CONTINUING LEGAL EDUCATION

ALBANY LAW SCHOOL

Institute of Legal Studies

Everything You Need to Know About Becoming a Judge

September 12, 2014

80 NEW SCOTLAND AVENUE
ALBANY, NEW YORK 12208-3494
TEL: 518-472-5888 FAX: 518-445-2303
WWW.ALBANYLAW.EDU/CLE

Everything You Need to Know About Becoming a Judge

Friday, September 12, 2014

Albany Law School, 80 New Scotland Ave, Albany, NY 12208

Co-Chairs:
Hon. Rose H. Sconiers
Appellate Division, Fourth Dept. and Chair, Franklin H. Williams Judicial Commission

Hon. Karen K. Peters
Presiding Justice, NYS Supreme Court, Appellate Division, Third Department

1:00pm – 1:30pm **Registration**

1:30pm – 1:40pm **Welcoming Remarks**
Penelope (Penny) Andrews, President & Dean, Albany Law School

1:40pm – 1:50pm **Introduction**

Hon. Rose H. Sconiers, Appellate Division, Fourth Department and Chair, Franklin H. Williams Judicial Commission

Hon. Karen K. Peters, Presiding Justice, Appellate Division Third Department

1:50pm – 2:40pm **Election Law Overview & Related Ethical Requirements**

Moderator: Hon. Karen K. Peters, Presiding Justice, Appellate Division Third Department

Panelists: Cathleen S. Cenci, Deputy Administrator
NYS Commission on Judicial Conduct

Matthew Clyne, Esq.
Democratic Commissioner, Albany County Board of Elections

Brian R. Haak, Esq.
Election Law Attorney and Town of Colonie Councilman

James E. Long, Esq.
Law Office of James E. Long, Esq.

2:40pm – 3:10pm **Evaluation Processes**

Moderator: April M. Dalbec, President
Capital District Women's Bar Association

Panelists: Christopher Massaroni, Esq.
Albany County Bar Association Judicial Screening Committee

Timothy P. O'Keefe, Director
New York State Judicial Election Qualification
Commission, Third Department

3:10pm – 3:20pm **Break**

3:20pm – 4:00pm **Securing Nomination in Supreme Court**

Moderator: Hon. Doris M. Gonzalez, Acting Supreme Court Justice
Supreme Court, Bronx County

Panelists: Paul Caputo, Albany County Independence Party Chair

Richard Jacobson, Esq., Chair of the Albany County
Democratic Committee's Law Committee

Hon. Karen K. Peters, Presiding Justice
Third Department

Hon. Leslie E. Stein, Appellate Division
Third Department

4:00pm – 5:00pm **Making the Ballot in Town, City, County, and Family Court**

Moderator: Hon. Peter G. Crummey, President
Albany County Bar Association

Panelists: Hon. William A. Carter
Albany City Court Judge

Hon. Rachel L. Kretser
Albany City Court Judge

Hon. Susan M. Kushner
Albany County Family Court Judge

Hon. Debra J. Young
Rensselaer County Court Judge

5:00pm – 5:30pm **Appointment Process for NYS Court of Claims**

Moderator: William T. Little, Esq., President,
Capital District Black and Hispanic Bar Association

Panelists: Jessica M. Cherry, Esq.
NYS Senate

Hon. Michael H. Melkonian
NYS Court of Claims Judge

John A. Regan, Assistant Counsel
Governor Andrew M. Cuomo

5:30pm **Reception – East Foyer**

Everything You Need to Know About Becoming A Judge
September 12, 2014

Sponsors:

Franklin H. Williams Judicial Commission

Albany County Bar Association

Albany Law School

Capital District Women's Bar Association

New York State Academy of Trial Lawyers

Capital District Black & Hispanic Bar Association

Center for Women in Government & Civil Society

Judicial Section of the New York State Bar Association

National Association of Women Judges, New York Chapter

New York State Latino Judges Association

Third Judicial District Gender Fairness Committee

Everything You Need to Know About Becoming a Judge

September 12, 2014

Speaker Biographies

PENELOPE (PENNY) ANDREWS is Albany Law School's 17th president and dean, effective July 1, 2012. She is the first female president for the school since it opened in 1851. Previously Dean Andrews was the associate dean for academic affairs and professor of law at City University of New York School of Law. Prior to joining CUNY, she was a professor of law and director of international studies at Valparaiso Law School, where she taught courses such as International Human Rights Law and International Criminal Law. Dean Andrews, who was born and raised in South Africa, has extensive international experience, including teaching at law schools in Germany, Australia, Holland, Scotland, Canada and South Africa. An annual award in her name—The Penelope E. Andrews Human Rights Award—was inaugurated in 2005 at the South African law school of University of KwaZulu-Natal. Along with numerous other awards, she holds a "Women of South Africa Achievement Award," as well as Albany Law's Kate Stoneman Award, which she received in 2002.

PAUL CAPUTO is the Chairman of the Albany County Independence Party as well as the Vice Chairman of the New York State Independence Party. He has been the convener of the Independence Party 3rd Judicial District convention since 2002. Mr. Caputo also has served as a member of the Guilderland Town Board, Guilderland Planning Board and the Guilderland Environmental Council. He is presently President and CEO of All and One Consulting Services, which is a full service IT consulting firm specializing in Business Innovation through IT, Cloud And Managed Services.

HON. WILLIAM A. CARTER was elected to the Albany City Court Bench in 2002 after being appointed to that position in 2001. He is currently serving his second ten-year term in Albany City Court – Criminal Part. Since 2005, Judge Carter has presided over the Albany City Domestic Violence Court as an Acting County Court Judge. This Court is the only full-time dedicated Domestic Violence Court in the region. A former New York State Trooper, Judge Carter was previously a New York State Assistant Attorney General in the Criminal Prosecutions Bureau, and an Assistant District Attorney and the Chief Assistant District Attorney for Albany County. Prior to his appointment to the bench, Judge Carter was a criminal defense attorney with Castillo & Associates and an Associate Capital Defender. Judge Carter is a 1991 graduate of Albany law School, where he has been an Adjunct Professor since 2005.

CATHLEEN S. CENCI, Esq. is Deputy Administrator in Charge of the Albany office for the New York State Commission on Judicial Conduct. She joined the Commission staff in 1985. Ms. Cenci is a graduate of Potsdam College (*summa cum laude*) and Albany

Law School. In 1979, she completed the course superior at the Institute of Touraine in Tours, France. Ms. Cenci has been a judge of the Albany Law School moot court competitions and a member of Albany County Big Brothers/Big Sisters.

JESSICA M. CHERRY, ESQ. works for the New York State Senate as legislative counsel to State Senator John J. Bonacic, Chairman of the Senate Judiciary Committee. She serves as counsel to the Committee, which, among other legislative duties, requires coordination and oversight of judicial nominations when they are submitted to the State Senate for confirmation. Ms. Cherry is a graduate of Albany Law School, and was admitted to the New York State Bar in 2013.

MATHEW CLYNE, ESQ. is a sole practitioner in Albany, New York and also the Albany County Democratic Elections Commissioner, a position he has held since March 16, 2007. Previously, Mr. Clyne was an Associate Attorney with Casey, Yanas, Mitchell & Amerling (1978–1989) and an Associate Attorney with the Law Offices of Daniel A. Whalen (1989–1999). He served as Counsel to the Albany County Department of Health from 1980-2005. Mr. Clyne is a graduate of Siena College (1974) and Albany Law School (1977).

HON. PETER G. CRUMMEY is Senior Colonie Town Justice and Court Administrator. Judge Crummey has served as Colonie Town Justice since January 1, 2000. He presides in one of the busiest Courts in the State of New York which handles more than 24,000 cases annually including criminal cases, vehicle and traffic cases and civil proceedings. Prior to first being elected Colonie Town Justice, Judge Crummey served as an Albany County Legislator and Minority Leader; a Prosecutor in the Colonie and Menands Traffic Courts; Attorney for the Town of Colonie; and, for thirteen years, as Attorney for the Colonie Zoning Board of Appeals. He also maintains a practice of law in Albany and has been active in a variety of community affairs. Judge Crummey serves as President of the Albany County Bar Association and serves on the New York State Bar Association's Special Committee on Youth Courts. He routinely gives presentations in local schools and to community groups concerning the Court system. In January, 2013, Judge Crummey was presented the Distinguished Service Award from the New York State Bar Association's Law, Youth and Citizenship Committee and in May, 2013, Judge Crummey was presented with the Partner in Education Award from the Capital Region Social Studies Council. For more than six years, Judge Crummey has hosted BENCHMARK, a cable television show for the Colonie Town Library, interviewing a wide variety of jurists and attorneys involved in the justice system. He is a graduate of Boston College and Albany Law School.

APRIL M. DALBEC, ESQ. joined McNamee, Lochner, Titus & Williams, P.C. in 2010 as a member of the matrimonial department. Ms. Dalbec is an experienced civil and criminal litigator who has been practicing since 2002. She has focused her practice on matrimonial law, family court matters, plaintiff's personal injury, complex criminal defense, and defending professionals in disciplinary matters. Ms. Dalbec has extensive trial experience including high profile criminal matters and successful trials, negotiation,

mediation and settlement of substantial civil cases. She received a J.D., *cum laude*, from Albany Law School (2001); a B.A., *cum laude*, from the State University at Albany (1998); and an A.A.S. from Hudson Valley Community College (1998). Ms. Dalbec is a member of numerous organizations, including the American Association for Justice, the New York State Academy of Trial Lawyers, the New York State Trial Lawyers Association, the New York State Bar Association, the Capital District Women's Bar Association, and the Capital District Trial Lawyers Association. This year she became the 36th President of the Capital District Chapter of the Women's Bar Association of New York State.

HON. DORIS M. GONZALEZ started her legal career in 1985 in the insurance industry, where very few Hispanic female attorneys were employed, and she rose through the ranks to become a senior trial attorney trying high profile cases. After 15 years of practice in the private sector, she went to work for a Supreme Court Judge in the Appellate Term 1st Department and then in the Supreme Court Civil Division, Bronx County. Judge Gonzalez served as a member of her local Community Board and also as chairperson of the Neighborhood Advisory Board and the Community Action Board. She was elected as a Civil Court Judge in Bronx County in November of 2006. In December 2009, Judge Gonzalez was appointed by Judge Pfau as Acting Supreme Court Justice. She also sat in Supreme Criminal Court in Bronx County for three years and in the Civil Court for Bronx County. Judge Gonzalez serves as President of the Latino Judges Association; a member of the Gender Fairness Committee, where she serves on the "women of distinction" subcommittee; Chair of the Committee to Encourage Judicial Service of the New York City Bar; an appointed member of the Judicial Advisory Council, where she sits on the facilities and technology committee; and Treasurer of the New York Chapter of the National Association of Women Judges.

BRIAN R. HAAK, ESQ. has spent almost 30 years in government and politics. During that time, Mr. Haak has been a campaign manager, a candidate, and a public office holder. At the age of 20, he was appointed to the St. Johnsville village board, becoming the youngest person ever to sit on the board. Mr. Haak served as St. Johnsville village administrator and as director of the village's urban renewal activities. He also served as the chief financial officer for two different municipalities. He was elected St. Johnsville village justice in 1998, and was re-elected to that position, without opposition, in 2001 and 2005. In February 1999, he also was appointed to serve as St. Johnsville town justice. Later that year he was elected to the position without opposition and was re-elected, again without opposition, in 2003. While serving as town and village justice, Mr. Haak earned a J.D. from Albany Law School in 2002. During law school, he served as a judicial extern with the Honorable Lawrence Kahn, District Court Judge for the Northern District of New York. He resigned his judicial office in July 2005 to run unchallenged for the position of St. Johnsville town supervisor, becoming the first freshman to serve as chair of the finance committee of the Montgomery County Board of Supervisors, overseeing the county's $82 million budget. He resigned as supervisor in January 2007 to take his current position with the New York State Assembly as Associate Counsel and Home Rule Counsel. Mr. Haak is a member of the Colonie Town Board. He has

served as a member of various town and county political committees and as a delegate/alternate delegate to three previous judicial nominating conventions in both the Third and Fourth Judicial Districts. His private practice specializes in constitutional law, election law, and municipal law.

RICHARD JACOBSON, ESQ. is special counsel to the New York State Senate Democratic Conference. He has also operated his own law firm since 2003, with an emphasis on real estate and criminal defense. Judge Jacobson has been a member of the Albany County Legislature since 2012. He was previously an assistant public defender for Albany County for seven years. He is a graduate of Christian Brothers Academy in Albany, Siena College, and SUNY Albany, where he received a Master's Degree. Mr. Jacobson received a law degree from the McGeorge School of Law, University of the Pacific in Sacramento, CA.

