

Election Ethics for Employees

June 2, 2010



Presented by:
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State Court Administrative Office, Region I

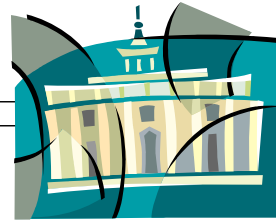
Judge = Judicial System

- Michigan Code of Judicial Conduct, Canon 1:

- 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.



At Court



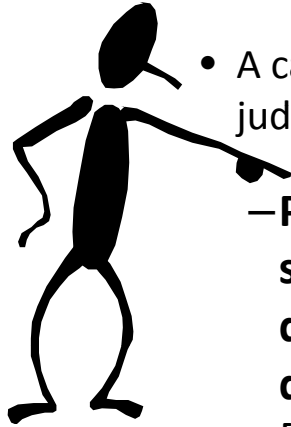
- Staff
 - Can't solicit them or coerce them to assist

- Stuff
 - Can't use court resources for campaign purposes



Court Employees are specifically mentioned in the Code of Judicial Conduct more than once

Canon 7B



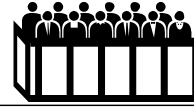
- A candidate, including an incumbent judge, should:
 - **Prohibit public employees subject to the judge’s direction and control from doing what the judge cannot [7B(1)(b)]**

Canon 7B(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.”



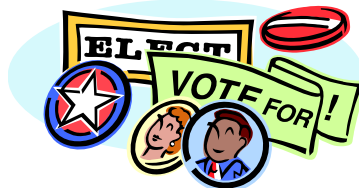
FYI - Campaigns and Jurors



- **Jl 104 – A judge may not use jury records for the judge's personal election mailings.**
- **A judge may not personally solicit public statements of support from persons who have served as jurors in the judge's court.**
- **Additionally, judges may not personally provide food or gifts to jurors.**

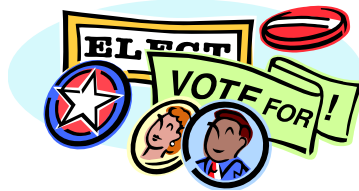
MODEL CODE OF CONDUCT FOR MICHIGAN COURT EMPLOYEES

- **CANON EIGHT:**
 - “I am free to participate in political activities during non-working hours as long as such activity does not use or appear to use my position or court in connection with such activities.”



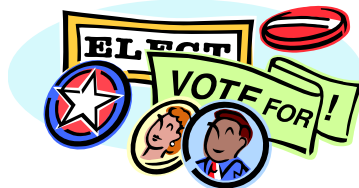
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Guidelines – Canon Eight

- Ability to participate in the democratic process should not be hampered by your employment if done outside of working hours
- Participation includes:
 - Holding party membership
 - Making speeches
 - Making contributions of time or money



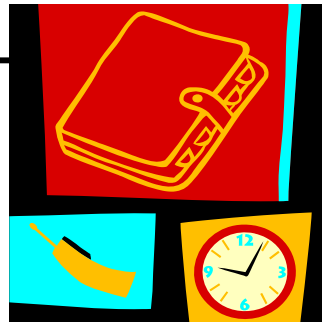
“This participation in political activity should not transcend into the workplace”

- **By the displaying of political materials, soliciting signatures or soliciting or receiving funds for political purposes**



“In addition, no government equipment or resources of any kind are to be used for promoting political activity in the workplace before, during or after work hours.”

- Your time is a resource.
- So is the phone, email, internet access, etc.



Here's Why!

MCL 750.175 Embezzlement by public officer, agent or servant

“Any person holding any public office in this state, or the agent or servant of any such person, who knowingly and unlawfully appropriates to his own use, or to the use of any other person, the money or property received by him in his official capacity or employment, of the value of 50 dollars or upwards, shall be guilty of a felony.”



***When in doubt – pick the high road
and call your Regional Administrator!***

- “The law often permits what honor forbids.”

Spartacus, 1760
Bernard Joseph Saurin

- Questions?

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CANON 7

A Judge or a Candidate for Judicial Office Should Refrain from Political Activity Inappropriate to Judicial Office

A. Political Conduct in General:

1. A judge or a candidate for judicial office should not:
 - a. hold any office in a political party;
 - b. make speeches on behalf of a political party or non-judicial candidate or publicly endorse a candidate for non-judicial 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 non-judicial office.

B. Campaign Conduct:

1. A candidate, including an incumbent judge, for a judicial office:
 - a. should maintain the dignity appropriate to judicial office, and should encourage family members to adhere to the same standards of political conduct that apply to the judge;
 - b. should prohibit public employees subject to the judge's direction or control from doing for the judge what the judge is prohibited from doing under this canon;
 - c. should not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;
 - d. should not use or participate in the use of any form of public communication that the candidate knows or reasonably should know is false, fraudulent, misleading, deceptive, or which contains a material misrepresentation of fact or law or omits a fact necessary to make the

statement considered as a whole not materially misleading, or which is likely to create an unjustified expectation about results the candidate can achieve.

