.*

- *Supporting charitable organizations on social media.* “Judges may support charitable organizations on social media so long as the organization will not likely be engaged in proceedings that would ordinarily come

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before the judge, the judge does not coerce participation by others, and the judge does not individually solicit funds for the organization” under MCJC 4; however, “[j]udges shall not individually publish their own specific charitable contributions on social media” because “[s]uch a public disclosure is proscribed conduct under [MCJC 4(D)].” [State Bar of Michigan Ethics Opinion, JI-148, November 1, 2019](#). “Although social media and websites can reach a larger audience, any communication permissible via a print document continues to be permissible in a charitable organization’s digital content”; accordingly, “[j]udges may allow their names and photographs to be shown on the website or in the social media of a charitable organization if the use does not: (1) appear to be the judge’s personal solicitation for funds; (2) coerce participation from others; or (3) compromise the integrity of the court.” EO JI-148.

- *Donating to a nonjudicial candidate's campaign.* “A sitting judge may make a private monetary donation to a nonjudicial candidate’s campaign”; “[e]ven though the candidate must publish a financial report of donations, the contribution would not amount to a ‘public endorsement’ of the candidate.” [State Bar of Michigan Ethics Opinion, JI-145, June 15, 2015](#). “Given the [2013] amendments of [MCJC 4] allowing judges to be more involved in fundraising activities” and “relax[ing] some of the previous restrictions on a judge’s extrajudicial activities,” “a campaign contribution to a nonjudicial candidate, without more, is not ethically prohibited.” EO JI-145.
- *Contributing to a bond issue.* “A judge may make a financial contribution to a group supporting a bond issue to build a new school in the school district in which the judge resides” and “may also allow a yard sign to be placed in the judge’s yard, indicating support for the bond issue” because “[t]he two activities . . . appear to fall within the allowable range of activities” of MCJC 4(C). [State Bar of Michigan Ethics Opinion, JI-116, November 7, 1997](#).<sup>58</sup>
- *Sponsoring a youth sports team with campaign funds.* “A judicial candidate may spend campaign funds on sponsorship of a youth sports team so long as the information displayed on the schedule and uniforms of the team do not misrepresent the candidate’s identity, qualifications, or present position and includes the necessary identifying information.” [State Bar of Michigan Ethics Opinion, JI-58, October 15, 1992](#).<sup>59</sup> Under MCJC 4(B), a judge “may engage in the arts, sports and other social and recreational activities so long as the activities do not detract from the dignity of the office or interfere with the performance of the judge’s judicial duties,” and there is no “reason why a judge’s participation in the sponsorship of youth soccer would

<sup>58</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

<sup>59</sup>Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.

detract from the dignity of the office or interfere with judicial duties.” EO JI-58.

- *Signing resolution endorsing petition.* “A judge may not sign a resolution which requests specific action be taken by the mayor and county board of commissioners regarding business closings of a local employer and the union workers it employs.” [State Bar of Michigan Ethics Opinion, JI-52, April 27, 1992.](#)<sup>60</sup> “The subject matter of the Resolution is not ‘the law, the legal system or the administration of justice’ [as set out in [MCJC 4\(I\)](#)]; the Resolution addresses the private and civic interests of the community, not judicial matters.” EO JI-52. “That the Resolution requests action from the mayor and county board of commissioners would appear to contravene [[MCJC 4\(A\)\(2\)](#)], which allows a judge to appear at public hearings or consult with executive bodies on matters concerning the law, the legal system and the administration of justice.” EO JI-52. And although [MCJC 4\(C\)](#) “allows a judge to participate in civic and charitable activities ‘that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties,’” “[w]ording in the Resolution which emphasizes the ‘community’ does not in and of itself make signing the Resolution a ‘civic’ activity; intervention in the management decisions of a local business and support of union interests regarding a particular employer are not ‘civic’ activities within the scope of the Canon.” EO JI-52. “Even if signing the Resolution could somehow be construed as a ‘civic activity,’ participation is prohibited since the Resolution does reflect adversely on impartiality and does interfere with the performance of judicial duties.” *Id.* “Therefore, it is not ethical for a judge to sign the Resolution.” *Id.*

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#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)

National Center for State Courts - [Center for Judicial Ethics](#)

State of Michigan - [Judicial Tenure Commission](#)

State Bar of Michigan - [Ethics](#)

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<sup>60</sup> Amendments to the MCJC have resulted in relettering and renumbering of various provisions of the Code.





## Canon 5: Applicability of the Code of Judicial Conduct to Judicial Candidates

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“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.” [Michigan Code of Judicial Conduct, Canon 5](#).

**Disclaimer:** The opinions in this chapter may involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 5 is featured in this chapter.



## Michigan Supreme Court Cases

### *Engaging in misconduct involving alcohol/drugs.*

- *Driving while intoxicated.* A judicial candidate “[f]ail[ed] to establish, maintain, enforce and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved” contrary to MCJC 1; engaged in “[i]rresponsible or improper conduct which erodes public confidence in the judiciary” in violation of [MCJC 2\(A\)](#); engaged in “[c]onduct involving impropriety and the appearance of impropriety” in violation of [MCJC 2\(A\)](#); and “[f]ail[ed] to respect and observe the law and to conduct herself at all times in a manner which would enhance the public’s confidence in the integrity of the judiciary” contrary to [MCJC 2\(B\)](#). This conduct was made applicable to respondent, as a judicial candidate, by MCJC 5 when, while running for office, she was arrested on suspicion of driving while intoxicated and littering. *In re McDonald*, 503 Mich 1013, 1016 (2019). Following her election to the bench, she pled guilty to disorderly conduct - littering, with a plea agreement for a delayed sentence and dismissal upon successful completion of probation, and admitted to careless driving. *Id* (judge suspended for 45 days without pay).

### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)

National Center for State Courts - [Center for Judicial Ethics](#)

State of Michigan - [Judicial Tenure Commission](#)

State Bar of Michigan - [Ethics](#)

# Canon 6: A Judge Should Regularly File Reports of Compensation Received for Quasi-Judicial and Extra-Judicial Activities and of Monetary Contributions

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“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.” [Michigan Code of Judicial Conduct, Canon 6.](#)<sup>1</sup>

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 6 is featured in this chapter.

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<sup>1</sup>See [SCAO Form 17, Financial Report](#), for more information.