HON. RACHEL L. KRETSER was appointed to the Albany City Criminal Court in December 2005, and was elected to that position in November, 2006, becoming the first woman ever to serve on a criminal court bench in the Third Judicial District. Before her ascension to the bench, Judge Kretser was an Assistant Attorney General for more than twenty-five years, serving in the Litigation Bureau, as Deputy Bureau Chief of the Legislative Bureau; Bureau Chief of both the Albany Consumer Frauds Bureau and the Legal Education and Staff Development Bureau; and as a member of the Attorney General's Executive Staff. Prior to joining the Attorney General's Office, Judge Kretser was associated with the Manhattan law firm of Weil, Gotshal & Manges. She serves as Presiding Member of the New York State Bar Association's Judicial Section, Immediate Past President of the New York State Association of City Court Judges, and Vice President of the New York Chapter of the National Association of Women Judges. From 2003-2009 she served as Vice President of the New York State Bar Association, representing the Third Judicial District. Judge Kretser is Past President of the Women's Bar Association of the State of New York (1995-1996) and Past President of the Capital District Women's Bar Association (1991-1992). She is a founding member of the CDWBA Legal Project and the Women's Bar Foundation. In 1993, Judge Kretser was appointed by then-Deputy Administrative Judge Joseph J. Traficanti, Jr. to the OCA Committee on City Courts, and was reappointed to that Committee in 2008. In 1994, she was appointed to the Federal Bankruptcy Judge Merit Selection Panel by Jon O. Newman, former Chief Judge of the Second Circuit Court of Appeals. Judge Kretser was appointed by former NYS Court of Appeals Chief Judge Judith S. Kaye to the Third Department Judicial Screening Panel in 1996, and served on that committee for ten years. In 1997, she was appointed to the Third Judicial District Litigation Task Force by former Presiding Justice Anthony Cardona; and was appointed to the Northern District Magistrate Selection Committee in 2001 by Hon. Frederick Scullin, Jr., former Chief U.S. District Judge for the Northern District. Judge Kretser was appointed to the Third Judicial District Gender Fairness Committee in 1988 by Justice Karen Peters and reappointed by Justices George Ceresia, Victoria Graffeo and Leslie Stein. In recognition of her dedication to the profession and to the community, she has received a number of prestigious awards including the Ruth Shapiro Memorial Award

from the New York Bar Association, the Kate Stoneman Award from Albany Law School, and the Distinguished Service Award from the Attorney General's Office.

HON SUSAN M. KUSHNER was a practicing attorney for more than 25 years, and an Alternate Public Defender in Albany County Family Court during her campaign for Family Court Judge. She has practiced law in the private sector and at various levels of government including the State, County and City of Albany. Judge Kushner is a 1985 graduate of Albany Law School. In addition to her professional experience, Judge Kushner has been involved in her community as a previously elected member of the Albany City School Board. She is on the Board of Directors of the Albany Booster Club and has long participated in school activities including running her own after school cooking class at Livingston Middle School. Mentoring children and families ranks high on her list of priorities. Since taking the bench in January 2014, Judge Kushner is the first Upstate Family Court Judge to have been appointed by the New York State Office of Children and Families to serve on its Independent Review Board. She is also undertaking projects to integrate Family Court as a recognized and integral part of the communities it serves. In fall 2013, Judge Kushner defeated the Albany County Democratic Committee's candidate in the Democratic primary and went on to win the general election.

WILLIAM T. LITTLE, ESQ. graduated from the State University of New York, College at Albany with a B.A. in Political Science and a minor in Criminal Justice. He received a J.D. from Albany Law School, where he was an Associate Editor for the *Albany Law School Environmental Journal*. He is co-founder of the Law Office of Teresi & Little, PLLC established in 2013 with his former law school trial team partner, Greg Teresi. Mr. Little practices primarily in the fields of civil and commercial litigation and criminal defense and heads the firm's civil litigation practice. He started his career working at a large Albany litigation law firm practicing primarily in the areas of commercial litigation, personal injury litigation, municipal liability, employment discrimination, products liability, premises liability, labor law and professional liability. Mr. Little has represented clients in state and federal courts, Court of Claims, and before numerous state agencies including the EEOC, New York State Division of Human Rights and the New York State Department of Financial Services. He is the President of the Capital District Black and Hispanic Bar Association, Chair of Admissions for the Albany County Bar Association, Board Member and General Counsel to the African American Cultural Center of the Capital District, and District Representative for the Torts Insurance and Compensation Law Section of the New York State Bar Association. He has lectured on topics related to New York State and Federal Practice and for employers on issues related to sexual, racial, and other types of harassment, discrimination, and affirmative action.

JAMES E. LONG, ESQ. received a J.D. from the University of New Hampshire School of Law (formerly Franklin Pierce Law Center) in Concord, NH, in 1978 and a B.A. from the State University of New York at Albany in 1974. Mr. Long has been in private practice since January 1979, except during periods of time when he served as the full-time Supreme Court judicial law clerk. He has also served as Special Counsel on the

Elections Committee in the New York State Senate for the Democratic Conference from February 2003 to November 2005, under then-Senator David A. Paterson. Mr. Long is a well-known election lawyer who has supervised, managed or consulted on nearly every judicial race in the Third Judicial District since 1979.

CHRISTOPHER MASSARONI, ESQ. has, for several years, served as the Chair of the Judiciary Committee of the Albany County Bar Association. He is a trial attorney with McNamee, Lochner, Titus & Williams, P.C. and has experience in many substantive areas, including complex commercial cases, personal injury and product liability cases, and employment matters. Mr. Massaroni has successfully litigated cases in federal and state courts throughout New York State, and in numerous other states. He has extensive experience in the litigation of corporate disputes, including those involving claims of shareholders, ownership disputes, allegations of breach of fiduciary duty, and intellectual property issues. He also represents management in a variety of labor and employment matters, including discrimination and wrongful termination claims, grievances, and claims of unlawful strike activities. Mr. Massaroni has been selected by many national corporations to handle their self-insured personal injury defense claims in Upstate New York, including mass tort and complex product liability cases. He also represents accident victims in wrongful death and major injury cases, and has recovered many millions of dollars on behalf of these clients. Mr. Massaroni received a J.D. from Cornell Law School (1982) and a B.A., *summa cum laude*, from Union College (1979). He is a member of the New York State Bar Association, the American Association for Justice and the New York State Trial Lawyers Association. Mr. Massaroni served as a Law Clerk to the Hon. John A. MacKenzie, Chief Judge, United States District Court for the Eastern District of Virginia from 1982-1983. He was named a Super Lawyer in the 2010, 2011, 2012, 2013 and 2014 Upstate New York editions of *Super Lawyers* magazine for Business Litigation, Personal Injury Plaintiff: General, Personal Injury Defense: General.

HON. MICHAEL H. MELKONIAN was appointed to the New York State Court of Claims and appointed as an Acting Supreme Court Justice on December 15, 2008, by Governor David E. Paterson. Since 2010, he has presided over civil cases in the Third Judicial District. From 2008 to 2009, he presided over criminal cases in the First Judicial District. A graduate of Marist College and St. John's University Law School, Judge Melkonian served as Counsel to New York State Senator Serphin R. Maltese from 1992 to 1995. He then joined the Office of the New York State Attorney General as an Assistant Counsel from 1995 to 1997 and served as Assistant Counsel to the New York State Office of Mental Health from 1997 to 1999. From 1999 to 2007, Judge Melkonian was an Assistant Counsel to the New York State Senate Majority and then served as a Commissioner of the New York State Legislative Bill Drafting Commission from 2007 to 2008. Additionally, he served as a Deputy Counsel to the Rensselaer County Legislature from 2004 to 2008. Judge Melkonian also served as a Judge Advocate in both the United States Army Reserve from 1999 to 2006 and in the New York State National Guard from 2006 to 2007.

TIMOTHY P. O'KEEFE has served as the Director of the Third Judicial Department Independent Judicial Election Qualification Commissions (IJEQCs) since its inception in 2007. He is also the Administrator of the Civil Appeals Settlement Program for the Supreme Court, Appellate Division, Third Judicial Department. Prior to returning to the Third Department in 2007, Mr. O'Keefe was in private practice for 10 years after serving as an Appellate Court Attorney upon his graduation from St. John's University School of Law.

HON. KAREN K. PETERS received a B.S. from George Washington University (*cum laude*) and a J.D. from New York University (*cum laude*, Order of the Coif). From 1972 to 1979 she was engaged in the private practice of law in Ulster County, served as an Assistant District Attorney in Dutchess County and worked as an assistant professor at the State University at New Paltz, where she developed curricula and taught courses in the areas for criminal law, gender discrimination and the law, and civil rights and civil liberties. In 1979, Justice Peters was selected as the first counsel for the newly created New York State Division of Alcoholism and Alcohol Abuse and served in that capacity under Governors Hugh Carey and Mario M. Cuomo. In 1983, she became the director of the State Assembly Government Operations Committee. Elected to the bench in 1983, she remained Family Court Judge for the County of Ulster until 1992, when she was elected the first woman Supreme Court Justice in the Third Department. Justice Peters was appointed to the Appellate Division, Third Department by Governor Mario M. Cuomo on February 3, 1994 and was appointed Presiding Justice of that Court by Governor Andrew M. Cuomo on April 5, 2012, the first woman appointed to that position in that court. Justice Peters serves on the New York State Task Force on Wrongful Convictions. First appointed a member of the New York State Commission on Judicial Conduct by Chief Judge Judith Kaye in 2000, and later reappointed to that position by Governor David Paterson, Justice Peters served until 2012. Justice Peters has also served as Chairperson of the Gender Bias Committee in the Third Judicial District and on numerous state bar committees, including the New York State Bar Association Special Committee on Alcoholism and Drug Abuse, the New York State Bar Association Special Committee on Procedures for Judicial Discipline, and the President's Committee on Access to Justice. She is also a member of the American Bar Association, the Ulster County Bar Association, the Albany County Bar Association, the Mid-Hudson Women's Bar Association and the Capital District Women's Bar Association. Throughout her career, Justice Peters has taught and lectured extensively in the areas of Family Law, Judicial Education and Administration, Criminal Law, Appellate Practice and Alcohol and the Law.

JOHN A. REGAN, ESQ. serves as assistant counsel to Governor Andrew M. Cuomo. In this role, his portfolio includes local government issues, judicial appointments, and helping manage New York State Senate confirmations. He came to New York State government in 2012 when he served as Associate Deputy Counsel for then-Director of State Operations Howard Glaser. From 2007-2012, Mr. Regan was the Washington, D.C.-based legal presence for WOH Government Solutions, the government affairs subsidiary for the Albany law firm of Whiteman Osterman & Hanna, LLP and a

registered federal lobbyist. Prior to that, Mr. Regan held a presidential commission and served as a diplomat in the U.S. Foreign Service. His postings included Barbados and as Director of the Office of Cuban Affairs in Washington, D.C., work for which he received a Meritorious Honor Award and a Superior Honor Award from the U.S. Department of State. Mr. Regan is a graduate of the George Washington University and Catholic University Law School, both in Washington, D.C.

HON. ROSE H. SCONIERS was designated as an Associate Justice of the Appellate Division, Fourth Department, by Governor David A. Paterson on February 1, 2010. She was elected to the New York State Supreme Court in 1993 and re-elected in 2007. Justice Sconiers is a former judge of the City Court of Buffalo; former Executive Attorney of The Legal Aid Bureau of Buffalo, Inc.; former Assistant Corporation Counsel for the City of Buffalo; and a 1973 graduate of the State University of New York at Buffalo School of Law. She was admitted to the State Bar in 1974 and to the U.S. Federal District Court in 1975. In addition, she is admitted to the U.S. Court of Appeals for the Second Circuit and the U.S. Supreme Court. Justice Sconiers was appointed by Chief Judge Jonathan Lippman in 2009 to Chair the statewide Franklin H. William Judicial Commission on Minorities. Justice Sconiers is the former President of the Association of Justices of the Supreme Court of the State of New York, former Presiding Member of the Judicial Council of the New York State Bar Association and a former delegate to the National Conference of State Trial Judges of the American Bar Association. She is the recipient of many honors and awards, including the University of Buffalo Law Alumni Association Distinguished Alumna Award, the YWCA Leader Luncheon Outstanding Achievement Award and the Buffalo Urban League Evans/Young Award. She was inducted into the Western New York Women's Hall of Fame in 2001. She received the 2008 Outstanding Jurist Award from the Bar Association of Erie County and was honored as the 2011 Lawyer of the Year by the Women Lawyers of Western New York. In addition, Justice Sconiers received the 2013 Bridge Builders Award from the Rochester Black Bar Association.

HON. LESLIE E. STEIN was appointed to the Appellate Division, Third Department, effective February 11, 2008. She graduated from Macalaster College in 1978 and from Albany Law School in 1981. Justice Stein was elected Albany City Court Judge in 1997 and served as Acting Family Court Judge in 2001. She was elected to the Supreme Court for the Third Judicial District in 2001. She served as the Administrative Judge of the Rensselaer County Integrated Domestic Violence Part from January 2006 to February 2008. Prior to her judicial career, Justice Stein was confidential law clerk to the Schenectady County Family Court Judges from 1981 to 1983. She then engaged in private practice from 1983 to 1987, practicing exclusively in matrimonial and family law. She was elected a Fellow of the American Academy of Matrimonial Lawyers in 1991. She is a founding member of the New York State Judicial Institute on Professionalism in the Law, established by Chief Judge Kaye, since 1999. Justice Stein served as chair of the Third Judicial District Gender Fairness Committee from 2001 to 2005.