2. These provisions govern a candidate, including an incumbent judge, for a judicial office:
 - a. A judge 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).
 - b. A judge may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy.
 - c. Such committees are prohibited from soliciting campaign contributions from lawyers in excess of \$100 per lawyer, but may solicit public support from lawyers. A candidate's committee may solicit funds for the campaign no earlier than 180 days before a primary election or nominating convention and may not solicit or accept funds after the date of the general election. A candidate should not use or permit the use of campaign contributions for the private benefit of the candidate or the candidate's family.
 - d. 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.
 - e. 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.
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. Fund Raising Other Than for Campaign Purposes Prohibited: Except as provided in 7B(2)(b), (c),

1. No judge shall accept a testimonial occasion on the judge's behalf where the tickets are priced to cover more than the reasonable costs thereof, which may include only a nominal gift,
2. No judge or other person, party, committee, organization, firm, group or entity may accept any contribution of money or of a tangible thing of value, directly or indirectly, to or for a judge's benefit for any purpose whatever, including but not limited to, contribution for a campaign deficit, expenses associated with judicial office, testimonial, honorarium (other than for services, subject to Canon 6) or otherwise.

All funds at any times heretofore collected for campaign or any other purposes and not heretofore expended and not expended for campaign purposes in the year 1974, shall either be returned to the contributors or donated to the client security fund of the State Bar of Michigan no later than January 1, 1975.

D. Applicability

1. 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.
2. 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 Canons 4 or 5.
3. 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 Canons 4 or 5.

October 5, 1995

SYLLABUS

A judge may not use jury records for the judge's personal election mailings.

A judge may not personally solicit public statements of support from persons who have served as jurors in the judge's court.

References: MCJC 2C, 5C(7), 7B(2)(a); MCR 2.510.

A judge inquires whether it is ethical to solicit public statements of support from persons who have previously served as jurors in the judge's court. The judge has obtained juror information from juror questionnaires or from other court records, and has a computer record of those who have, over the years, served as jurors. The judge proposes to send the former jurors a letter seeking permission to use the former juror's name in support of the judge's candidacy.

The judge also asks whether the information compiled is "public information" which must be shared with an election opponent.

MCJC 5C(7) states:

"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." Emphasis added.

The Committee would have reservations about a judge using juror information obtained in an official judicial capacity for the judge's own political advantage. 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 5C(7) and would not be permitted.

Information about jurors is information acquired by the judge in the judge's judicial capacity. The judge is prohibited from using or disclosing that information for "any other purpose not related to judicial duties." The judge's re-election efforts are not part of "judicial duties." MCJC 2C also would prohibit the judge from using judicial office, i.e. access to records because of his judicial position, to enhance personal election chances. Therefore the juror information the judge has acquired is not available for the purposes of soliciting campaign support.

The judge's second inquiry is whether juror information compiled by the judge is "public information" which must be shared with any opponent. This calls for a conclusion of law. The Committee does not render advisory opinions with regard to legal questions, however the Committee notes that MCR 2.510 specifies that only judges, clerks, parties to actions and their lawyers are allowed to examine juror questionnaires, and then only under conditions prescribed by local court rule enacted under the guidance of the State Court Administrator's Office. This reaffirms the Committee's conclusion that juror information should not be disclosed or used by a judge or judicial candidate if it was acquired by a judge in a judicial capacity.

Not only would the information be unavailable to the judge's opponent, but it would also be unavailable to the judge for any purpose not related to the judge's judicial responsibilities.

Since the information cannot be used for the proposed purpose, the inquiry concerning the juror letter is moot.



Model Code of Conduct for Michigan Trial Court Employees

All employees in Michigan's courts hold highly visible positions of public trust. We must conduct our business in an environment and in a manner that favorably reflects the ideals consistent with the fundamental values of the Michigan judicial system, as identified by the Michigan Supreme Court. These values include: fairness, accessibility, accountability, effectiveness, responsiveness, and independence. Our actions at all times should uphold and increase the public trust and confidence in the judicial branch, reflect the highest degree of integrity, and demonstrate commitment to each principle embodied in this model code.

Canon One IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY

I will avoid activities that could cause an adverse reflection on my position or the court. I will maintain dignity in every comment, photograph, or video shared in person or via electronic means including social networking sites.

Canon Two ABUSE OF POSITION

I will not use or attempt to use my position to secure unwarranted privileges for others or myself.