## Michigan Supreme Court Cases

*Misappropriating public funds.* “Respondent was found . . . to have violated . . . [MCJC 6(B)]” by “misappropriating public funds” and “inappropriately spent much of this money on . . . travel expenses for herself[.]” *In re James*, 492 Mich 553, 555, 558, 559 (2012) (additional violations and misconduct occurred in this case; the cumulative effect of the judge’s conduct “coupled with its duration, nature, and pervasiveness, convince[d the] Court that she [was] unfit for judicial office,” and she was removed from office for the remainder of her term). Specifically, “using court funds, respondent purchased a \$350 airline ticket for herself to attend a judicial conference in California,” but “did not attend the conference and exchanged the unused ticket for another that she used for a non-court-related trip.” *Id.* at 567. “Respondent testified . . . that the airline ticket was ‘worthless.’ However, the record established that after the airline assessed a penalty of \$150, respondent used the remaining \$200 toward a \$249 plane ticket for personal travel after being suspended from office.” *Id.* at 567-568. “Another incident involved a plane ticket for a conference in Massachusetts” where “[r]espondent issued a check from the [court’s alternative sentencing Community Service Program (CSP)] account to herself for \$349.40, which she estimated to be the round-trip cost for the trip,” but “[s]he actually paid \$7.50 for the ticket she purchased using frequent-flier miles.” *Id.* at 568. “It is undisputed that respondent did not reimburse the CSP account for the difference,” and “[s]he testified that she was not overcompensated for her ticket because it would have cost \$1,137.50 if she had paid the 32,500 frequent-flier miles she used to purchase the ticket.” *Id.* “However, testimony . . . established that frequent-flier miles have no actual cash value because they cannot be sold or converted for cash” and “are more akin to coupons.” *Id.* “It was also shown that respondent could have purchased a ticket for much less than \$1,137.50,” and “[i]t is apparent that respondent knew this because she wrote herself a check for \$349.40, not \$1,137.50.” *Id.* Respondent also “denied failing to take appropriate action to recover refunds owing from overpayments for court-related travel.” *Id.* at 569. This inappropriate use of the CSP account as well as failing to track or document the spending from this account violated MCJC 6(B). *Id.* at 563 n 16.



## State Bar of Michigan Ethics Opinions

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### *Guidance on engaging in various matters outside of court.*

- *Selling product and retaining royalties.* “A judge who has developed a computer program which will produce forms for use by lawyers may sell the program to a lawyer or other person as a distributor. The judge may retain a royalty for the units sold, but may not take part in the marketing of the product or be retained in any advisory capacity as to technical questions concerning the product. The judge should have no ownership in the purchaser entity, nor have any rights in the operation by which the product is distributed.” [State Bar of Michigan Ethics Opinion, JI-21, May 11, 1990.](#)
- *Compensation for writing.* “A judge may write an article containing general legal information, provide work product for inclusion in an educational pamphlet or cassette tape sold for profit, and receive compensation therefor, provided that the promotion and sale of the material is not an exploitation of the author’s judicial position and the activity does not interfere with the proper performance of judicial duties.” [State Bar of Michigan Ethics Opinion, JI-76, December 9, 1993.](#) That is, “the judge may receive reasonable compensation in accordance with [MCJC 6(C)] for the judge’s time and effort in writing the article[.]” EO JI-76.
- *Accepting scholarship/fellowship for professional development seminar.* “A judge may accept scholarships or fellowships in order to attend professional development seminars provided they are awarded on the same terms as applied to nonjudicial applicants and do not adversely reflect upon the judge’s impartiality toward persons whose interests come before the judge.” [State Bar of Michigan Ethics Opinion, JI-75, November 16, 1993.](#) “If scholarship funds are received, a financial report should be filed with the State Court Administrator’s Office as required by [MCJC 6(C).] EO JI-75. Note that while accepting a scholarship or fellowship may not violate MCJC 6, it may implicate other canons if it could constitute a gift or, as mentioned, affect the judge’s impartiality should the parties appear before the judge in court.
- *Receiving and reporting compensation for speaking engagement or event.* Under [MCJC 6\(C\)](#), “[a] judge may accept an honorarium for speaking [on nonlegal subjects at a private conference sponsored by a company] if other participants would receive a comparable



honorarium, and if the value exceeds \$100, the judge reports it to the State Court Administrator.” [State Bar of Michigan Ethics Opinion, JI-80, February 16, 1994](#). See also [State Bar of Michigan Ethics Opinion, JI-110, November 15, 1996](#) (any compensation received from serving as a track steward at an auto racing event must be reported pursuant to MCJC 6).

- *Reporting non-fundraising event or fundraising event handled by nonjudge.* If “the nature of [an] event is not fund-raising, there are no ‘proceeds’ or outside income to report under MCJC 6.” [State Bar of Michigan Ethics Opinion, JI-49, March 20, 1992](#). Even if the purpose of the event is fundraising, only a nonjudge would be able to handle the collection, deposit, and allocation of the funds received,” and accordingly, there would be no reporting required under MCJC 6.” EO JI-49.
- *Reporting delayed compensation for services rendered before taking judicial office.* “A judge need not report to the State Court Administrator a bonus from the judge’s former law firm received one month after the judge’s appointment to the bench.” [State Bar of Michigan Ethics Opinion, JI-37, May 22, 1991](#). In this situation, “the bonus the judge received was for services rendered *before* the judge took office” and did not constitute “compensation” under MCJC 6. EO JI-37. “Delayed compensation for services rendered prior to taking judicial office are not subject to financial disclosure.” *Id.*
- *Reporting receipt of refund from overcharge on campaign services.* Receiving a refund due to an overcharge for campaign services after the accounts for the judicial campaign have been closed does not constitute “‘compensation’ or ‘reimbursement of expenses’ required to be reported under MCJC 6.” [State Bar of Michigan Ethics Opinion, JI-63, December 18, 1992](#).

#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)

National Center for State Courts - [Center for Judicial Ethics](#)

State of Michigan - [Judicial Tenure Commission](#)

State Bar of Michigan - [Ethics](#)

# Canon 7: A Judge or a Candidate for Judicial Office Should Refrain From Political Activity Inappropriate to Judicial Office<sup>1</sup>

## **“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

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<sup>1</sup>“All judicial candidates are subject to . . . 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.” MCJC 5.

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." [Michigan Code of Judicial Conduct, Canon 7.](#)

**Disclaimer:** Many of the opinions in this chapter involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 7 is featured in this chapter.



## Michigan Supreme Court Cases

### *Engaging in misconduct resulting in removal from office.*

- *Engaging in improper campaign activities.* A judge “committed misconduct by allowing her staff to perform campaign tasks during work hours” in violation of [MCJC 7\(B\)\(1\)\(b\)](#). *In re Brennan*, 504 Mich 80, 84, 106 (2019). Both the judge’s judicial secretary/court recorder and law clerk/magistrate testified that, “on one occasion, they assisted [the judge] with her campaign by responding to questionnaires from news outlets during work hours”; “[staff] testimony that [the judge] was in the room performing the campaign work along with them, showed that [the judge] was aware that her staff members were performing the campaign task during work hours.” *Id.* at 104-105. “On another occasion, [the staff], along with [the judge], conducted online research in the courtroom regarding ‘what kind of swag’ would be used at a campaign party.” *Id.* at 86, 105 (judge removed from office and conditionally suspending her without pay for six years, “with the suspension becoming effective only if [she] regains judicial office during that period”; penalty included other misconduct).