HON DEBRA J. YOUNG is a judge on the Rensselaer County Court. She was a partner in the Albany law firm of Thuillez, Ford, Gold, Butler and Young, LLP prior to her election to the County Court bench in November 2012. She joined the firm in 1997 following her completion of a clerkship at the Appellate Division, Third Department. In addition to practicing law, Judge Young also served as a Town Board member in the Town of Schodack, beginning with her appointment in May 2005, her election in November 2005, and her re-election in November 2009. During her tenure on the Town Board, Judge Young worked diligently to preserve and improve services to the town residents. Additionally, she was appointed Attorney to the Town of Hoosick in 2011 and served as their legal advisor until her election to County Court.

Election Law Overview & Related Ethical Requirements

Moderator:

Hon. Karen K. Peters

Panelists:

Cathleen S. Cenci, Esq.
Matthew Clyne, Esq.
Brian R. Haak, Esq.
James E. Long, Esq.

THE POLITICAL PARTIES

What is a political party?

Election Law §1-104(3) – "any political organization which at the **last preceding election for governor** polled at least fifty thousand [**50,000**] votes for its **candidate for governor**" (emphasis supplied)

Six Official Statewide Parties in New York

1.	Democratic – 5,873,844	49.7%
2.	Republican – 2,785,773	23.6%
3.	Conservative – 156,317	1.3%
4.	Working Families – 48,110	0.4%
5.	Independence – 482,356	4.1%
6.	Green – 24,237	0.2%

Organized by Size

Democratic	5,873,844	49.7 %
Republican	2,785,773	23.6
Blank/NOP	2,435,048	20.6
Independence	482,356	4.1
Conservative	156,317	1.3
Working Families	48,110	0.4
Green	24,237	0.2
Other	5,173	0.0

Primary Ballot
Designating Petitions:

- The only way to qualify for the primary ballot on a statewide party is to circulate a DESIGNATING PETITION
- In NYS, a candidate may circulate designating petitions to get on or more statewide party lines.
  - If more than one candidate qualifies for a party line, there is a primary for that line.
  - If only one candidate qualifies, there is no primary and only that candidate appears on that party's line in the general election.

Designating Petitions:
Signature Requirements

- Signature requirements are based on the OFFICE and PARTY LINE sought.
- For **Assembly** on **Statewide Party Lines**, the **Designating petition** must contain:
  - The signatures of 5% of the enrolled voters in a political unit (excluding inactive voters)

  OR

  - 500 signatures of enrolled voters in the political unit;

  WHICHEVER IS <u>LESS</u>

  - **<u>ALWAYS collect at least 3 TIMES the number of signatures needed to ensure a sufficient number of VALID signatures.</u>**

Designating Petitions
2014 Time Frames

First Day for Signing Petitions: May 29, 2014*

Filing Dates: July 7- July 10, 2014

2014

POLITICAL CALENDAR

May 9, 2014

Federal Primary Election
June 24

State/Local Primary Election
September 9

General Election
November 4

This political calendar is a ready reference to the significant dates pertaining to elections to be held in this state. For complete information be sure to consult the State's Election Law and Regulations and any relevant court orders.

All dates are based on court-ordered and statutory provisions in effect on the date of publication and may be subject to change. Final confirmation should be obtained from your county board of elections or the State Board.

NEW YORK STATE
BOARD OF ELECTIONS
40 NORTH PEARL STREET – SUITE 5
ALBANY, NEW YORK 12207
(518) 474-6220

For TDD/TTY, call the NY State Relay 711

www.elections.ny.gov

PRIMARY ELECTION HOURS

In New York City and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam and Erie, POLLS OPEN at 6 AM and CLOSE at 9 PM. In all other counties POLLS OPEN at 12 NOON and CLOSE at 9 PM.

GENERAL ELECTION HOURS

All Polls OPEN at 6 AM and CLOSE at 9 PM

FILING REQUIREMENTS FEDERAL COURT ORDER

For the 2014 Federal Primary Election and General Elections, all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of

FEDERAL ELECTION

ELECTION DATES

June 24^	Federal Primary Election. Court Ordered

CERTIFICATION OF FEDERAL PRIMARY

May 1	Certification of Federal primary ballot by State Board of Elections of designations filed in its office. §6-110
May 2	Determination of candidates for Federal office by county boards. §6-114

November 4^	General Election §6-100(1)(a)

CERTIFICATION OF FEDERAL GENERAL BALLOT

Sept. 11	Certification of general election ballot by State Board of Federal designations filed in its office. §6-112(1)
Sept. 12	Determination of Federal candidates by county boards. §6-114

CANVASS OF FEDERAL ELECTION RESULTS

July 3	Canvass of Federal Primary returns by Counties
July 9	Recanvass of Federal Primary returns
July 1	Verifiable Audit of Voting Systems

BECOMING A CANDIDATE

DESIGNATING PETITIONS FOR FEDERAL PRIMARY

March 4	First day for signing Federal designating petitions §6-134(4)
April 7 - April 10	Dates for filing Federal designating petitions §6-158(1)
April 14	Last day to authorize Federal designations §6-120(3) & §6-158(6)
April 14	Last day to accept or decline Federal designations §6-158(2)
April 18	Last day to fill a vacancy after a Federal declination. §6-158(3)
April 22	Last day to file authorization of substitution after declination of a Federal designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS FOR FEDERAL PRIMARY

Mar. 25	First day for signing Federal OTB petitions. §6-164
April 17	Last day to file Federal OTB petitions. §6-158(4)
April 21	Last day to file OTB petition if there has been a declination by a designated candidate. §6-158(5)

PARTY NOMINATIONS OTHER THAN PRIMARY

May 13 - June 3	Dates for holding state committee meeting to nominate candidates for statewide office. §6-104(6)
July 15	Last day to file certificates of nomination to fill vacancies in Federal office created pursuant to §§ 6-116 & 6-158(5)
July 18	Last day to accept or decline a nomination for Federal office made based on § 6-116
July 21	Last day to file authorization of nomination for Federal office made based on § 6-116
July 22	Last day to fill a vacancy after a declination for Federal office made based on § 6-116

INDEPENDENT PETITIONS FOR FEDERAL OFFICE

June 24	First day for signing Federal nominating petitions §6-138(4)
July 29 - August 6	Dates for filing Federal independent nominating petitions §6-158(9)
August 8	Last day to accept or decline Federal independent nomination. §6-158(11)
August 11	Last day to fill a vacancy after a declination to any Independent petition for Federal office. §6-158(12)
August 8	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

FEDERAL ELECTION

VOTER REGISTRATION

VOTER REGISTRATION FOR FEDERAL PRIMARY

May 30	Mail Registration for Federal Primary: Last day to postmark application and last day it must be received by board of elections is June 4. §5-210(3)
May 30	In person registration for Federal Primary. Last day application must be received by board of election to be eligible to vote in primary election. §§5-210, 5-211 & 5-212
June 4	Changes of address for Federal Primary received by this date must be processed. §5-208(3)

VOTER REGISTRATION FOR GENERAL

Oct. 10	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections is Oct.15. §5-210(3)
Oct. 10	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If you have been honorably discharged from the military or have become a naturalized citizen since October 10^, you may register in person at the board of elections up until October 24^. §§5-210, 5-211, 5-212
Oct. 15	Changes of address received by this date must be processed. §5-208(3)

VOTING BY ABSENTEE

ABSENTEE VOTING FOR FEDERAL PRIMARY

June 17	Last day to postmark application for Federal primary ballot. §8-400(2)(a)
June 23	Last day to apply in person for Federal primary ballot. §8-400(2)(a)
June 23	Last day to postmark Federal primary ballot. Must be received by the county board no later than July 1st. §8-412(1)
June 24	Last day to deliver Federal primary ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL PRIMARY

May 10	Deadline to transmit Military/Special Federal ballots for Federal primary. §10-109(1) & §11-204(4)
May 30	Last day for a board of elections to receive application for Military/Special Federal ballot if not previously registered. §10-103(3) & §11-202
June 17	Last day for a board of elections to receive Military/Special Federal application if previously registered. §10-103(3) & §11-204(4)
June 23	Last day to apply personally for Military ballot if previously registered. §10-103(3)
June 23	Last day to postmark Military/Special Federal ballot and date it; must be received by the board of elections is July 1. §10-114(1) & §11-212

ABSENTEE VOTING FOR FEDERAL GENERAL

Oct. 28	Last day to postmark application or letter of application for general election ballot. §8-400(2)(a)
Nov. 3	Last day to apply in person for general election ballot. §8-400(2)(a)
Nov. 3	Last day to postmark ballot. Must be received by the county board no later than Nov. 12^ §8-412(1)
Nov. 4	Last day to deliver ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL GENERAL

Sept. 20	Deadline to transmit Military/Special Federal general election ballots. §10-109(1) & §11-204(4)
Oct. 10	Last day for a board of elections to receive application for Special Federal absentee ballot if not previously registered. §11-202(1)

STATE/LOCAL ELECTION

ELECTION DATES

Sept. 9	State/local Primary Election §8-100(1)(a)
##-May 20	PARTY CALLS: Last day for State & County party chirs to file a statement of party positions to be filled at the State Primary Election. §2-120 ##

CERTIFICATION OF STATE/LOCAL PRIMARY

Aug. 4	Certification of September state/local primary ballot by SBOE of designations filed in its office. §4-110
Aug. 5	Determination of candidates and questions; County Boards. §4-114

CANVASS OF STATE/LOCAL PRIMARY RESULTS

Sept. 18	Canvass of State/local Primary Returns by County Board of Elections §9-200(1)
Sept. 24	Recanvass of State/local Primary returns. §9-208(1)
Sept. 16	Verifiable Audit of Voting Systems. §9-211(1)

Nov. 4	General Election §8-100(1)(c)

CERTIFICATION OF STATE/LOCAL GENERAL ELECTION BALLOT

Sept. 29	Certification of state general election ballot by SBOE of nominations filed in its office. §4-112(1)
Sept. 30	Determination of state/local candidates and questions by county boards. §4-114

CANVASS OF STATE/LOCAL GENERAL ELECTION RESULTS

Nov. 29	Canvass of General Election results by County Board of Elections §9-214(1)
Nov. 19	Recanvass of General results. §9-208(1)
Nov. 19	Verifiable Audit of Voting Systems. §9-211(1)

BECOMING A CANDIDATE*

DESIGNATING PETITIONS FOR STATE/LOCAL PRIMARY

##-May 29	First day for signing designating petitions for state/local offices. §6-136(4) ##
July 7 - July 10	Dates for filing designating petitions for state/local offices. §6-158(1)
July 14	Last day to authorize designations for state/local offices. §6-120(3)
July 14	Last day to accept or decline designations for state/local offices. §6-158(2)
July 18	Last day to fill a vacancy after a declination for state/local office §6-158(3)
July 22	Last day to file authorization of substitution after declination of a state/local designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL PRIMARY

June 24	First day for signing OTB petitions for state/local offices. §6-164
July 17	Last day to file OTB petitions for state/local offices §6-158(4)
July 24	Last day to file OTB petition if there has been a declination by a designated candidate for state/local offices. §6-158(4)

PARTY NOMINATION OTHER THAN PRIMARY

##-May 13 - June 3	Dates for holding state committee meeting to nominate candidates for statewide office. §6-104(6) ##
##-May 29	First day to hold a town caucus. §6-158 (6)
Sept. 16	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
Sept. 16	Last day to file certificates of nomination to fill vacancies created pursuant to §§ 6-116 & 6158(6)
Sept. 19	Last day to accept or decline a nomination

STATE/LOCAL ELECTION

JUDICIAL DISTRICT CONVENTIONS

Sept. 16 thru 22	Dates for holding judicial conventions. §6-158(5)
Sept. 23	Last day to file certificates of nominations. §6-158(6)
Sept. 26	Last day to decline. §6-158(8)
Sept. 30	Last day to fill vacancy after a declination. §6-158(8)
Minutes of a convention must be filed within 72 hours of adjournment. §6-158(5)	

SIGNATURE REQUIREMENT FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL OFFICES

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less:
For any office to be filled by all the voters of:

the entire state (with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)	15,000
New York City	7,500
any county or borough of New York City	4,000
a municipal court district within NY City	1,500
any city council district within New York City.	900
cities or counties having more than 250,000 inhabitants	2,000
cities or counties having more than 25,000 but not more than 250,000	1,000
any city, county, councilmanic or county legislative districts in any city other than NY City	500
any congressional district	1,250
any state senatorial district	1,000
any assembly district	500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision; a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

*NOTE: *Section 1057-b of the New York City Charter supersedes New York Election law signature requirements for Designating and OTB petitions and Independent nominating petitions with respect to certain NY City offices.*

SIGNATURE REQUIREMENT FOR INDEPENDENT NOMINATING PETITIONS FOR STATE/LOCAL OFFICES

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:

the entire state (with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)	15,000
any county or portion thereof outside the city of NY	1,500
the City of New York	7,500
any county or borough or any two counties or boroughs within the city of NY City	4,000
a municipal court district	3,000
any city council district within NY City	2,700
any congressional district	3,500
any state senatorial district	3,000
any assembly district	1,500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision.