Canon Three IMPARTIALITY

I will provide impartial treatment to all persons interacting with the court. I will not make comments in person or via electronic means including social networking sites regarding pending matters, including comments regarding parties, or attorneys who appear before the court.

Canon Four PROPER USE OF PUBLIC RESOURCES

I will use the resources, property, and funds of the court judiciously and solely in accordance with prescribed procedures.

Canon Five DUTY TO DISCLOSE

I will respectfully disclose information required by the court.

Canon Six CONFIDENTIALITY & DISCRETION

I will not disclose confidential or discretionary information gained through my court employment to any unauthorized person. Information on blogs or other social media should comply with the court's confidentiality and any other relevant court policies. I will not post internal reports, policies, procedures, or other internal business-related confidential communications on social media. I will not use my court e-mail address to register on or engage in social media or professional social networking utilized for personal use.

**Canon Seven
DISCRIMINATION**

I will not discriminate on the basis of race, color, religion, national origin, gender, or other protected group.

**Canon Eight
POLITICAL ACTIVITY**

I am free to participate in political activities during nonworking hours as long as such activity does not use or appear to use my position or court in connection with such activities.

**Canon Nine
DUTY TO SERVE**

I will carry out my responsibilities to the court, litigants, coworkers, and all others interacting with the court in a timely, diligent, and courteous manner. I will not harass, threaten, retaliate or disparage court employees, or anyone associated with, or doing business with the court, whether in person or through other means, including the use of social media.

**Canon Ten
COMPETENCY**

I will actively pursue educational opportunities to improve my professional knowledge, skills, and abilities in order to provide quality service to the court and the public.

Guidelines

The following guidelines clarify the aforementioned canons:

Canon One

IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY

Court employees are highly visible and should conduct themselves in a way that instills public trust and confidence. Their actions reflect not only on themselves, but on the court as well. Improper behavior or the appearance of improper behavior may compromise the integrity of the court. Activities an employee engages in that are improper or may be perceived as improper include:

- Violating federal, state, or local laws and regulations.
- Entering into a contract directly or indirectly for services, supplies, equipment, or realty with the court system.
- Outside employment that may conflict or appear to conflict with the employee's job duties. Seek approval from the appropriate authority before accepting outside employment. **NOTE:** No form of outside employment shall be performed utilizing the resources of the court and shall not require or induce the employee to disclose information acquired in the course of his or her official duties.
- Employees shall abide by the Michigan Supreme Court anti-nepotism policy found in AO 2016-5.
- Employees shall not engage in the use of social media while also listing his or her affiliation with the court. If an employee identifies himself or herself as a court employee, they must state that the views they express on social media are their own and not those of the court.
- If employees choose to identify themselves as judiciary employees on personal social media, some readers may view them as spokespersons for the court and/or for a particular court. Even if you do not identify yourself as a judiciary employee, you should assume that the viewer of any social media is aware that you are a judiciary employee and that you are held to a high standard of personal and professional conduct.

Canon Two

ABUSE OF POSITION

The use of the real or apparent power of a position as a court employee to personally benefit the employee or someone else is prohibited. Court employees should never use their position to secure privileges, gifts, special favors, or exemptions. Generally, these would be special considerations given by others to the employee specifically because of his or her position as a court employee. The solicitation or acceptance of a gift, favor, or additional compensation can give the impression that something will be done in return for the donor. This contravenes the core ideals of the judiciary.

A court employee shall not attempt to take advantage of his or her access to judges and court files to further any personal interest, or engage in ex parte discussions.

**Canon Three
IMPARTIALITY**

The official actions of an employee should not be affected or appear to be affected by kinship, rank, position, or influence of any party or person involved in the court system. Many times relationships place temptation upon the employee to provide special service or nonservice. Differential treatment in any of these situations undermines the integrity of the employee and the judicial system.

Employees need to be able to provide impartial and understandable answers to the public's questions in an efficient manner, without providing legal advice.

Employees must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

**Canon Four
PROPER USE OF
PUBLIC RESOURCES**

Court employees are stewards of public resources. A court employee shall use the resources, property, and funds judiciously and solely in accordance with prescribed procedure. Pitfalls include temptations such as personal phone calls at the court's expense, personal use of government property (such as office supplies, printers, computers, vehicles, etc.), or the use of court property to assist nonemployees as a favor.

**Canon Five
DUTY TO DISCLOSE**

A court employee should expect coworkers to abide by the canons set out in this code. A court employee shall report violations of this code or attempts to compel one to violate this code.

Court employees must inform the appropriate authority if he or she is arrested in any jurisdiction or involved in any pending legal action at the court of employment. This will allow the court to take the appropriate actions related to the employee's status.

When required by law, rule, or regulation, court employees will dutifully disclose all financial interests and dealings.