### *Misusing position.*

- *Engaging in improper campaign activities.* A judge engaged in inappropriate political activity while a judge or judicial candidate when she simultaneously ran for judge and mayor, but failed to discontinue mayoral campaign activities after she was elected to the position of judge and signed the oath of office for an upcoming six-year term; the judge “knew, or should have known, that as a judicial candidate and as a judge, she was and is subject to the rules governing political and campaign conduct as provided in [[MCJC 7](#)] and [Const 1963, art 6].” *In re Sanders*, 485 Mich 1045, 1047 (2010). The judge also engaged in inappropriate campaign conduct/soliciting contribution when she identified herself as treasurer of her campaign committee and solicited donations to her campaign on her website; “[a]s a judicial candidate, [the judge] knew or should have known that [[MCJC 7\(B\)\(2\)](#)] prohibits a candidate for judicial office from acting as treasurer or personally soliciting or accepting campaign funds.” *Sanders*, 485 Mich at 1048. Further, the judge “fail[ed] to resign judicial office before becoming a candidate either in a party primary or in a



general election for non-judicial office, in violation of [MCJC 7(A)(3)]"; "ma[de] speeches on behalf of a non-judicial candidate (herself) or publicly endors[ed] a candidate for non-judicial office, in violation of [MCJC 7(A)(1)(b)]"; and personally solicited campaign funds, in violation of MCJC 7(B)(2)(a). *Sanders*, 485 Mich at 1048-1049 (judge publicly censured and suspended for 21 days without pay).

***Balance between permissible speech and improper communication.***

- No violation for communication that was substantially true despite inaccuracies, or mere rhetorical hyperbole. MCJC 7(B)(1)(d) "states that a judicial candidate 'should not knowingly, or with reckless disregard, use or participate in the use of any form of public communication that is false.'" *In re Chmura (After Remand)*, 464 Mich 58, 92-93 (2001). "When analyzing whether a judicial candidate has violated the canon, . . . the communication at issue must have conveyed an objectively factual matter." *Id.* at 93. "Thus, speech that can be reasonably interpreted as communicating hyperbole, epithet, or parody is protected, at least under [MCJC 7(B)(1)(d)]." *Chmura*, 464 Mich at 93. "Similarly, an expression of opinion is protected under the canon as long as it does not contain provably false factual connotations." *Id.* "If the communication at issue sets forth objectively factual matters, the communication must then be analyzed to determine whether the statements communicated are literally true." *Id.* "If they are, the judicial candidate will not be in violation of [MCJC 7(B)(1)(d)]"; "[h]owever, if the public communication conveys an inaccurate statement, the communication, as a whole, must be analyzed to determine whether 'the substance, the gist, the sting' of the communication is true despite such inaccuracy." *Chmura*, 464 Mich at 93. "Once it has been determined that a judicial candidate has, in fact, made a false public communication, the inquiry then focuses on whether such communication was made knowingly or with reckless disregard." *Id.* Accordingly, the "respondent did not violate [MCJC 7(B)(1)(d)]" where "[a] review of the [campaign communications at issue] reveal[ed] that the communications were either literally true, substantially true despite their inaccuracies, or communicated mere rhetorical hyperbole." *Chmura*, 464 Mich at 93.
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## Judicial Tenure Commission Summaries of Non-Public Resolutions

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### *Grievance investigations concerning various matters outside of court.*

- *Remedying improper charitable donation made with campaign funds.* A judge who donated leftover money in their campaign bank account to a charity at the conclusion of their campaign technically violated [MCJC 7\(B\)\(2\)\(f\)](#), but once made aware of the violation, sent the same amount of money to the State Bar Client Security Fund to remedy the violation. [JTC Case Summary, 21-3](#) (dismissed with an explanation).
- *Analysis of improper wind up activity.* A judge who self-reported that they kept a private IOLTA account open after taking the bench to cover checks that had not yet cleared did not violate [MCJC 7\(C\)\(1\)](#) because the violation was in good faith, no one suffered any harm, the judge gained no profit, and no client funds were ever at risk. [JTC Case Summary, 21-5](#) (dismissed with an explanation).
- *Listing judiciary names as members of campaign fundraising committee.* A judge listed the names of other judges and judicial officers as members of their campaign fundraising committee, in violation of [MCJC 7\(B\)\(2\)\(a\)](#) and [MCJC 7\(B\)\(3\)](#). [JTC Case Summary, 14-7](#) (dismissed with an admonition).
- *Publicly endorsing candidate.* A judge gave permission for a sign supporting a candidate for nonjudicial office to be placed on their property which amounted to a highly visible public endorsement, in violation of [MCJC 7\(A\)\(1\)\(b\)](#). [JTC Case Summary, 14-9](#) (dismissed with an admonition).
- *Publicly endorsing candidate.* A judge's photograph was used without authorization in an acquaintance's campaign for state representative which would reasonably cause any member of the public to conclude that the judge was supporting the candidate, in violation of [MCJC 7](#). [JTC Case Summary, 14-5](#) (dismissed with a caution).
- *Serving in dual roles.* A referee held elective and judicial office at the same time by simultaneously serving as a city commissioner and a referee, in violation of [MCJC 7\(A\)\(3\)](#). [JTC Case Summary, 19-4](#) (dismissed with a caution).



## State Bar of Michigan Ethics Opinions

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### *Guidance on engaging in various matters outside of court.*

- *Conducting campaign activity on social media.* “Judicial officers and judicial candidates are not limited to conducting campaign activity on only a judicial campaign social media account”; “[s]ince all social media platforms require a mutual consent or acknowledgment to follow on personal or professional social media accounts, there is a general understanding that those who do not want to see such material are able to easily block, hide, or ignore the postings by judicial officers and judicial candidates on those personal and professional accounts.” [State Bar of Michigan Ethics Opinion, JI-147, November 1, 2019](#). “For that reason, judicial officers and judicial candidates are expected to follow the rules for advertising and solicitation that would apply to in-person interactions, simply transferring these guidelines to social media outlets. Mirroring in-person campaign rules, judicial officers and judicial candidates may use social media to notify and advertise their own campaigns on personal and professional accounts, but solicitation and acceptance of campaign contributions are reserved only for judicial candidates’ campaign committees.” *Id.* [MCJC 7\(B\)](#) “already addresses the issues of judicial officers’ interactions with individuals regarding judicial campaigns and solicitation of campaign contributions” and “[i]n the current iteration, the MCJC is silent as to its interpretation and instruction for social media use by judicial officers”; accordingly, it appears that “social media accounts are permissible for judicial officers in Michigan, so long as the online activity does not violate any of the already established Canons.” EO JI-147. “This is not to be confused with political campaign solicitations, which is prohibited by [\[MCJC 7\(A\)\]](#)”; “just as one is limited during in-person interactions for campaign contributions, so is the judicial officer and the judicial candidate limited online” and “[j]udicial officers and judicial campaigns must not use their personal or professional social media platforms to solicit or accept campaign contributions, just as they would not be allowed to during in-person communications either.” EO JI-147.
- *Moderating a forum conducted by a political party.* Under [MCJC 7\(A\)\(1\)](#), “[w]ith regard to political conduct, judges cannot make speeches on behalf of a political party or publicly endorse a candidate for non-judicial office, but may attend political gatherings and speak at such gatherings on the judge’s own behalf or for other judicial candidates”;

accordingly, “a judicial officer may serve as moderator at a forum on criminal justice initiatives conducted by a political party provided the judge does not comment on pending or impending cases in any court; the judge does not take a position on a legislative initiative that would preclude the judge from later presiding over a case or controversy involving the matter; and, the judge’s participation does not interfere with the performance of the judge’s judicial duties.” [State Bar of Michigan Ethics Opinion, JI-121, April 23, 1999](#).