VOTER REGISTRATION

VOTER REGISTRATION FOR STATE/LOCAL PRIMARY

Aug. 15	Mail Registration for state/local Primary: Last day to postmark

STATE/LOCAL ELECTION

VOTER REGISTRATION FOR GENERAL

Oct. 10	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections by Oct. 15. §5-210(3)
Oct. 10	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If honorably discharged from the military or have become a naturalized citizen since October 10th, you may register in person at the board of elections up until October 24th §§5-210, 5-211, 5-212
Oct. 15	Changes of address received by this date must be processed. §5-208(3)

VOTING BY ABSENTEE

ABSENTEE VOTING FOR STATE/LOCAL PRIMARY

Sept. 2	Last day to postmark application for state/local primary ballot. §8-400(2)(c)
Sept. 8	Last day to apply in person for state/local primary ballot. §8-400(2)(c)
Sept. 8	Last day to postmark state/local ballot. Must be received by the county board no later than Sept. 16th. §8-412(1)
Sept. 9	Last day to deliver state/local primary ballot in person to county board, by close of polls. §8-412(1)

MILITARY VOTERS/SPECIAL FEDERAL FOR STATE/LOCAL PRIMARY

Aug. 8	First day to mail ballot to Military/Special Federal Voter. §10-108(1)
Aug. 15	Last day for a board of elections to receive application for Military ballot for state/local primary if not previously registered. §10-106(5)
Sept. 2	Last day for a board of elections to receive Military application for state/local primary if previously registered. §10-106(5)
Sept. 8	Last day to apply personally for Military ballot for state/local primary if previously registered. §10-106(5)
Sept. 8	Last day to postmark Military ballot for state/local primary and date it must be received by the board of elections is September 16. §10-114(1)

ABSENTEE VOTING FOR GENERAL ELECTION

Oct. 28	Last day to postmark application or letter of application for general election ballot. §8-400(2)(c)
Nov. 3	Last day to apply in person for ballot for general election ballot. §8-400(2)(c)
Nov. 3	Last day to postmark general election ballot. Must be received by the county board no later than Nov. 12th §8-412(1)
Nov. 4	Last day to deliver general election ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL

Oct. 3	Deadline to transmit Military/Special Federal ballots, per federal court order.
Oct. 24	Last day for a board of elections to receive application for a Military absentee ballot if not previously registered. §10-106(5)
Oct. 28	Last day for a board of elections to receive Military/Special Federal absentee application, if by mail and previously registered. §10-106(5)
Nov. 3	Last day to apply personally for a Military General Election ballot if previously registered. §10-106(5)
Nov. 3	Last day to postmark Military/Special Federal ballot and it must be received by the board of elections is Nov. 27. §10-114(1) §11-212

FINANCIAL DISCLOSURE

DATES FOR FILING:

PRIMARY ELECTION

Substantial Compliance

- Designating petitions must substantially comply with the statutory requirements of the election law to avoid a successful challenge.

Designating Petitions
MUST Haves:

- **Date of election**;
- **Name of candidate**;
- **Candidate's residence**, and if different, a mailing or post office address;
- **Office or Party Position sought including district number**;
- **Voter signature IN INK**
  - Other info (town, date, etc) can be done by someone else.

Designating Petition Sec. 6-132, ELECTION LAW

I, the undersigned, do hereby state that I am a duly enrolled voter of the _____ Party and entitled to vote at the next primary election of such party, to be held on _____, 20_____; that my place of residence is truly stated opposite my signature hereto, and I do hereby designate the following named person (or persons) as a candidate (or candidates) for the nomination of such party for public office or for election to a party position of such party.

Name(s) of Candidate(s)	Public Office or Party Position	Place of Residence (also Post Office address if not identical)

I do hereby appoint (here insert the names and addresses of at least three persons, all of whom shall be enrolled voters of said party),

as a committee to fill vacancies in accordance with the provisions of the election law.

IN WITNESS WHEREOF, I have hereunto set my hand, the day and year placed opposite my signature.

Date	Name of Signer (signature required) (printed name may be added)	Residence	Enter Town or City Except in NYC enter County
1. / / Printed Name			
2. / / Printed Name			
3. / / Printed Name			
4. / / Printed Name			
5. / / Printed Name			
6. / / Printed Name			
7. / / Printed Name			
8. / / Printed Name			
9. / / Printed Name			
10. / / Printed Name			

(You may use fewer or more signature lines - this is only to show format.)

Complete ONE of the following

1) STATEMENT OF WITNESS

I (name of witness) _____ state: I am a duly qualified voter of the State of New York and am an enrolled voter of the _____ Party.

I now reside at (residence address) _____.

Each of the individuals whose names are subscribed to this petition sheet containing (fill in number) _____ signatures, subscribed the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet.

I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement,, shall subject me to the same penalties as if I had been duly sworn.

_____ _____

Date Signature of Witness

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City _____ County _____

2) NOTARY PUBLIC OR COMMISSIONER OF DEEDS

On the dates above indicated before me personally came each of the voters whose signatures appear on this petition sheet containing (fill in number) _____ signatures, who signed same in my presence and who, being by me duly sworn, each for himself or herself, said that the foregoing statement made and subscribed by him or her was true.

_____ _____

Date Signature and Official Title of Officer Administering Oath

Designating Petitions
MUST Haves (con't):

- Changes to signature or date **MUST** be initialed by the witness.
- Information about the witness **MUST** be above the signature.
  - Omissions, errors or unexplained alterations can **INVALIDATE** the entire page.

Designating Petitions

MAY Have:

- A committee on vacancies (3 people)
  - For a designating petition, all members of the committee on vacancies must be enrolled members of the party.
  - For an independent nominating petition, all members of the committee on vacancies must be registered voters who live in the political unit.

General Election
Ballot Access:

- There are two ways that a candidate can qualify for the general election ballot:

1. Wining a statewide party primary.
2. By circulating **independent nominating petitions** to obtain an **independent line.**

Obtaining an Independent Line

- Anyone can circulate a petition to get on the general election ballot.
- The candidate picks a name for his or her party "Rent is 2 Damn High" or "Anti-Prohibition Party"
- For independent lines the nominating petition of an Assembly candidate that wants to appear on the general election ballot must contain:
  - 5% of the total number of votes cast for the office of Governor in the last election in that political unit but not more than 1,500 signatures.
  - Always aim to collect at least three times the number of signatures needed to ensure a sufficient number of "valid" signatures.

Independent Nominating Petitions
2014 Time Frames

First Day for Signing Petitions: July 8, 2014

Filing Dates: August 12 – August 19, 2014

Compiling Petitions:
Checklist

- ✓ Collect completed petition sheets from volunteers before filing deadline.
- ✓ Check for sufficient signatures.
- ✓ Bind petition sheets.
- ✓ Prepare Cover Sheets.

Compiling Petitions:

MUST

- ✓ Number sheets of the petition sequentially at the foot of each sheet.
- ✓ Fasten two or more petition sheets together in numerical order.
- ✓ Prepare a cover sheet for petitions containing ten or more pages.
- ✓ Local procedures will determine if a multi-volume petition requires a cover sheet for each volume.

Compiling Petitions:

MAY

- ✓ Fasten petition sheets together to form one or more volumes.

Compiling Petitions:
Coversheets (I)

MUST CONTAIN:

- **Name, residence** and, if different, mailing address of candidate;
- The **office or position sought** including **district number**;
- The **name of the party** or **independent body** making nomination;
- A **statement** that the **petition** contains a number of **signatures** equal or greater than that required;

(con't on next slide)

SAMPLE COVER SHEET

Designating and Independent Petitions

[Place Name of Party or Independent Body Here]

Name of Candidate	Public Office or Party Position	Residence Address (Also mailing address if different)

Volume Number ..... _____

Total Number of Volumes in Petition ..... _____

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: _____
(please print)

Residence Address: _____

_____
(also mailing address if different)

Phone: _____ Fax: _____
(Include if notice by fax desired)

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above:

_____
Candidate or Agent

SAMPLE COVER SHEET

Designating and Independent Petitions Filed In New York City and Counties which Utilize Petition Identification Numbering Systems

[Place Name of Party or Independent Body Here]

Name of Candidate	Public Office or Party Position	Residence Address (Also mailing address if different)

Total Number of Volumes in Petition ..... _____

Identification Numbers ..... _____

The petition contains the number, or in excess of the number, of valid signatures required by the Election Law.

Contact Person to Correct Deficiencies:

Name: _____
(please print)

Residence Address: _____

_____
(also mailing address if different)

Phone: _____ Fax: _____
(Include if notice by fax desired)

I hereby authorize that notice of any determination made by the Board of Elections be transmitted to the person named above:

_____
Candidate or Agent

SAMPLE PREPARED BY STATE BOARD OF ELECTIONS

Compiling Petitions:
Coversheets (II)

- The **volume number** or **identification number** of that volume;
- The **total number** of **volumes** in each petition of the **identification number** for each volume.
- NOTE: Additional information may be **required** if the petition contains more than one candidate.

May Contain:

- Name, address, phone and fax of contact person for BOE regarding deficiencies in binding or cover sheets.

Filing Petitions
Where to File:

<u>If Assembly District</u>:

- Is wholly contained within one county: **CBOE**
- Is wholly contained in the City of NY: **NYCBOE**
- Covers whole or portions of two or more counties: **SBOE**

Filing Petitions
General:

- Petitions must meet statutory requirements for filing or it is a **FATAL DEFECT**
- File between 9:00 am and 5:00 pm.
- If last day to file falls on a Saturday, Sunday, or legal holiday, the next business day becomes the last day to file (doesn't apply to petitions per se).
- All papers sent by mail (including petitions) in an envelope postmarked prior to midnight of the last day to file will be deemed timely filed and accepted when received (not in NYC).
- No filing by fax or email.

Part II:

BUSTING PETITIONS

Challenges to Petitions

Requires additional time, energy, and commitment during the campaign to:

- Examine opponent's petitions;
- Evaluate likelihood of success;
- Prepare;
- File;
- Serve objections; and
- Commence and litigate court proceedings.

Opponent's Petition: What to Look At (I)

Constitutional and/or statutory requirements to run

- U.S. citizen;
- 18 year old;
- Any jurisdictional residency requirement
  - Example – NYS Assembly
    - Resident of the State for 5 years; and
    - Resident of the Assembly district for 12 months immediately preceding the election

Opponent's Petitions: What to Look At (II):

- Timely filing of petition;
- Proper authorization if not enrolled member of the party for which they are a candidate (July 14, 2014);
  - Does not apply to judicial offices (Election Law §6-120(4)
- Correct form of petition (Election Law §6-132);
- Correct content of the petition.

Opponents' Petitions:
Signatures: ELIGIBILITY

- Are there enough signatures?
- Is the signer residing AND registered to vote in the Assembly District? (listed address may be wrong but still OK)
- Is the signer an enrolled member of the relevant political party?
- Has the signer signed another petition previously?

Opponents' Petitions:
Signatures: FORM

- Did the signer sign in ink?
- Did the signer use ditto marks? (not always fatal – but don't use them).
- Are there alterations on the petitions? (usually not fatal)
- Does the signature "belong" to the signer?

Opponents' Petitions:
Signatures: INFORMATION PROVIDED

- Did the signer provide the proper address?
- Did the signer sign within the petition period?
- Did the signer attempt to witness his/her own signature?
- Is the accurate town or city provided?

WITNESS STATEMENT (I)

- Is all the information provided?
  - Omissions, errors or unexplained alterations can invalidate the entire page.
- Did the witness sign and date the witness statement?
- Is the witness an enrolled member of the party in New York State?
- Does the petition properly state the number of signatures on the page?

Witness Statement (II)

- If the number of signatures is OVERSTATED: whole page is invalid.
- If the number of signatures in UNDERSTATED: then only the number of signatures stated is used.
- Does the witness include the proper town or city AND county?
- Does the signature "belong" to the witness?

Witness Statement (III)

- Did witness previously sign a petition for an opposing candidate?
- If witness was a Notary or Commissioner of Deeds:
  - Was the voter properly sworn?
  - Is the Notary or Commissioner duly commissioned?

  (May not be fatal, see cure provision in Executive Law.)

Fraud or Forgery?

Take note of reports from the field and use common sense …

"Common sense is not so common."
* Voltaire, Dictionnaire Philosophique (1764)

Remember …

- Must file authorization (if not a party member)*
  - Does not apply to judicial offices (Election Law §6-120 [4])

- Must file acceptance

Part III:

HOW TO BRING A CHALLENGE

At the Board of Elections…

- General objections MUST be filed by an OBJECTOR within 3 days after the petition is filed.
- Specific objections MUST be filed by an objector within 6 days of the filing of General objections and you DO NOT get the benefit of the postmark rule.
- Objections made wherever petition is filed.

In Court…

- MUST commence an action within 14 days after the last day to file designating petitions by an Objector or Candidate.
- EXCEPTION: A candidate removed from ballot may challenge BOE determination by petition brought within 3 days of BOE's determination.

"What You Need to Know About Your Ethical Responsibilities When Becoming a Judge": An Overview of the Applicable Rules Governing Judicial Conduct with Emphasis on the Political Activity Rule (22 NYCRR 100.5) and a Discussion of Selected Commission Determinations and Court of Appeals Decisions Involving Improper Political Activity by Judges.

Overview

Applicability of the Rules Governing Judicial Conduct (22 NYCRR Part 100 et sec), with emphasis on 100.5, "Judge or candidate for elective judicial office shall refrain from inappropriate political activity."

When considered a candidate under the Rules 100.0(A): Upon public announcement of candidacy or authorization of solicitation or acceptance of contributions.