**Canon Six
CONFIDENTIALITY &
DISCRETION**

Although most court records are public, some are nonpublic, and cannot be released. Court employees need to understand the types of cases, and documents that are considered confidential. Confidential information should never be disclosed to any unauthorized person for any purpose to the media, general public, in person, or over the phone, or on social media. Employees shall never disclose confidential information including, but not limited to, the possible outcome of a pending case, case processing procedures, and other nonpublic information in person or via electronic means including social media platforms.

Canon Six (con't.)
**CONFIDENTIALITY &
DISCRETION**

Sensitive information acquired by court employees in the course of performing their official duties should never be revealed until it is made a matter of public record. Even when the information becomes public, court employees should exercise a great deal of discretion.

Sometimes breaches of confidentiality do not involve intentional disclosures of official court records. Some are the result of innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, which could give attorneys, litigants, reporters, and the public confidential information. Such remarks can seriously compromise a case or a person's standing in the community. Court staff should discuss cases only for legitimate reasons. Court employees shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.

Examples of confidentiality issues are not limited to cases. Personnel, probation, health records, and information accessed through the Law Enforcement Information Network (LEIN) or the Judicial Data Warehouse (JDW) have confidential limitations. Counter clerks should guard against being overheard when discussing legitimate confidential information.

Canon Seven
DISCRIMINATION

Essential to the administration of justice is allowing equal access and treatment for all. Every day court employees are called upon to assist people, and it is their responsibility to provide customers and coworkers with courteous service, regardless of the individual's race, religion, gender, national origin, political activities, etc. Discrimination can come in varying forms (words and actions), yet court employees should be aware that no form of discrimination is acceptable and when discovered should be exposed and discouraged.

Additionally, the evaluation of prospective employees should be based on their employable qualities such as job skills, knowledge, and attitude. Likewise, the evaluation of existing employees should be based upon criteria such as job skills, knowledge, and attitude in the performance of their duties. Therefore, no employee will discriminate in favor of or against any employee or applicant for employment based on the individual's race, religion, gender, national origin, political activities, etc.

**Canon Eight
POLITICAL ACTIVITY**

A court employee's ability to participate in the democratic process by working for a political cause, party, or candidate should not be hampered by his or her employment if done outside of working hours. This participation includes, but is not limited to, holding party membership, holding public office¹, making speeches, and making contributions of time and/or money to candidates, political parties, or other groups engaged in political activity. This participation in political activity should not transcend into the workplace by the displaying of political material (i.e., literature, badges, signs, or other material advertising a political cause, party or candidate), soliciting signatures for political candidacy, or soliciting, or receiving funds for political purposes. In addition, no government equipment, or resources of any kind are to be used for promoting political activity in the workplace before, during, or after work hours.

**Canon Nine
DUTY TO SERVE**

For the court to be an effective institution, court employees must reflect a high level of professionalism as they faithfully carry out all assigned duties and enforce the rules/orders provided by the court. It is never acceptable to undermine the judge or speak negatively of the court, especially in a public arena. A court employee's primary obligation is to the court. Court employees are not to inappropriately destroy, alter, falsify, mutilate, backdate, or fail to make required entries on any court records.

Court employees must recognize that colleagues are also customers, and they should be given the same level of professional consideration as public clients.

Employees shall refrain from posts on social media that can contribute to a hostile work environment on the basis of race, sex, disability, religion, or any other status protected by law. Some specific examples of prohibited social media conduct include posting commentary, content, or images that are defamatory, pornographic, proprietary, harassing, or libelous.

**Canon Ten
COMPETENCY**

When working within the court system, laws and rules of operation are continually changing due to legislation, court rules, administrative orders, caselaw, technology, etc. Therefore, court employees are encouraged to take advantage of educational opportunities that will enhance their skills, advance their understanding, and allow for better service.

Adopted 8/2008

The Michigan Judicial Institute gratefully acknowledges the contributions of the State Court Administrative Office Regional Administrators, the Management Analysts of Trial Court Services, and Court Administrators Donna Beaudet, David Drain, and Michelle Hill who reviewed draft text and provided valuable feedback throughout the revision of this document.

Amended 8/18/2010

The Code was corrected to omit language on Page 4, Canon Three, which erroneously stated court employees could be authorized to give legal advice.

¹Holding public office is acceptable unless a conflict of interest exists with employment at the court, or it is prohibited by law. An example of a conflict includes serving on the county board of commissioners whose oversight of budget and other policy issues impact the court.

Acknowledgment of Receipt of the Model Code of Conduct

I have read and understand the Model Code of Conduct. As a court employee, I also agree that I will support the Constitution of the United States and the Constitution of the State of Michigan, and that I will faithfully discharge the duties of my office.

Signature

Date