- *Attending a dinner sponsored by a political party.* “A judge may not attend a testimonial dinner sponsored by a political party where the price of admission exceeds the reasonable cost of attendance,” because “[i]t is unethical for a judge to use or permit the use of the prestige of judicial office to raise money for a political party.” [State Bar of Michigan Ethics Opinion, JI-115, August 15, 1997](#).<sup>2</sup> “While it is clear that judges may attend political gatherings and make individual contributions to political parties, the Michigan Code of Judicial Conduct does not permit judges to personally solicit money for any purpose—not even for the judge’s own election campaign.” *Id.*
- *Advertising for judicial office.* “All advertising generated by a candidate seeking judicial office must avoid misrepresenting the candidate’s own qualifications and the qualifications of the candidate’s opponent”; “[i]t is misleading and unethical for a candidate for judicial office to refer to an opponent’s rating by a local bar association as ‘not recommended’ in the candidate’s campaign literature when, in fact, the bar association’s actual rating of the opponent’s [is] ‘qualified, but not recommended.’” [State Bar of Michigan Ethics Opinion, JI-120, March 22, 1990](#). Under [MCJC 7\(B\)\(1\)\(d\)](#), “[a]ny advertising generated by a candidate seeking judicial office must avoid misrepresenting the candidate’s own qualifications as well as those qualifications of the candidate’s opponent,” such as “where a candidate ‘embellishes’ the candidate’s own qualifications in campaign literature or speeches, making the statements misleading to the public.” EO JI-120. “However, the prohibitions found in [[MCJC 7\(B\)\(1\)\(d\)](#)] . . . are no less applicable to a candidate whose campaign literature omits a fact concerning an opponent’s qualification,” and “[w]hen a fact is necessary to make the candidates campaign statement considered as a whole not materially misleading it must be included in all announcements.” EO JI-120. “Therefore, great care and precautions should be taken by a judicial candidate to ensure the content of the candidate’s campaign literature or speeches is truthful, accurate, and non-misleading.” *Id.*

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<sup>2</sup>The 2013 amendments to the MCJC deleted [MCJC 7\(C\)\(1\)](#), which is referenced in JI-115; however, the syllabus analysis remains valid.

- *Soliciting support from jurors.* “A judge may not personally solicit public statements of support from persons who have served as jurors in the judge’s court” in contravention of [MCJC 7\(B\)\(2\)\(a\)](#). [State Bar of Michigan Ethics Opinion, JI-104, October 5, 1995](#).
- *Attending political gathering and distributing campaign materials.* “A judicial candidate may attend and distribute personal campaign literature at an event held for a nonjudicial candidate”; however, “[a] judicial candidate may not afford a particular opportunity for the distribution of a nonjudicial candidate’s campaign materials at an event given for the judicial candidate.” [State Bar of Michigan Ethics Opinion, JI-93, June 28, 1994](#). “It is safe to conclude that attendance and speech at political gatherings would not prohibit the promulgation and distribution of a judicial candidate’s campaign material with or without the judicial candidate’s immediate presence,” but “[p]roviding special facilities such as a card table for a nonjudicial candidate’s campaign materials might easily be interpreted as a promotion or endorsement of the candidate’s election,” and “[s]uch conduct is impermissible by a judge or judicial candidate.” *Id.*
- *Appointing family member as campaign treasurer.* “A judicial candidate may not appoint the candidate’s father-in-law to serve as the candidate’s campaign treasurer” because it “would not be in accord with the [\[MCJC 7\]](#) policies underlying the separation of a judicial candidate from solicitation and acceptance of campaign funds.” [State Bar of Michigan Ethics Opinion, JI-90, April 15, 1994](#).
- *Fundraising.* “A judicial candidate’s campaign committee may not send invitations to a fund raiser prior to the [fundraising period starting on February 15 of the year of the election<sup>3</sup>];” however, “[a] judicial candidate’s campaign committee may use funds voluntarily contributed by the candidate and others prior to the [fundraising period starting on February 15 of the year of the election] to reserve a hall or order catering for a fund raising event to be held within the [fundraising period starting on February 15 of the year of the election].” [State Bar of Michigan Ethics Opinion, JI-78, February 4, 1994](#). “Although fund raising cannot begin until the time period set forth in [\[MCJC 7\(B\)\(2\)\(d\)\]](#), the work of a planning committee or campaign committee may begin prior to that time period”; “[t]his is not prohibited since [\[MCJC 7\(B\)\(2\)\(d\)\]](#) addresses the solicitation rather than the acts in preparation for fund raising,” and “[t]o hold otherwise, would effectively eliminate the activities which a planning committee is allowed to do as part of its function.” EO JI-78.

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<sup>3</sup> Effective January 1, 2000, the “180-day fundraising period” discussed in JI-78, was replaced by a fund-raising period starting on February 15 of the year of the election. See ADM File No. 1999-32, 461 Mich ccxvii (1999).

- *Forming a campaign committee.* “A judicial candidate may form and register a campaign committee prior to the [fundraising period starting on February 15 of the year of the election<sup>4</sup>],” and “may make personal contributions to the registered campaign committee, and the campaign committee may make expenditures, prior to the [fundraising period starting on February 15 of the year of the election].” [State Bar of Michigan Ethics Opinion, JI-74, October 18, 1993](#). “Unsolicited campaign contributions may be accepted by the registered campaign committee prior to the [fundraising period starting on February 15 of the year of the election], but may be expended only within the fund raising period.” *Id.* “A judicial candidate should campaign under the candidate’s full name so as to avoid any mistaken identity”; accordingly, “[i]n order to avoid ethical challenge,” an individual who “plans to be a candidate for a judicial seat [currently] held by a spouse who will not seek re-election . . . *must exercise special care* respecting name, identity, qualification, background and incumbency.” *Id.*
- *Participating in fundraising for a political party.* “A judge may not participate in fund raising for a political party and its candidates by calling bingo numbers, selling bingo cards, and handling money at the event.” [State Bar of Michigan Ethics Opinion, JI-73, October 6, 1993](#). “MCJC 7 directly addresses a judge’s political activities”: “A judge may attend political gatherings, speak to such gatherings on the judge’s own behalf or on behalf of other judicial candidates, and may personally contribute to the political party,” but “[a] judge may not make speeches on behalf of a political party or nonjudicial candidate, and may not publicly endorse a candidate for nonjudicial office.” EO JI-73.
- *Reporting receipt of refund from overcharge on campaign services.* “A judicial candidate who receives a refund due to an overcharge for campaign services, which refund arrives after accounts for the judicial campaign have been closed, may apply the late-arriving refund to any unsatisfied campaign debts.” [State Bar of Michigan Ethics Opinion, JI-63, December 18, 1992](#). MCJC 7(B)(2)(d) “must be read to prohibit acceptance of *campaign funds* after the date of the election; a refund on a paid expense is not a ‘campaign fund.’” EO JI-63. [MCJC 7\(B\)\(2\)\(f\)](#) “stipulates disposition of *excess* campaign funds *after payment of all campaign expenses*; [where] all campaign expenses were not covered by available campaign funds, . . . there was no excess.” EO JI-63. Moreover, if “[t]he refund is legally due the candidate under the contract for the [campaign] services[,] nothing in the ethics rules prohibits a judge or a candidate from receiving benefits derived from a contract.” *Id.*