Mandatory conduct:

- Maintain dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary
- Complete education program (w/in 30 days after nomination or 90 days prior to nomination)
- File financial disclosure statement with UCS Ethics Commission within 20 days
- "Respect and comply with the law" (100.2[A]). *E.g.,* Comply with Election Law required filings of campaign receipts and expenditures, political literature and required time frames for filing, contribution limitations.

Examples of Permissible Conduct:

- Participate in own campaign as permitted under the Election Law
- "Window period" for permissible activity: 100.0(Q) Begins nine months before primary, nominating convention or caucus and ends six months after election day or primary
- Attend political gatherings and speak on own behalf
- Advertise
- Be on a slate with other candidates
- Purchase two tickets to politically sponsored dinners, subject to $250 limitation

Examples of Impermissible Conduct:

- **Acting as a leader or office holder in political organization**: *Matter of King*, 2008 Annual Report 145 (judicial candidate did not resign as chair of local political party).

- **Partisan Political Activity**: *Matter of Maney,* 70 NY2d 27 (1987) (judge while not a candidate or in window period, planned to overthrow the local political leader and nominated candidates at a caucus); *Matter of Raab*, 100 NY2d 305 (2003) (judge participated in party's screening of candidates and in a phone bank for a candidate; Constitutionality of Rules upheld); *Matter of Farrell,* 2005 Annual Report 159 (judge made phone calls supporting candidacy of party chair).

- **Contributions to political organization or candidate**: *Matter of Burke,* 2015 Annual Report ___ Commn on Jud. Conduct, April 12, 2014) (judge's real estate company and law firm made political contributions); *Matter of Raab and Matter of Farrell, supra* (judges made lump sum payments to political parties).

- **Pledges or promises and commitments**: *Matter of Shanley,* 98 NY2d 310 (2002) (not improper for candidate to campaign as "law and order" candidate); *Matter of Watson*, 100 NY2d 290 (2003) (judicial candidate's statements amounted to promise to aid law enforcement rather than apply law neutrally; Constitutionality of Rules upheld); *Matter of Hafner*, 2001 Annual Report 113 (judicial candidate ran ads that implied he would treat defendants more harshly than incumbent and would not judge each case on the merits); *Matter of Polito,* 1999 Annual Report 129 (judicial candidate ran graphic and sensational ads promising to jail criminals); *Matter of Decker*, 1995 Annual Report 111(judge running for re-election disparagement of his opponent in response to attacks on judge, coupled with judge's public support of another candidate, warranted sanction).

- **False Statements/Misrepresentation**: *Matter of Shanley, supra* (judge misrepresented her education in campaign flyers); *Matter of Mullin,* 2001 Annual Report 113 (2000) (judge's campaign materials implied he was incumbent); *Matter of Chan*, 2010 Annual Report 124 and *Matter of Michels,* 2012 Annual Report 130 (2011) (campaign materials misrepresented that judges were endorsed by NY Times); *Matter of Fiore,* 1999 Annual Report 101 (judge who was not an attorney described himself as a "senior associate" in campaign literature).

- **Fraudulent Petitions**: *Matter of Greaney,* 2008 Annual Report 103 (judge collected signatures on designating petitions knowing that witnesses had not witnessed the petitions); *Matter of Heburn,* 84 NY2d 168 (1994) (judge falsely certified that he had witnessed signatures on nominating petitions).

- **Campaign Finance**: *Matter of Anderson*, 2013 Annual Report 75) (donor gave judicial candidate a check and a loan for amounts exceeding individual maximum contribution under Election Law, which judge then gave to her campaign); *Matter of Mullen*, 2002 Annual Report 129 (judge retained campaign funds which he used to finance subsequent judicial campaigns instead of returning funds to donors *pro rata*).

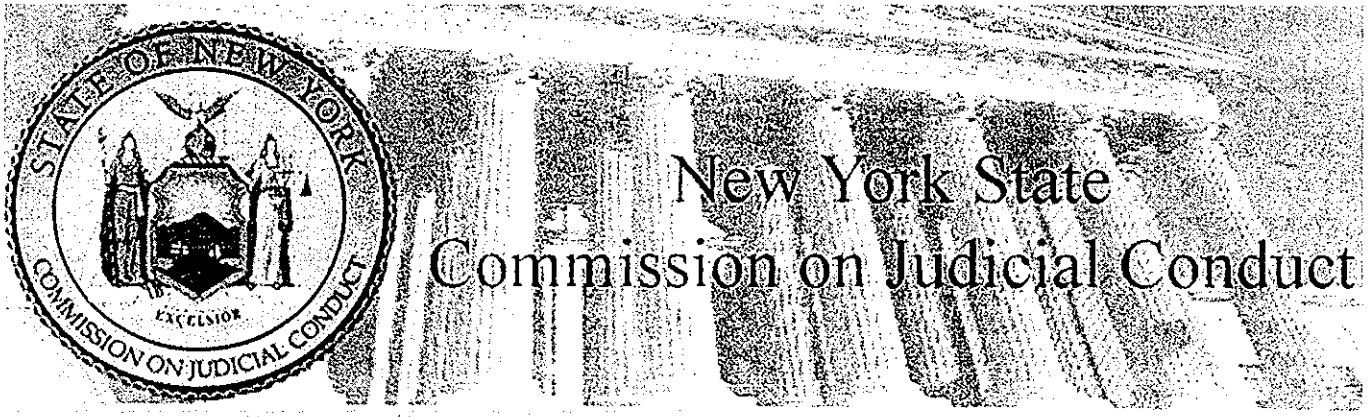
- **Personal Solicitation**: *Matter of Chan, supra* (judicial candidate sent letter to bar association soliciting contributions); *Matter of Yacknin,* 2009 Annual Report 176 (judge running for reelection importuned attorneys in court for "support"); *Williams-Yulee v Florida Bar* (pending petition for writ of certiorari, US Supreme Court, challenging the constitutionality of the Florida code's ban on personal solicitation of funds by judicial candidates).

Other Resources:

New York State Commission on Judicial Conduct: www.scjc.state.ny.us

NYS Unified Court System Judicial Campaign Ethics Center: http://www.nycourts.gov/ip/jcec/index.shtml

American Judicature Society Center for Judicial Ethics: https://www.ajs.org/judicial-ethics/



Rules Governing Judicial Conduct

The Chief Administrator of the Courts, with the approval of the Court of Appeals, promulgates Rules Governing Judicial Conduct, which are incumbent upon all judges of the New York State Unified Court System. Violations of those Rules may result in disciplinary action by the Commission.

The Rules are available on the court system's website: http://www.nycourts.gov/rules/chiefadmin/100.shtml. They are also published here.

Part 100 of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct

22 NYCRR Part 100

Preamble

Section 100.0 Terminology.

Section 100.1 A judge shall uphold the integrity and independence of the judiciary.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

Section 100.6 Application of the rules of judicial conduct.

Section 100.7 [Repealed]

Section 100.8 [Repealed]

Preamble

The rules governing judicial conduct are rules of reason. They should be applied consistently with constitutional requirements, statues, other court rules and decisional law and in the context of all relevant circumstances. The rules are to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

The rules are designed to provide guidance to judges and candidates for elective judicial office and to provide a structure for regulating conduct through disciplinary agencies. They are not designed or intended as a basis for civil liability or criminal prosecution.

The text of the rules is intended to govern conduct of judges and candidates for elective judicial office and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

The rules are not intended as an exhaustive guide for conduct. Judges and judicial candidates also should be governed in their judicial and personal conduct by general ethical standards. The rules are intended, however, to state basic standards which should govern their conduct and to provide guidance to assist them in establishing and maintaining high standards of judicial and personal conduct.

Section 100.0 Terminology.

The following terms used in this Part are defined as follows:

(A) A "candidate" is a person seeking selection for or retention in public office by election. A person becomes a candidate for public office as soon as he or she makes a public announcement of candidacy, or authorizes solicitation or acceptance of contributions.

(B) "Court personnel" does not include the lawyers in a proceeding before a judge.

(C) The "degree of relationship" is calculated according to the civil law system. That is, where the judge and the party are in the same line of descent, degree is ascertained by ascending or descending from the judge to the party, counting a degree for each person, including the party but excluding the judge. Where the judge and the party are in different lines of descent, degree is ascertained by ascending from the judge to the common ancestor, and descending to the party, counting a degree for each person in both lines, including the common ancestor and the party but excluding the judge. The following persons are relatives within the fourth degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, first cousin, child, grandchild, great-grandchild, nephew or niece. The sixth degree of relationship includes second cousins.

(D) "Economic interest" denotes ownership of more than a de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that

(1) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, cultural, fraternal or civic organization, or service by a judge's spouse or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization, unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities

(5) "de minimis" denotes an insignificant interest that could not raise reasonable questions as to a judge's impartiality.

(E) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

(F) "Knowingly", "knowledge", "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(G) "Law" denotes court rules as well as statutes, constitutional provisions and decisional law.

(H) "Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship.

(I) "Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship.

(J) "Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.

(K) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports.

(L) A "part-time judge", including an acting part-time judge, is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment.

(M) "Political organization" denotes a political party, political club or other group, the principal purpose of which is to further the election or appointment of candidates to political office.

(N) "Public election" includes primary and general elections; it includes partisan elections, nonpartisan elections and retention elections.

(O) "Require". The rules prescribing that a judge "require" certain conduct of others, like all of the rules in this Part, are rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control.

(P) "Rules"; citation. Unless otherwise made clear by the citation in the text, references to individual components of the rules are cited as follows:

"Part"-refers to Part 100.

"Section"-refers to a provision consisting of 100 followed by a decimal (100.1).

"Subdivision"-refers to a provision designated by a capital letter (A).

"Paragraph"-refers to a provision designated by an Arabic numeral (1)

"Subparagraph"-refers to a provision designated by a lower-case letter (a).

(Q) "Window Period" denotes a period beginning nine months before a primary election, judicial nominating convention, party caucus or other party meeting for nominating candidates for the elective judicial office for which a judge or non-judge is an announced candidate, or for which a committee or other organization has publicly solicited or supported the judge's or non-judge's candidacy, and ending, if the judge or non-judge is a candidate in the general election for that office, six months after the general election, or if he or she is not a candidate in the general election, six months after the date of the primary election, convention, caucus or meeting.

(R) "Impartiality" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(S) An "independent" judiciary is one free of outside influences or control.

(T) "Integrity" denotes probity, fairness, honesty, uprightness and soundness of character. "Integrity" also includes a firm adherence to this Part or its standard of values.

(U) A "pending proceeding" is one that has begun but not yet reached its final disposition.

(V) An "impending proceeding" is one that is reasonably foreseeable but has not yet been commenced.

Historical Note
Sec. filed Feb. 1, 1996 eff. Jan. 1, 1996.
Amended (D) and (D)(5) on Sept. 9, 2004.
Added (R) - (V) on Feb. 14, 2006

Section 100.1 A judge shall uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Part 100 are to be construed and applied to further that objective.

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.1, new added by renum. and amd. 33.1, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.2 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

(A) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members.

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.2, new added by renum. and amd. 33.2, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.3 A judge shall perform the duties of judicial office impartially and diligently.

(A) Judicial duties in general. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative Responsibilities.

(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(2) A judge shall require order and decorum in proceedings before the judge.

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

(4) A judge shall perform judicial duties without bias or prejudice against or in favor of any person. A judge in the performance of judicial duties shall not, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, and shall require staff, court officials and others subject to the judge's direction and control to refrain from such words or conduct.

(5) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, against parties, witnesses, counsel or others. This paragraph does not preclude legitimate advocacy when age, race, creed, color, sex, sexual orientation, religion, national origin, disability, marital status or socioeconomic status, or other similar factors are issues in the proceeding.

(6) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. 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 or their lawyers concerning a pending or impending proceeding, except:

(a) Ex parte communications that are made for scheduling or administrative purposes and that do not affect a substantial right of any party are authorized, provided the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and the judge, insofar as practical and appropriate, makes provision for prompt notification of other parties or their lawyers 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 a copy of such advice if the advice is given in writing and the substance of the advice if it is given orally, 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, with the consent of the parties, may confer separately with the parties and their lawyers on agreed-upon matters.

(e) A judge may initiate or consider any ex parte communications when authorized by law to do so.

(7) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

(8) A judge shall not make any public comment about a pending or impending proceeding in any court within the United States or its territories. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This paragraph does not apply to proceedings in which the judge is a litigant in a personal capacity.

(9) A judge shall not:
(a) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;

(b) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

(C) Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered. A judge shall not appoint or vote for the appointment of any person as a member of the judge's staff or that of the court of which the judge is a member, or as an appointee in a judicial proceeding, who is a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such a person. A judge shall refrain from recommending a relative within the fourth degree of relationship of either the judge or the judge's spouse or the spouse of such person for appointment or employment to another judge serving in the same court. A judge also shall comply with the requirements of Part 8 of the Rules of the Chief Judge (22 NYCRR Part 8) relating to the Appointment of relatives of judges. Nothing in this paragraph shall prohibit appointment of the spouse of the town or village justice, or other member of such justice's household, as clerk of the town or village court in which such justice sits, provided that the justice obtains the prior approval of the Chief Administrator of the Courts, which may be given upon a showing of good cause.

(D) Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a substantial violation of this Part shall take appropriate action.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a substantial violation of the Code of Professional Responsibility shall take appropriate action.