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<sup>4</sup> Effective January 1, 2000, the “180-day fundraising period” discussed in JI-78, was replaced by a fund-raising period starting on February 15 of the year of the election. See ADM File No. 1999-32, 461 Mich ccxvii (1999).



- *Using excess campaign funds.* “Excess funds from a judicial election campaign may not be used to finance a postelection investiture celebration” [State Bar of Michigan Ethics Opinion, JI-60, December 1, 1992](#). [MCJC 7\(B\)\(2\)\(f\)](#) provides that “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.” “Since by definition a victory party has no influence on the nomination or election of a candidate, arguably a victory party is not a campaign expense”; “[t]herefore, excess funds from a judicial campaign may not be used for an investiture celebration.” EO JI-60. Further, “[n]either a judge nor the judge’s campaign committee may accept donations of money or anything of value toward the costs of a postelection investiture celebration.” *Id.* However, “[t]he ethics rules do not prevent a successful judicial candidate from hosting a postelection victory party for family, friends and volunteers when paid for out of the successful candidate’s own resources.” *Id.*
- *Sitting with spouse at political event.* “A judge’s spouse may serve on the campaign committee of a nonjudicial candidate and appear as a committee member on campaign letterhead.” [State Bar of Michigan Ethics Opinion, JI-47, March 6, 1992](#). “It is clear under [[MCJC 7\(A\)\(1\)\(b\)](#)] that a judge may not personally serve on the campaign committee for a political candidate”; however, “it is not simply the judge’s conduct which must be restricted,” and “[o]ccasionally, conduct of members of the judge’s family may be restricted in order to preserve the independence of the judiciary and confidence in the legal system[.]” EO JI-47. [MCJC 7\(A\)\(1\)\(b\)](#) “prohibits a judge from endorsing a candidate for non-judicial office”; “[w]hile a sheriff’s election is a nonjudicial office, a spouse serving as a campaign committee member and appearing on campaign letterhead does not constitute the judge’s public endorsement of that candidate.” EO JI-47. “A judge may sit on the dais with the judge’s spouse who is serving as co-chairperson of a political party social event.” EO JI-47. [MCJC 7\(A\)\(2\)\(a\)](#) “specifically allows a judge to attend a political gathering, so long as the judge does not ‘publicly endorse’ the nonjudicial candidate, nor hold a political office.” EO JI-47. “When considering the possibility of any benefit to the sponsoring political organization from the judge’s attendance at a dinner as spouse of an organizer, it seems that the benefit is minimal”; “[t]he judge is a guest like anyone else” where the judge “is not giving any speeches, nor is the judge responsible for organizing the dinner.” *Id.* Accordingly, “[t]he judge is not overstepping boundaries by sitting on the dais with the judge’s spouse at a political gathering.” *Id.*
- *Placing an advertisement in a political party’s ad book.* “A judge or candidate may place an advertisement in a political party’s ad book so long as the content of the advertisement does not constitute a speech

on behalf of a political party or nonjudicial candidate or an endorsement of a candidate for nonjudicial office.” [State Bar of Michigan Ethics Opinion, JI-36, April 15, 1991](#). “If the advertisement is merely a ‘tombstone’ ad, and does not constitute a speech on behalf of a political party or nonjudicial candidate or an endorsement of a nonjudicial candidate, it would be permissible under [MCJC 7(A)(2)].” EO JI-36. An acceptable example would be:

paid for by

JUDGE XXXX XXXXXX

CIRCUIT JUDGE

“Placing such a ‘tombstone’ advertisement in a political party’s ad book is . . . even less suspect than attending a political gathering [permissible under [MCJC 7(A)(2)(a)]] or contributing to a political party [permissible under [MCJC 7(A)(2)(c)]]” because “[i]t is a contribution and an appearance, and nothing more.” EO JI-36.

- *Giving away fundraiser tickets.* “A judge may attend a fundraiser held for a nonjudicial candidate, and may participate in campaign activities which do not constitute a public endorsement of the nonjudicial candidate”; “[t]he same rules apply to a judge’s participation in a campaign for a nonjudicial candidate who is a relative of the judge or a member of the judge’s household.” [State Bar of Michigan Ethics Opinion, JI-30, November 15, 1990](#). While “[t]he Canon does not directly address the question of proper ‘campaigning’ for a nonjudicial or political candidate,” MCJC 7(A) “does specifically allow a judge to attend a political gathering and to contribute to a political party, as long as the judge does not hold a party office of publicly endorse a nonjudicial candidate.” EO JI-30. “If a judge can buy a fundraising ticket, the judge surely cannot be prohibited from attending the event.” *Id.* “Since [MCJC 7(A)(2)(a)] specifically allows attendance at ‘political gatherings’ and a fundraiser for a nonjudicial candidate is clearly a ‘political gathering,’ a judge may attend fundraisers for nonjudicial candidates.” EO JI-30. “The judge’s presence in and of itself does not constitute a ‘public endorsement’ of the type prohibited by [MCJC 7(A)(1)(b)].” EO JI-30. “Similar logic would allow a judge to give away extra fundraising tickets the judge has purchased but cannot use.” *Id.* Regarding “the nature of active campaigning a judge may volunteer for a nonjudicial candidate,” “[m]any campaign activities are performed behind the scenes, e.g., stuffing envelopes, voter registration drives, placing ads, writing speeches,” and “[a] judge is not prohibited from participating from participating in this type of activity for a nonjudicial candidate.” *Id.* “Other types of activity of a ‘public’ nature are prohibited, i.e., giving speeches, handing out campaign literature, displaying bumper stickers, signing letters and soliciting votes.” *Id.* “Building yard signs

for a campaign most properly falls within the category of ‘behind the scenes’ participation and is not prohibited’; however, “[s]oliciting persons for display of signs in the yard or volunteering to set up the signs in the yards of persons who consent is ‘public activity,’ could be construed as a ‘public endorsement’ of the nonjudicial candidate, and should not be performed by judges.” *Id.* “When the nonjudicial candidate is a member of the judge’s household or a relative, there is a strong public perception that the judge supports the relative’s candidacy.” *Id.* “The Code, however, makes no exception for nonjudicial candidates who may be presumed to have a judge’s support.” *Id.* “Campaign events should not be held at the judge’s home or at other property owned by the judge, even when it is also the property of the nonjudicial candidate.” *Id.* “Factual information about the nonjudicial candidate’s background or family should not tie the candidacy to the prestige of the judge’s office.” *Id.*