(3) Acts of a judge in the discharge of disciplinary responsibilities are part of a judge's judicial duties.

(E) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) (i) the judge has a personal bias or prejudice concerning a party or (ii) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge knows that (i) the judge served as a lawyer in the matter in controversy, or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or (iii) the judge has been a material witness concerning it;

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceeding;

(d) the judge knows that the judge or the judge's spouse, or a person known by the judge to be within the sixth degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding;
(ii) is an officer, director or trustee of a party;
(iii) has an interest that could be substantially affected by the proceeding;

(e) The judge knows that the judge or the judge's spouse, or a person known by the judge to be within the fourth degree of relationship to either of them, or the spouse of such a person, is acting as a lawyer in the proceeding or is likely to be a material witness in the proceeding.

(f) the judge, while a judge or while a candidate for judicial office, has made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or has made a public statement not in the judge's adjudicative capacity that commits the judge with respect to
(i) an issue in the proceeding; or
(ii) the parties or controversy in the proceeding.

(g) notwithstanding the provisions of subparagraphs (c) and (d) above, if a judge would be disqualified because of the appearance or discovery, after the matter was assigned to the judge, that the judge individually or as fiduciary, the judge's spouse, or a minor child residing in his or her household has an economic interest in a party to the proceeding, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(F) Remittal of Disqualification. A judge disqualified by the terms of subdivision (E), except subparagraph (1)(a)(i), subparagraph (1)(b)(i) or (iii) or subparagraph (1)(d)(i) of this section, may disclose on the record the basis of the judge's disqualification. If, following such disclosure of any basis for disqualification, the parties who have appeared and not defaulted and their lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge believes that he or she will be impartial and is willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

Amended 100.3 (B)(9)-(11) & (E)(1)(f) - (g) Feb. 14, 2006

Amended 100.3(C)(3) and 100.3(E)(1)(d) & (e) Feb. 28, 2006

Section 100.4 A judge shall so conduct the judge's extra-judicial activities as to minimize the risk of conflict with judicial obligations.

(A) Extra-Judicial Activities in General. A judge shall conduct all of the judge's extra- judicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;

(2) detract from the dignity of judicial office; or

(3) interfere with the proper performance of judicial duties and are not incompatible with judicial office.

(B) Avocational Activities. A judge may speak, write, lecture, teach and participate in extra- judicial activities subject to the requirements of this Part.

(C) Governmental, Civic, or Charitable Activities.

(1) A full-time judge shall not appear at a public hearing before an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

(2)

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

(b) A judge shall not accept appointment or employment as a peace officer or police officer as those terms are defined in section 1.20 of the Criminal Procedure Law.

(3) A judge may be a member or serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, cultural, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Part.

(a) A judge shall not serve as an officer, director, trustee or non-legal advisor if it is likely that the organization

(i) will be engaged in proceedings that ordinarily would come before the judge, or
(ii) if the judge is a full-time judge, will be engaged regularly in adversary proceedings in any court.

(b) A judge as an officer, director, trustee or non-legal advisor, or a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities;
(ii) may not be a speaker or the guest of honor at an organization's fund-raising events, but the judge may attend such events. Nothing in this subparagraph shall prohibit a judge from being a speaker or guest of honor at a court employee organization, bar association or law school function or from accepting at another organization's fund-raising event an unadvertised award ancillary to such event;
(iii) may make recommendations to public and private fund-granting organizations on projects and programs

concerning the law, the legal system or the administration of justice; and
(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation, but may be listed as an officer, director or trustee of such an organization. Use of an organization's regular letterhead for fund-raising or membership solicitation does not violate this provision, provided the letterhead lists only the judge's name and office or other position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.

(D) Financial activities.

(1) A judge shall not engage in financial and business dealings that:

(a) may reasonably be perceived to exploit the judge's judicial position;

(b) involve the judge with any business, organization or activity that ordinarily will come before the judge; or

(c) involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge, subject to the requirements of this Part, may hold and manage investments of the judge and members of the judge's family, including real estate.

(3) A full-time judge shall not serve as an officer, director, manager, general partner, advisor, employee or other active participant of any business entity, except that:

(a) the foregoing restriction shall not be applicable to a judge who assumed judicial office prior to July 1, 1965, and maintained such position or activity continuously since that date; and

(b) a judge, subject to the requirements of this Part, may manage and participate in a business entity engaged solely in investment of the financial resources of the judge or members of the judge's family; and

(c) any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from this paragraph during the period of such interim or temporary appointment.

(4) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household not to accept, a gift, bequest, favor or loan from anyone except:

(a) a "gift" incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award

or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under section 100.3(E);

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and if its value exceeds $150.00, the judge reports it in the same manner as the judge reports compensation in Section 100.4(H).

(E) Fiduciary Activities.

(1) A full-time judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, designated by an instrument executed after January 1, 1974, except for the estate, trust or person of a member of the judge's family, or, with the approval of the Chief Administrator of the Courts, a person not a member of the judge's family with whom the judge has maintained a longstanding personal relationship of trust and confidence, and then only if such services will not interfere with the proper performance of judicial duties.

(2) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

(3) Any person who may be appointed to fill a full-time judicial vacancy on an interim or temporary basis pending an election to fill such vacancy may apply to the Chief Administrator of the Courts for exemption from paragraphs (1) and (2) during the period of such interim or temporary appointment.

(F) Service as Arbitrator or Mediator. A full-time judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(G) Practice of Law. A full-time judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to a member of the judge's family.

(H) Compensation, Reimbursement and Reporting.

(1) Compensation and reimbursement. A full-time judge may receive compensation and reimbursement of expenses for the extra- judicial activities permitted by this Part, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

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

(b) Expense reimbursement shall 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 or guest. Any payment in excess of such an amount is compensation.

(c) No full-time judge shall solicit or receive compensation for extra- judicial activities performed for or on behalf of: (1) New York State, its political subdivisions or any office or agency thereof; (2) school, college or university that is financially supported primarily by New York State or any of its political subdivisions, or any officially recognized body of students thereof, except that a judge may receive the ordinary compensation for a lecture or for teaching a regular course of study at any college or university if the teaching does not conflict with the proper performance of judicial duties; or (3) any private legal aid bureau or society designated to represent indigents in accordance with article 18-B of the County Law.

(2) Public Reports. A full-time judge shall report the date, place and nature of any activity for which the judge received compensation in excess of $150, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The judge's report shall be made at least annually and shall be filed as a public document in the office of the clerk of the court on which the judge serves or other office designated by law.

(I) Financial Disclosure. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this section and in section 100.3(F), or as required by Part 40 of the Rules of the Chief Judge (22 NYCRR Part 40), or as otherwise required by law.

Historical Note
Sec. filed Aug. 1, 1972; amd. filed Nov. 26, 1976; renum. 111.4, new added by renum. and amd. 33.4, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996; amds. filed: Feb. 27, 1996; Feb. 9, 1998 eff. Jan. 23, 1998. Amended (C)(3)(b)(ii).

Section 100.5 A judge or candidate for elective judicial office shall refrain from inappropriate political activity.

(A) Incumbent judges and others running for public election to judicial office.

(1) Neither a sitting judge nor a candidate for public election to judicial office shall directly or indirectly engage in any political activity except (i) as otherwise authorized by this section or by law, (ii) to vote and to identify himself or herself as a member of a political party, and (iii) on behalf of measures to improve the law, the legal system or the administration of justice. Prohibited political activity shall include:

(a) acting as a leader or holding an office in a political organization;

(b) except as provided in Section 100.5(A)(3), being a member of a political organization other than enrollment and membership in a political party;

(c) engaging in any partisan political activity, provided that nothing in this section shall prohibit a judge or candidate from participating in his or her own campaign for elective judicial office or shall restrict a non-judge holder of public office in the exercise of the functions of that office;

(d) participating in any political campaign for any office or permitting his or her name to be used in connection with any activity of a political organization;

(e) publicly endorsing or publicly opposing (other than by running against) another candidate for public office;

(f) making speeches on behalf of a political organization or another candidate;

(g) attending political gatherings;

(h) soliciting funds for, paying an assessment to, or making a contribution to a political organization or candidate; or

(i) purchasing tickets for politically sponsored dinners or other functions, including any such function for a non-political purpose.

(2) A judge or non-judge who is a candidate for public election to judicial office may participate in his or her own campaign for judicial office as provided in this section and may contribute to his or her own campaign as permitted under the Election Law. During the Window Period as defined in Subdivision (Q) of section 100.0 of this Part, a judge or non-judge who is a candidate for public election to judicial office, except as prohibited by law, may:

(i) attend and speak to gatherings on his or her own behalf, provided that the candidate does not personally solicit contributions;

(ii) appear in newspaper, television and other media advertisements supporting his or her candidacy, and distribute pamphlets and other promotional campaign literature supporting his or her candidacy;

(iii) appear at gatherings, and in newspaper, television and other media advertisements with the candidates who make up the slate of which the judge or candidate is a part;

(iv) permit the candidate's name to be listed on election materials along with the names of other candidates for elective public office;

(v) purchase two tickets to, and attend, politically sponsored dinners and other functions, provided that the cost of the ticket to such dinner or other function shall not exceed the proportionate cost of the dinner or function. The cost of the ticket shall be deemed to constitute the proportionate cost of the dinner or function if the cost of the ticket is $250 or less. A candidate may not pay more than $250 for a ticket unless he or she obtains a statement from the sponsor of the dinner or function that the amount paid represents the proportionate cost of the dinner or function.

(3) A non-judge who is a candidate for public election to judicial office may also be a member of a political organization and continue to pay ordinary assessments and ordinary contributions to such organization.

(4) A judge or a non-judge who is a candidate for public election to judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the impartiality, integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under this Part;

(c) except to the extent permitted bySection 100.5(A)(5), shall not authorize or knowingly permit any person to do for the candidate what the candidate is prohibited from doing under this Part;

(d) shall not:

(i) make pledges or promises of conduct in office that are inconsistent with the impartial performance of the adjudicative duties of the office;
(ii) with respect to cases, controversies or issues that are likely to come before the court, make commitments that are inconsistent with the impartial performance of the adjudicative duties of the office;
(iii) knowingly make any false statement or misrepresent the identity, qualifications, current position or other fact concerning the candidate or an opponent; but

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate subparagraphs 100.5(A)(4)(a) and (d).

(f) shall complete an education program, either in person or by videotape or by internet correspondence course, developed or approved by the Chief Administrator or his or her designee within 30 days after receiving the nomination or 90 days prior to receiving the nomination for judicial office. The date of nomination for candidates running in a primary election shall be the date upon which the candidate files a designating petition with the Board of Elections. This provision shall apply to all candidates for elective judicial office in the Unified Court System except for town and village justices.

(g) shall file with the Ethics Commission for the Unified Court System a financial disclosure statement containing the information and in the form, set forth in the Annual Statement of Financial Disclosure adopted by the Chief Judge of the State of New York. Such statement shall be filed within 20 days following the date on which the judge or non-judge becomes such a candidate; provided, however, that the Ethics Commission for the Unified Court System may grant an additional period of time within which to file such statement in accordance with rules promulgated pursuant to section 40.1(t)(3) of the Rules of the Chief Judge of the State of New York (22 NYCRR). Notwithstanding the foregoing compliance with this subparagraph shall not be necessary where a judge or non-judge already is or was required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge. This requirement does not apply to candidates for election to town and village courts.

(5) A judge or candidate for public election to judicial office shall not personally solicit or accept campaign contributions, but may establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions and support from the public, including lawyers, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees may solicit and accept such contributions and support only during the window period. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

(6) A judge or a non-judge who is a candidate for public election to judicial office may not permit the use of campaign contributions or personal funds to pay for campaign-related goods or services for which fair value was not received.

(7) Independent Judicial Election Qualifications Commissions, created pursuant to Part 150 of the Rules of the Chief Administrator of the Courts, shall evaluate candidates for elected judicial office, other than justice of a town or village court.

(B) Judge as candidate for nonjudicial office. A judge shall resign from judicial office upon becoming a candidate for elective nonjudicial office either in a primary or in a general election, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(C) Judge's staff. A judge shall prohibit members of the judge's staff who are the judge's personal appointees from engaging in the following political activity:

(1) holding an elective office in a political organization, except as a delegate to a judicial nominating convention or a member of a county committee other than the executive committee of a county committee;

(2) contributing, directly or indirectly, money or other valuable consideration in amounts exceeding $500 in the aggregate during any calendar year to all political campaigns for political office, and other partisan political activity including, but not limited to, the purchasing of tickets to political functions, except that this $500 limitation shall not apply to an appointee's contributions to his or her own campaign. Where an appointee is a candidate for judicial office, reference also shall be made to appropriate sections of the Election Law;

(3) personally soliciting funds in connection with a partisan political purpose, or personally selling tickets to or promoting a fund-raising activity of a political candidate, political party, or partisan political club; or

(4) political conduct prohibited by section 50.5 of the Rules of the Chief Judge (22 NYCRR 50.5).

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.5, new added by renum. and amd. 33.5, filed Feb. 2, 1982; amds. filed: Dec. 21, 1983; May 8, 1985; March 2, 1989; April 11, 1989; Oct. 30, 1989; Oct. 31, 1990; repealed, new filed; amd. filed March 25, 1996 eff. March 21, 1996. Amended (A)(2)(v).