- *Participating in a public forum during an election campaign.* “A judicial candidate may participate in a public forum in the course of an election campaign, provided the candidate does not create the impression that, if elected or re-elected, the candidate would act with bias or partiality toward a particular class or group”; under [MCJC 7\(B\)\(1\)](#), “[i]t is not unethical, *per se*, for a judicial candidate to make general statements of political philosophy.” [State Bar of Michigan Ethics Opinion, JI-27, August 1, 1990](#).
- *Soliciting campaign contributions.* “A judicial candidate may not solicit or accept campaign contributions at any time”; however, “[a] judicial candidate’s campaign committee may accept unsolicited campaign contributions prior to the [fundraising period starting on February 15 of the year of the election<sup>5</sup>] preceding the primary election or nominating convention, up to and including general election day.” [State Bar of Michigan Ethics Opinion, JI-17, January 30, 1990](#). “Ethics rules do not govern the conduct of persons or committees not directly associated with the judicial candidate or the judicial candidate’s campaign committee” “to the extent their activities are ‘unsolicited’ and unendorsed by the candidate.” *Id.*
- *Soliciting campaign contributions.* “It is improper for a judicial candidate to solicit campaign contributions before the judicial office is lawfully created”; “MCJC 7 is the exclusive authority for the timing of campaign solicitations,” and “[u]ntil the judgeship has been created, there is no way to calculate solicitation [no earlier than February 15 of the year of the election<sup>6</sup>].” [State Bar of Michigan Ethics Opinion, JI-16,](#)

<sup>5</sup> Effective January 1, 2000, the “180-day fundraising period” discussed in JI-78, was replaced by a fund-raising period starting on February 15 of the year of the election. See ADM File No. 1999-32, 461 Mich ccxvii (1999).

<sup>6</sup> Effective January 1, 2000, the “180-day fundraising period” discussed in JI-78, was replaced by a fund-raising period starting on February 15 of the year of the election. See ADM File No. 1999-32, 461 Mich ccxvii (1999).

[January 30, 1990](#). “Accordingly, a lawyer aspiring to become a judge must first await lawful creation of the judgeship prior to the solicitation of campaign funds.” *Id.*

- *Soliciting campaign contributions.* Under [MCJC 7\(B\)\(2\)\(c\)](#), “[a] judicial candidate’s campaign committee may solicit [campaign contributions] from political action committees which are in fact an alter ego of a lawyer or a law firm.” [State Bar of Michigan Ethics Opinion, JI-2, January 28, 1989](#). “No literal prohibition prevents the acceptance of contributions from political action committees”; accordingly, “[a] judicial candidate’s campaign committee may accept unsolicited money or in-kind campaign contributions from political action committees, unless the contribution appears to be motivated by a desire to have influence over the candidate.” *Id.*
- *Including name of judicial candidate with nonjudicial candidates in third party communication.* “The inclusion of the name of a judicial candidate in a third party’s communication with nonjudicial candidates does not constitute a public endorsement of the nonjudicial candidate by the judge and does not in itself constitute improper conduct by the judge.” [State Bar of Michigan Ethics Opinion, JI-11, October 23, 1989](#). MCJC 7 “allows a judge to attend political gatherings and individually participate in partisan political activities; a judge’s participation, although visible, is not considered an impermissible ‘endorsement.’” EO JI-11. Because “the communication involved is done by someone other than the judge and has not been solicited by the judge, . . . a judicial candidate is [not] required to attempt to have it retracted” under MCJC 7. EO JI-11.
- *Repaying campaign loans.* “A judicial candidate’s campaign committee should first repay loans to other creditors before repaying loans made by the candidate to his committee” because “[t]hough it is proper for a candidate to loan the committee monies and be later reimbursed from its funds, . . . establishing first priority to those funds violates the spirit if not the language of [[MCJC 7\(B\)\(1\)\(a\)](#), [MCJC 7\(B\)\(2\)\(e\)](#), and [MCJC 7\(B\)\(2\)\(f\)](#)] where a candidate ‘. . . should maintain the dignity appropriate to judicial office . . . should not use or permit the use of campaign contributions for the private benefit of [the candidate], . . . return to the contributors funds raised in excess of the actual costs incurred[.]’” [State Bar of Michigan Ethics Opinion, JI-7, July 7, 1989](#). “[T]he circumstance of first priority repayment gives the appearance of private benefit to the candidate to the exclusion of other lenders or contributors, particularly where shortfall results.” *Id.* “A judicial candidate may not permit others to voluntarily pay campaign creditors after the election,” and “[a] candidate, successful or not, may not accept contributions after the election from friends or relatives to retire campaign debts.” EO JI-7. “[I]t is clear campaign debts must be retired by funds solicited or accepted within the time frames outlined

in [MCJC 7(B)] and ceasing on election day,” and “[t]o permit anyone to pay the just campaign debts directly to campaign creditors circumvents [MCJC 7(B)] to accomplish indirectly what it cannot do directly, i.e., accept post-election funds, and is thus forbidden.” EO JI-7. “This applies to any candidate, whether successful or not, regardless whether the willing donor is a stranger, friend, or relative.” *Id.*

- *Paying campaign expenses.* “A candidate for judicial office may retain and use a contribution to retire campaign expenses under circumstances where a check was mailed prior to the close of the general election, but received after the date of the general election.” [State Bar of Michigan Ethics Opinion, JI-5, April 11, 1989.](#) MCJC 7(B)(2)(d) states that a candidate “may not accept funds after the date of the general election”; “the mailing of a campaign contribution the day of the election and its receipt the following day satisfies the requirements” of the Canon. EO JI-5. Where “the contribution was made during the general election by delivery to the postal system,” “mailing on the last day is recognized . . . to be timely.” *Id.*
- *Making public statements.* “A candidate for state supreme court justice may criticize the majority portion of a divided opinion of that court, and the legal philosophy that underlies that portion of the opinion.” [State Bar of Michigan Ethics Opinion, C-227, November, 1982.](#) “[T]he underlying purpose of the Michigan Code of Judicial Conduct is to further the effectiveness of the judicial system in a democratic society,” and “[t]o place undue restraints on criticism of Supreme Court opinions by candidates for the Supreme Court has serious constitutional implications, as well as ethical considerations.” *Id.* “[T]he effectiveness of the judicial system will be promoted by a free and open public discussion concerning opinions by and legal philosophies of incumbent justices.” *Id.* However, “criticism or debate must in all instances be fair, reasonable and just, and must not create an impression that the candidate, if elected or re-elected, would act with bias or partiality favorable to a particular class or group. *Id.* “A candidate should never make statements that are false or misleading, or unjustly attack an incumbent judge.” *Id.*

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#### *Guidance on serving on various organizations.*

- *Serving on planning committee for judicial office.* “[A] sitting judge or a judicial candidate may be a member of their own planning committee for judicial office provided it is separate and apart from their campaign committee and that distinction is clearly delineated, and that the sole function of the planning committee is to plan the strategies for the campaign for the judicial office.” [State Bar of Michigan Ethics Opinion, JI-152, August 24, 2022.](#) “Due to the



restrictions of MCJC 7,” “[a] judge may not be a member of their own campaign committee for judicial office.” EO JI-152.