Amended 100.5 (A)(2)(v), (A)(4)(a), (A)(4)(d)(i)-(ii), (A)(4)(f), (A)(6), (A)(7) Feb. 14, 2006. Amended 100.5(A)(4)(g) Sept. 1, 2006. Amended 100.5(A)(4)(f) on Oct. 24, 2007.

Section 100.6 Application of the rules of judicial conduct.

(A) General application. All judges in the unified court system and all other persons to whom by their terms these rules apply, e.g., candidates for elective judicial office, shall comply with these rules of judicial conduct, except as provided below. All other persons, including judicial hearing officers, who perform judicial functions within the judicial system shall comply with such rules in the performance of their judicial functions and otherwise shall so far as practical and appropriate use such rules as guides to their conduct.

(B) Part-time judge. A part-time judge:

(1) is not required to comply with section 100.4(C)(1), 100.4(C)(2)(a), 100.4(C)(3)(a)(ii), 100.4(E)(1), 100.4(F), 100.4(G), and 100.4(H);

(2) shall not practice law in the court on which the judge serves, or in any other court in the county in which his or her court is located, before a judge who is permitted to practice law, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(3) shall not permit his or her partners or associates to practice law in the court in which he or she is a judge, and shall not permit the practice of law in his or her court by the law partners or associates of another judge of the same court who is permitted to practice law, but may permit the practice of law in his or her court by the partners or associates of a judge of a court in another town, village or city who is permitted to practice law;

(4) may accept private employment or public employment in a Federal, State or municipal department or agency, provided that such employment is not incompatible with judicial office and does not conflict or interfere with the proper performance of the judge's duties.

(5) Nothing in this rule shall further limit the practice of law by the partners or associates of a part-time judge in any court to which such part-time judge is temporarily assigned to serve pursuant to section 106(2) of the Uniform Justice Court Act or Section 107 of the Uniform City Court Act in front of another judge serving in that court before whom the partners or associates are permitted to appear absent such temporary assignment.

(C) Administrative law judges. The provisions of this Part are not applicable to administrative law judges unless adopted by the rules of the employing agency.

(D) Time for compliance. A person to whom these rules become applicable shall comply immediately with all provisions of this Part, except that, with respect to section 100.4(D)(3) and 100.4(E), such person may make application to the Chief Administrator for additional time to comply, in no event to exceed one year, which the Chief Administrator may grant for good cause shown.

(E) Relationship to Code of Judicial Conduct. To the extent that any provision of the Code of Judicial Conduct as adopted by the New York State Bar Association is inconsistent with any of these rules, these rules shall prevail.

Historical Note
Sec. filed Aug. 1, 1972; repealed, new added by renum. 100.7, filed Nov. 26, 1976; renum. 111.6, new added by renum. and amd. 33.6, filed Feb. 2, 1982; repealed, new filed Feb. 1, 1996 eff. Jan. 1, 1996.

Amended 100.6(E) Feb. 14, 2006

Added 100.6(B)(5) on March 24, 2010

Section 100.7 [Repealed]

Historical Note
Sec. filed Aug. 1, 1972; renum. 100.6, new filed Nov. 26, 1976; renum. 111.7, new added by renum. and amd. 33.7, filed Feb. 2, 1982; amd. filed July 14, 1986; repealed, filed Feb. 1, 1996 eff. Jan. 1, 1996.

Section 100.8 [Repealed]

Historical Note
Sec. filed Aug. 1, 1972; renum. 111.8, filed Feb. 2, 1982 eff. Jan. 1, 1982.

08 Cal. Daily Op. Serv. 554
128 S.Ct. 791
169 L.Ed.2d 665
2008 Daily Journal D.A.R. 638
21 Fla. L. Weekly Fed. S 42
552 U.S. 196
76 USLW 4052

NEW YORK STATE BOARD OF ELECTIONS, et al., Petitioners,
v.
Margarita L"PEZ TORRES et al.
No. 06ñ766.
Supreme Court of the United States
Argued Oct. 3, 2007.Decided Jan. 16, 2008.

[128 S.Ct. 793]

[552 U.S. 196]

Syllabus [*]

Under New York's current Constitution, State Supreme Court Justices are elected in each of the State's judicial districts. Since 1921, New York's election law has required parties to select their nominees by a convention composed of delegates elected by party members. An individual running for delegate must submit a 500ñsignature petition collected within a specified time. The convention's nominees appear automatically on the general-election ballot, along with any independent candidates who meet certain statutory requirements. Respondents filed suit, seeking, *inter alia,* a declaration that New York's convention system violates the First Amendment rights of challengers running against candidates favored by party leaders and an injunction mandating a direct primary election to select Supreme Court nominees. The Federal District Court issued a preliminary injunction, pending the enactment of a new state statutory scheme, and the Second Circuit affirmed.

Held: New York's system of choosing party nominees for the State Supreme Court does not violate the First Amendment. Pp. 797 ñ 801.

(a) Because a political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform, a State's power to prescribe party use of primaries or conventions to select nominees for the general election is not without limits. [128 S.Ct. 794] *California Democratic Party v. Jones,* 530 U.S. 567, 577, 120 S.Ct. 2402, 147 L.Ed.2d 502. However, respondents, who claim their own associational right to join and have influence in the party, are in no position to rely on the right that the First Amendment confers on political parties. Pp. 797 ñ 799.

(b) Respondents' contention that New York's electoral system does not assure them a fair chance of prevailing in their parties' candidate-selection process finds no support in this Court's precedents. Even if *Kusper v. Pontikes,* 414 U.S. 51, 57, 94 S.Ct. 303, 38 L.Ed.2d 260, which acknowledged an

individual's associational right to vote in a party primary without undue state-imposed impediment, were extended to cover the right to run in a party primary, the New York law's signature and deadline requirements are entirely reasonable. A State may demand a minimum degree of support

[552 U.S. 197]

for candidate access to a ballot, see *Jenness v. Fortson,* 403 U.S. 431, 442, 91 S.Ct. 1970, 29 L.Ed.2d 554. P. 798.

(c) Respondents' real complaint is that the convention process following the delegate election does not give them a realistic chance to secure their party's nomination because the party leadership garners more votes for its delegate slate and effectively determines the nominees. This says no more than that the party leadership has more widespread support than a candidate not supported by the leadership. Cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. *E.g., Bullock v. Carter,* 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92. Those cases do not establish an individual's constitutional right to have a ìfair shotî at winning a party's nomination. Pp. 798 ñ 800.

(d) Respondents' argument that the existence of entrenched ìone-party ruleî in the State's general election demands that the First Amendment be used to impose additional competition in the parties' nominee-selection process is a novel and implausible reading of the First Amendment. Pp. 800 ñ 801.

462 F.3d 161, reversed.

SCALIA, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, SOUTER, THOMAS, GINSBURG, BREYER, and ALITO, JJ., joined. STEVENS, J., filed a concurring opinion, in which SOUTER, J., joined. KENNEDY, J., filed an opinion concurring in the judgment, in which BREYER, J., joined as to Part II.

Theodore B. Olson, for Petitioners New York State Board of Elections, et al.

Andrew J. Rossman, for Petitioners New York County Democratic Committee, et al.

Frederick A.O. Schwarz, Jr., for Respondents.Todd D. Valentine, Albany, NY, Randy M. Mastro, Jennifer L. Conn, Gibson, Dunn & Crutcher LLP, New York, NY, Theodore B. Olson, Matthew D. McGill, Michael S. Diamant, Gibson, Dunn & Crutcher LLP, Washington, D.C., for Petitioners New York State Board of Elections, Douglas Kellner, Neil W. Kelleher, Helena Moses Donohue and Evelyn J. Aquila.Carter G. Phillips, Sidley Austin LLP, Washington, D.C., for the New York Republican State Committee, Thomas C. Goldstein, Amanda R. Johnson, Akin Gump Strauss Hauer & Feld LLP, Washington, D.C., for the New York County Democratic Committee, Steven M. Pesner, Andrew J. Rossman, James P. Chou, James E. d'Auguste, Vincenzo[128 S.Ct. 795] A. DeLeo, Jamison A. Diehl, Michael D. Lockard, Akin Gump Strauss Hauer & Feld LLP, New York, New York, for the New York County Democratic Committee, Edward P. Lazarus, Akin Gump Strauss Hauer & Feld LLP, Los Angeles, California, for the New York County Democratic Committee, Joseph L. Forstadt, Ernst H. Rosenberger,

Burton N. Lipshie, David A. Sifre, Stroock & Stroock & Lavan, New York, New York, for Associations of New York State Supreme Court Justices in the City and State of New York Honorable David Demarest, J.S.C., Arthur W. Greig, New York, New York, for the New York County Democratic Committee.Andrew M. Cuomo, New York, NY, Barbara D. Underwood, Solicitor General, Benjamin N. Gutman, Deputy Solicitor General, Denise A. Hartman, Assistant Solicitor General, for Petitioner Attorney General of the State of New York as Statutory Intervenor.Paul M. Smith, Jenner & Block LLP, Washington, D.C., Jeremy M. Creelan, Elizabeth Valentina, Carletta F. Higginson, Matthew W. Alsdorf, Joshua A. Block, Jenner & Block LLP, New York, NY, Adam H. Morse, Jenner & Block LLP, Chicago, IL, Frederick A.O. Schwarz, Jr., Burt Neuborne, Deborah Goldberg, James J. Sample Aziz Huq, David Gans, New York, NY, Kent A. Yalowitz, Glynn K. Spelliscy, Joshua Brook, J. Alex Brophy, Yue-Han Chow, Arnold & Porter LLP, New York, NY, for Respondents.**Justice SCALIA delivered the opinion of the Court.**

[552 U.S. 198]

The State of New York requires that political parties select their nominees for Supreme Court Justice at a convention of delegates chosen by party members in a primary election. We consider whether this electoral system violates the First Amendment rights of prospective party candidates.

IA

The Supreme Court of New York is the State's trial court of general jurisdiction, with an Appellate Division that hears appeals from certain lower courts. See N.Y. Const., Art.

[552 U.S. 199]

VI, ßß 7, 8. Under New York's current Constitution, the State is divided into 12 judicial districts, see Art. VI, ß 6(a); N.Y. Jud. Law Ann. ß 140 (West 2005), and Supreme Court Justices are elected to 14ñyear terms in each such district, see N.Y. Const., Art. VI, ß 6(c). The New York Legislature has provided for the election of a total of 328 Supreme Court Justices in this fashion. See N.Y. Jud. Law Ann. ß 140ña (West Supp.2007).

Over the years, New York has changed the method by which Supreme Court Justices are selected several times. Under the New York Constitution of 1821, Art. IV, ß 7, all judicial officers, except Justices of the Peace, were appointed by the Governor with the consent of the Senate. See 7 Sources and Documents of the U.S. Constitutions 181, 184 (W. Swindler ed.1978). In 1846, New York amended its Constitution to require popular election of the Justices of the Supreme Court (and also the Judges of the New York Court of Appeals). *Id.*, at 192, 200 (N.Y. Const. of 1846, Art. VI, ß 12). In the early years under that regime, the State allowed political parties to choose their own method of [128 S.Ct. 796] selecting the judicial candidates who would bear their endorsements on the general-election ballot. See, *e.g.*, Report of Joint Committee of Senate and Assembly of New York, Appointed to Investigate Primary and Election Laws of This and Other States, S. Doc. No. 26, pp. 195ñ219 (1910). The major parties opted for party conventions, the same method then employed to nominate candidates

for other state offices. *Ibid.;* see also P. Ray, An Introduction to Political Parties and Practical Politics 94 (1913).

In 1911, the New York Legislature enacted a law requiring political parties to select Supreme Court nominees (and most other nominees who did not run statewide) through direct primary elections. Act of Oct. 18, 1911, ch. 891, ß 45(4), 1911 N.Y. Laws 2657, 2682. The primary system came to be criticized as a ìdevice capable of astute and successful manipulation by professionals,î Editorial, The State Convention,

[552 U.S. 200]

N.Y. Times, May 1, 1917, p. 12, and the Republican candidate for Governor in 1920 campaigned against it as ìa fraudî that ìoffered the opportunity for two things, for the demagogue and the man with money,î Miller Declares Primary a Fraud, N.Y. Times, Oct. 23, 1920, p. 4. A law enacted in 1921 required parties to select their candidates for the Supreme Court by a convention composed of delegates elected by party members. Act of May 2, 1921, ch. 479, ßß 45(1), 110, 1921 N.Y. Laws 1451, 1454, 1471.

New York retains this system of choosing party nominees for Supreme Court Justice to this day. Section 6ñ106 of New York's election law sets forth its basic operation: ìParty nominations for the office of justice of the supreme court shall be made by the judicial district convention.î N.Y. Elec. Law Ann. ß 6ñ106 (West 2007). A ìpartyî is any political organization whose candidate for Governor received 50,000 or more votes in the most recent election. ß 1ñ104(3). In a September ìdelegate primary,î party members elect delegates from each of New York's 150 assembly districts to attend the party's judicial convention for the judicial district in which the assembly district is located. See N.Y. State Law Ann. ß 121 (West 2003); N.Y. Elec. Law Ann. ßß 6ñ124, 8ñ100(1)(a) (West 2007). An individual may run for delegate by submitting to the Board of Elections a designating petition signed by 500 enrolled party members residing in the assembly district, or by five percent of such enrolled members, whichever is less. ßß 6ñ136(2)(i), (3). These signatures must be gathered within a 37ñday period preceding the filing deadline, which is approximately two months before the delegate primary. ßß 6ñ134(4), 6ñ158(1). The delegates elected in these primaries are uncommitted; the primary ballot does not specify the judicial nominee whom they will support. ß 7ñ114.