- *Serving on political action committee.* “A judge may not serve on a legislative affairs and political action committee whose mission is to support pro-business oriented candidates to partisan or nonpartisan offices.” [State Bar of Michigan Ethics Opinion, JI-65, February 25, 1993](#). “It is clear that a judge should refrain from participating in a process that publicly endorses a candidate for nonjudicial office, although [MCJC 7(A)(2)] does permit judges to ‘attend political gatherings’ and to ‘contribute to a political party.’” EO JI-65. “A judge’s membership and participation on a committee for the purpose of screening and providing public support of legislative candidates is therefore unethical.” *Id.* “In regard to supporting candidates for judicial office, a judge’s endorsement may be subject to criticism if it is demonstrated that the basis of the endorsement is to support the election of pro-business individuals.” *Id.* “The judge as well as the judicial candidate would incur the appearance of being predisposed in favor of pro-business interests or members of the Chamber of Commerce and would face recusal in legal proceedings involving such interests”; “[t]herefore, a judge should refrain from participating in any function of this subcommittee of the Chamber of Commerce.” *Id.*
- *Serving on board of organization with political ties.* “A judge may not serve as a member of the board of directors of a charitable, nonprofit organization which is under the auspices of a political party.” [State Bar of Michigan Ethics Opinion, JI-22, May 16, 1990](#). “It is not difficult for the public to confuse serving on the board of a democratic party foundation with holding political office.” *Id.* [MCJC 7\(A\)\(1\)\(a\)](#) “prohibits a judge from holding any office in a political party.” EO JI-22. “Though serving on this particular board is not the same as holding political office, any appearance of impropriety or perception of impropriety by the public should be avoided.” *Id.* “In sum, any accomplishments or misfortunes of the proposed charitable foundation accrue to the benefit or disadvantage of the county democratic party, and the national party in general,” and “[a] judge should not be a party to such an endeavor.” *Id.*
- *Serving on campaign committee of other judicial candidate.* “A judge may not be a member of the campaign committee of another judge or candidate for judicial office” and “may not act in the capacity of treasurer, either as a member of the campaign committee or otherwise, for another judge or candidate for judicial office.” [State Bar of Michigan Ethics Opinion, JI-14, October 12, 1989](#). “[B]ecause one of the primary functions of a campaign committee is the solicitation and acceptance of campaign funds, . . . a judge is prohibited from serving as a member of the campaign committee of another person seeking



judicial office” and “is prohibited from acting as treasurer of a campaign committee, when the judge is prohibited from serving on that committee.” *Id.* However, “[a] judge may be a member of a ‘planning committee’ of another judge or candidate for judicial office, provided the ‘planning committee’ is separate and apart from any campaign committee and that distinction is clearly delineated, and that the sole functions of the ‘planning committee’ are to plan the strategies for the campaign for the judicial office.” *Id.*

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*Guidance on serving in dual roles.*

- *Serving as referee and city council member.* “A friend of the court referee is required to resign as referee prior to becoming a candidate for city council.” [State Bar of Michigan Ethics Opinion, JI-59, November 15, 1992](#). [MCJC 7\(A\)\(3\)](#) states that “a judge should resign the judicial office before becoming a candidate either in a party primary or in a general election for nonjudicial office.” “A friend of the court referee is a ‘judge’ for purposes of [the MCJC],” and “[t]he city council position is a ‘non-judicial office’ but there is no ‘party primary’ or ‘general election.’” EO JI-59. However, “the position of city council member is clearly a political position” and “is also a position in the legislative branch of government; holding positions in two branches of government is prohibited.” *Id.*
- *Serving as magistrate and township clerk.* “All court magistrates are subject to the Code of Judicial Conduct and may not simultaneously hold a judicial office and a non-judicial partisan position.” [State Bar of Michigan Ethics Opinion, JI-10, September 14, 1989](#). [MCR 9.201\(B\)\(2\)](#) defines *judge* to include a magistrate; therefore, “appointed lay-magistrates are subject to the provisions of the Code of Judicial Conduct because they exercise judicial powers.” EO JI-10. [MCJC 7\(A\)\(1\)\(a\)](#) “precludes a judge or a candidate for judicial office from holding any office in a political party,” and [MCJC 7\(A\)\(3\)](#) “requires a judge to resign from the bench before becoming a candidate for non-judicial office.” EO JI-10. MCJC 7 “is grounded on the precept that judicial officers should earnestly adhere to impartial judicial considerations uninfluenced by partisan political persuasions.” EO JI-10. Accordingly, “[a] full-time nonlawyer judicial district court administrator-magistrate [who] also is an elected township clerk for the judicial district” “must resign from one of the two positions.” *Id.* “Should the administrator-magistrate elect to resign from the non-judicial office of township clerk, then she/he would be obligated to adhere to all provisions of the Code of Judicial Conduct and continue to be subject to the jurisdiction of the Judicial Tenure Commission.” *Id.*

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*Guidance on lending support.*

- *Donating to a nonjudicial candidate's campaign.* "A sitting judge may make a private monetary donation to a nonjudicial candidate's campaign"; "[e]ven though the candidate must publish a financial report of donations, the contribution would not amount to a 'public endorsement' of the candidate." [State Bar of Michigan Ethics Opinion, JI-145, June 15, 2015](#). "Given the [2013] amendments of [the Code of Judicial Conduct] allowing judges to be more involved in fundraising activities, a campaign contribution to a nonjudicial candidate, without more, is not ethically prohibited." *Id.*
- *Contributing to a bond issue.* "A judge may make a financial contribution to a group supporting a bond issue to build a new school in the school district in which the judge resides" and "may also allow a yard sign to be placed in the judge's yard, indicating support for the bond issue." [State Bar of Michigan Ethics Opinion, JI-116, November 7, 1997](#). "[C]ontribution to the group supporting the bond issue is not improper under [MCJC 7(A)]," and "endorsement of a school bond issue by the putting of a yard sign in the judge's yard, would not be improper political activity prohibited by [MCJC 7(A)]." EO JI-116. While "[d]isplaying yard signs for a nonjudicial candidate would be prohibited by [MCJC 7(A)]," the Canon is silent as to other types of elections, such as school bond elections." EO JI-116.
- *Contributing to a political party.* "A judge or judicial candidate may make a general contribution to a political action committee"; "[n]o ethics provision prohibits a group of judges, or a judges' organization, from making contributions to political action committees under the same conditions permitted to individual judges." [State Bar of Michigan Ethics Opinion, JI-105, August 18, 1997](#). MCJC 7(A)(1)(b) "prohibits a judge from publicly endorsing a candidate for nonjudicial office"; "[s]ince the Code explicitly prohibits endorsement for nonjudicial candidates and is silent on endorsements of judicial candidates, it is well accepted that judges may endorse, and therefore contribute to and participate in the campaigns of, judicial candidates, as long as the judge does not engage in solicitation of funds." EO JI-105. MCJC 7(A)(2)(c) "allows a judge to contribute to a political party," and "[a] contribution to a political party may be used to support party functions, such as general fundraisers, or may be used to support candidates of the party's choice"; "[t]here is nothing in the Michigan Code of Judicial Conduct which suggests that a contributor to the political party must control the spending of the contribution or otherwise earmark the funds for certain purposes," and "[a]ny financial contribution to the party generally, as opposed to a contribution to a particular candidate, is permitted." EO JI-105.

- *Supporting a judicial candidate.* “A judge may allow the judge’s name and judicial title to be used in a campaign brochure and a radio [advertisement] in which the judge is quoted as supporting a judicial candidate judge, as long as the endorsement is not used for fundraising.” [State Bar of Michigan Ethics Opinion, JI-95, August 1, 1994](#). “A judge is not prohibited from endorsing judicial candidates by law or ethics rules,” but “a judge may not solicit funds nor engage in fundraising for a judicial candidate, and the endorsement proposed may not be used for fundraising.” *Id.*
- *Endorsing a potential judicial candidate.* “Ethics rules do not prohibit a judicial candidate from engaging in campaign activities prior to the [fundraising period starting on February 15 of the year of the election<sup>7</sup>],” and “[i]n order to determine whether there is sufficient support to seek judicial office, a prospective candidate may form a planning committee consisting of lawyers and judges, send letters to individuals on letterhead showing the names of the planning committee members, and ask whether the recipients will support the candidate, work on the campaign, or display campaign signs” under [MCJC 7\(B\)\(2\)\(b\)](#). [State Bar of Michigan Ethics Opinion, JI-81, February 25, 1994](#). However, “[a] prospective candidate may not seek a public endorsement prior to announcing candidacy.” *Id.*
- *Sponsoring a youth sports team with campaign funds.* “A judicial candidate may spend campaign funds on sponsorship of a youth sports team so long as the information displayed on the schedule and uniforms of the team do not misrepresent the candidate’s identity, qualifications, or present position and includes the necessary identifying information.” [State Bar of Michigan Ethics Opinion, JI-58, October 15, 1992](#). “Campaign communications must include the name and address of the person or group sponsor paying for the communication,” and “[t]he advertisement (name on uniform) may not be false, fraudulent, deceptive or misleading or create a false impression through emphasis of size, color or style type.” *Id.* “It must also clearly indicate that it is a campaign advertisement and may not misrepresent the identity, background or any other fact including the possible impression of incumbency for a judicial candidate who is not currently a judge.” *Id.* “In the present instance, the uniforms and other promotional items for the team would continue to be used throughout the playing season, and beyond the campaign period.” *Id.* “If the slogans used and promotional items purchased by the judicial campaign are proper when expended, i.e., do not detract from the dignity of the office or performance of judicial duties, and are not misleading or constitute pledges of conduct in office, they may continue to be used by the team after the campaign period is over.” *Id.*

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<sup>7</sup> Effective January 1, 2000, the “180-day fundraising period” discussed in JI-78, was replaced by a fund-raising period starting on February 15 of the year of the election. See ADM File No. 1999-32, 461 Mich ccxvii (1999).

- *Endorsing a candidate to the board of directors of a local bar association.* “A judge may endorse a candidate to the board of directors of a local bar association.” [State Bar of Michigan Ethics Opinion, JI-53, April 27, 1992](#). [MCJC 7\(A\)\(1\)\(b\)](#) “is premised on the requirement that a judge should not involve the prestige of the judicial office in contested political election campaigns and clearly indicates that a judge may not publicly endorse a candidate for non-judicial office”; [MCJC 7\(A\)\(2\)\(b\)](#) “appears to limit a judge’s ability to speak at political gatherings on behalf of the judge and other judicial candidates.” EO JI-53. “The election for the board of directors of a local bar association is . . . a non-judicial office without party primary or general election and the election is not at the same time as political elections and thus . . . not contemplated within the prohibitions of [[MCJC 7\(A\)](#)].” EO JI-53. “‘Non-judicial office’ must be interpreted uniformly with the parameters of the Canons,” and even “judges themselves may run for bar association office without resigning their judicial offices.” *Id.*

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#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)  
National Center for State Courts - [Center for Judicial Ethics](#)  
State of Michigan - [Judicial Tenure Commission](#)  
State Bar of Michigan - [Ethics](#)



## Canon 8: Collective Activity by Judges

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“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.” [Michigan Code of Judicial Conduct, Canon 8](#).

**Disclaimer:** The opinions in this chapter may involve more than one Canon of the Michigan Code of Judicial Conduct; however, only information relevant to MCJC 8 is featured in this chapter.





## State Bar of Michigan Ethics Opinions

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### *Guidance on engaging in various matters outside of court.*

- *Charging a vendor fee at a judicial conference.* “A judicial association may charge a vendor a fee for making space available for the vendor to display services and products at a judicial conference in an amount in excess of \$100<sup>[1]</sup> if the fee charged is either in an amount reasonably calculated to represent the costs incurred by the association in making space available to the vendor or, if there is no additional cost to the association in making space available to vendors, the fee charged the vendor is not used to offset the cost of the conference itself, but rather is meticulously accounted for as a contribution to the association and used for other functions of the association such as ‘. . . the improvement of the law, the legal system, or the administration of justice[.]’” [State Bar of Michigan Ethics Opinion, JI-136, January 14, 2010](#). “Consistent with the prohibition against a judge’s individual solicitation of funds, a judicial association cannot directly solicit a vendor to attend a conference for the purpose of raising funds for the organization” because “MCJC 8 makes it clear that any prohibited conduct for a judge is also prohibited by judicial associations.” EO JI-136.

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#### Additional Resources

American Bar Association - [Judicial Ethics & Regulation](#)  
National Center for State Courts - [Center for Judicial Ethics](#)  
State of Michigan - [Judicial Tenure Commission](#)  
State Bar of Michigan - [Ethics](#)

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<sup>1</sup> Note that the threshold has since been increased to \$375.

# Cases

## I

*In re Adams*, 494 Mich 162 (2013) [1-4](#), [2-5](#)  
*In re Bradfield*, 465 Mich 1309 (2002) [1-8](#), [2-10](#)  
*In re Brennan*, 504 Mich 80 (2019) [1-2](#), [2-3](#), [7-5](#)  
*In re Brown (After Remand)*, 464 Mich 135 (2001) [1-5](#), [2-7](#)  
*In re Brown*, 468 Mich 1228 (2003) [1-11](#), [2-14](#), [3-12](#), [4-6](#)  
*In re Chmura (After Remand)*, 464 Mich 58 (2001) [7-6](#)  
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