The nominating conventions take place one to two weeks after the delegate primary. ßß 6ñ126, 6ñ158(5). Each of the 12 judicial districts has its own convention to nominate the

[552 U.S. 201]

party's Supreme Court candidate or candidates who will run at large in that district in the general election. ßß 6ñ124, 6ñ156. The general election takes place in November. ß 8ñ100(1)(c). The nominees from the party conventions appear automatically on the general-election ballot. ß 7ñ104(5). They may be joined on the general-election ballot by independent candidates and candidates of political organizations that fail to meet the 50,000 vote threshold for ìpartyî status; these candidates gain access to the ballot by submitting timely nominating petitions with (depending on

the judicial district) 3,500 or 4,000 signatures from voters in that district or signatures from five percent of the number of votes cast for Governor[128 S.Ct. 797] in that district in the prior election, whichever is less. ßß 6ñ138, 6ñ142(2).

B

Respondent LÛpez Torres was elected in 1992 to the civil court for Kings Countyóa court with more limited jurisdiction than the Supreme Courtóhaving gained the nomination of the Democratic Party through a primary election. She claims that soon after her election, party leaders began to demand that she make patronage hires, and that her consistent refusal to do so caused the local party to oppose her unsuccessful candidacy at the Supreme Court nominating conventions in 1997, 2002, and 2003. The following year, LÛpez Torresótogether with other candidates who had failed to secure the nominations of their parties, voters who claimed to have supported those candidates, and the New York branch of a public-interest organization called Common Causeóbrought suit in federal court against the New York Board of Elections, which is responsible for administering and enforcing the New York election law. See ßß 3ñ102, 3ñ104. They contended that New York's election law burdened the rights of challengers seeking to run against candidates favored by the party leadership, and deprived voters and candidates of their rights to gain access to the ballot and to associate in choosing their party's candidates. As relevant

[552 U.S. 202]

here, they sought a declaration that New York's convention system for selecting Supreme Court Justices violates their First Amendment rights, and an injunction mandating the establishment of a direct primary election to select party nominees for Supreme Court Justice.

The District Court issued a preliminary injunction granting the relief requested, pending the New York Legislature's enactment of a new statutory scheme. 411 F.Supp.2d 212, 256 (E.D.N.Y.2006). A unanimous panel of the United States Court of Appeals for the Second Circuit affirmed. 462 F.3d 161 (2006). It held that voters and candidates possess a First Amendment right to a ìrealistic opportunity to participate in [a political party's] nominating process, and to do so free from burdens that are both severe and unnecessary.î *Id.*, at 187. New York's electoral law violated that right because of the quantity of signatures and delegate recruits required to obtain a Supreme Court nomination at a judicial convention, see *id.*, at 197, and because of the apparent reality that party leaders can control delegates, see *id.*, at 198ñ200. In the court's view, because ìone-party ruleî prevailed within New York's judicial districts, a candidate had a constitutional right to gain access to the party's convention, notwithstanding her ability to get on the general-election ballot by petition signatures. *Id.*, at 193ñ195, 200. The Second Circuit's holding effectively returned New York to the system of electing Supreme Court Justices that existed before the 1921 amendments to the election law. We granted certiorari. 549 U.S. 1204, 127 S.Ct. 1325, 167 L.Ed.2d 72 (2007).

IIA

A political party has a First Amendment right to limit its membership as it wishes, and to choose a candidate-selection process that will in its view produce the nominee who best represents its political platform.

[552 U.S. 203]

Democratic Party of United States v. Wisconsin ex rel. La Follette, 450 U.S. 107, 122, 101 S.Ct. 1010, 67 L.Ed.2d 82 (1981); *California Democratic Party v. Jones,* 530 U.S. 567, 574ñ575, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000). These rights are circumscribed, however, when the State gives the party a role in the election processóas New York has done [128 S.Ct. 798] here by giving certain parties the right to have their candidates appear with party endorsement on the general-election ballot. Then, for example, the party's racially discriminatory action may become state action that violates the Fifteenth Amendment. See *id.,* at 573, 120 S.Ct. 2402. And then also the State acquires a legitimate governmental interest in ensuring the fairness of the party's nominating process, enabling it to prescribe what that process must be. *Id.,* at 572ñ573, 120 S.Ct. 2402. We have, for example, considered it to be ìtoo plain for argumentî that a State may prescribe party use of primaries or conventions to select nominees who appear on the general-election ballot. *American Party of Tex. v. White,* 415 U.S. 767, 781, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974). That prescriptive power is not without limits. In *Jones,* for example, we invalidated on First Amendment grounds California's blanket primary, reasoning that it permitted non-party-members to determine the candidate bearing the party's standard in the general election. 530 U.S., at 577, 120 S.Ct. 2402. See also *Eu v. San Francisco County Democratic Central Comm.,* 489 U.S. 214, 224, 109 S.Ct. 1013, 103 L.Ed.2d 271 (1989); *Tashjian v. Republican Party of Conn.,* 479 U.S. 208, 214ñ217, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986).

In the present case, however, the party's associational rights are at issue (if at all) only as a shield and not as a sword. Respondents are in no position to rely on the right that the First Amendment confers on political parties to structure their internal party processes and to select the candidate of the party's choosing. Indeed, both the Republican and Democratic state parties have intervened from the very early stages of this litigation to defend New York's electoral law. The weapon wielded by these plaintiffs is their *own* claimed associational right not only to join, but to have a certain degree of influence in, the party. They contend that New York's electoral system does not go far enoughó

[552 U.S. 204]

does not go as far as the Constitution demandsóin ensuring that they will have a fair chance of prevailing in their parties' candidate-selection process.

This contention finds no support in our precedents. We have indeed acknowledged an individual's associational right to vote in a party primary without undue state-imposed impediment. In *Kusper v. Pontikes,* 414 U.S. 51, 57, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973), we invalidated an Illinois law that required a voter wishing to change his party registration so as to vote in the primary of a different party to do so almost two full years before the primary date. But *Kusper* does not cast doubt on all state-imposed limitations

upon primary voting. In *Rosario v. Rockefeller,* 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973), we upheld a New York State requirement that a voter have enrolled in the party of his choice at least 30 days before the previous general election in order to vote in the next party primary. In any event, respondents do not claim that they have been excluded from voting in the primary. Moreover, even if we extended *Kusper* to cover not only the right to vote in the party primary but also the right to run, the requirements of the New York law (a 500ñsignature petition collected during a 37ñday window in advance of the primary) are entirely reasonable. Just as States may require persons to demonstrate ìa significant modicum of supportî before allowing them access to the general-election ballot, lest it become unmanageable, *Jenness v. Fortson,* 403 U.S. 431, 442, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971), they may similarly demand a minimum degree of support for candidate access to a primary ballot. The signature requirement here is far from excessive. See, *e.g.,* [128 S.Ct. 799] *Norman v. Reed,* 502 U.S. 279, 295, 112 S.Ct. 698, 116 L.Ed.2d 711 (1992) (approving requirement of 25,000 signatures, or approximately two percent of the electorate); *White, supra,* at 783, 94 S.Ct. 1296 (approving requirement of one percent of the vote cast for Governor in the preceding general election, which was about 22,000 signatures).

Respondents' real complaint is not that they cannot vote in the election for delegates, nor even that they cannot run

[552 U.S. 205]

in that election, but that the convention process that follows the delegate election does not give them a realistic chance to secure the party's nomination. The party leadership, they say, inevitably garners more votes for its slate of delegates (delegates uncommitted to any judicial nominee) than the unsupported candidate can amass for himself. And thus the leadership effectively determines the nominees. But this says nothing more than that the party leadership has more widespread support than a candidate not supported by the leadership. No New York law compels election of the leadership's slateóor, for that matter, compels the delegates elected on the leadership's slate to vote the way the leadership desires. And no state law prohibits an unsupported candidate from attending the convention and seeking to persuade the delegates to support her. Our cases invalidating ballot-access requirements have focused on the requirements themselves, and not on the manner in which political actors function under those requirements. See, *e.g., Bullock v. Carter,* 405 U.S. 134, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972) (Texas statute required exorbitant filing fees); *Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968) (Ohio statute required, *inter alia,* excessive number of petition signatures); *Anderson v. Celebrezze,* 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (Ohio statute established unreasonably early filing deadline). Here respondents complain not of the state law, but of the voters' (and their elected delegates') preference for the choices of the party leadership.

To be sure, we have, as described above, permitted States to set their faces against ìparty bossesî by requiring party-candidate selection through processes more favorable to insurgents, such as primaries. But to say that the State can

require this is a far cry from saying that the Constitution demands it. None of our cases establishes an individual's constitutional right to have a ìfair shotî at winning the party's nomination. And with good reason. What constitutes a ìfair shotî is a reasonable enough question for legislative judgment, which we will accept so long as it does not too

[552 U.S. 206]

much infringe upon the party's associational rights. But it is hardly a manageable constitutional question for judgesóespecially for judges in our legal system, where traditional electoral practice gives no hint of even the existence, much less the content, of a constitutional requirement for a ìfair shotî at party nomination. Party conventions, with their attendant ìsmoke-filled roomsî and domination by party leaders, have long been an accepted manner of selecting party candidates. ìNational party conventions prior to 1972 were generally under the control of state party leadersî who determined the votes of state delegates. American Presidential Elections: Process, Policy, and Political Change 14 (H. Schantz ed.1996). Selection by convention has never been thought unconstitutional, even when the delegates were not selected by primary but by party caucuses. See *ibid.*

The Second Circuit's judgment finesses the difficulty of saying how much of a shot is a ìfair shotî by simply mandating a primary until the New York Legislature acts. This was, according to the Second [128 S.Ct. 800] Circuit, the New York election law's default manner of party-candidate selection for offices whose manner of selection is not otherwise prescribed. Petitioners question the propriety of this mandate, but we need not pass upon that here. Even conceding its propriety, there is good reason to believe that the elected members of the New York Legislature remain opposed to the primary, for the same reasons their predecessors abolished it 86 years ago: because it leaves judicial selection to voters uninformed about judicial qualifications, and places a high premium upon the ability to raise money. Should the New York Legislature persist in that view, and adopt something different from a primary and closer to the system that the Second Circuit invalidated, the question whether *that* provides enough of a ìfair shotî would be presented. We are not inclined to open up this new and excitingly unpredictable theater of election jurisprudence. Selection by convention has been a traditional means of choosing party nominees. While a State

[552 U.S. 207]

may determine it is not desirable and replace it, it is not unconstitutional.

B

Respondents put forward, as a special factor which gives them a First Amendment right to revision of party processes in the present case, the assertion that party loyalty in New York's judicial districts renders the general-election ballot ìuncompetitive.î They argue that the existence of entrenched ìone-party ruleî demands that the First Amendment be used to impose additional competition in the nominee-selection process of the parties. (The asserted ìone-party rule,î we may observe, is that of the Democrats in some judicial districts, and of the Republicans in others. See 411

F.Supp.2d, at 230.) This is a novel and implausible reading of the First Amendment.

To begin with, it is hard to understand how the competitiveness of the general election has anything to do with respondents' associational rights in the party's selection process. It makes no difference to the person who associates with a party and seeks its nomination whether the party is a contender in the general election, an underdog, or the favorite. Competitiveness may be of interest to the voters in the general election, and to the candidates who choose to run *against* the dominant party. But we have held that those interests are well enough protected so long as all candidates have an adequate opportunity to appear on the general-election ballot. In *Jenness* we upheld a petition-signature requirement for inclusion on the general-election ballot of five percent of the eligible voters, see 403 U.S., at 442, 91 S.Ct. 1970, and in *Munro v. Socialist Workers Party,* 479 U.S. 189, 199, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986), we upheld a petition-signature requirement of one percent of the vote in the State's primary. New York's general-election balloting procedures for Supreme Court Justice easily pass muster under this standard. Candidates who fail to obtain a major party's nomination via convention can still get on the general-election ballot for the judicial

[552 U.S. 208]

district by providing the requisite number of signatures of voters resident in the district. N.Y. Elec. Law Ann. ß 6ñ142(2). To our knowledge, outside of the Fourteenth and Fifteenth Amendment contexts, see *Jones,* 530 U.S., at 573, 120 S.Ct. 2402, no court has ever made ìone-party entrenchmentî a basis for interfering with the candidate-selection processes of a party. (Of course, the *lack* of one-party entrenchment will not cause free access to the general-election ballot to validate an otherwise unconstitutional restriction upon participation in a party's nominating process. See *Bullock,* 405 U.S., at 146ñ147, 92 S.Ct. 849.)

[128 S.Ct. 801] The reason one-party rule is entrenched may be (and usually is) that voters approve of the positions and candidates that the party regularly puts forward. It is no function of the First Amendment to require revision of those positions or candidates. The States can, within limits (that is, short of violating the parties' freedom of association), discourage party monopolyófor example, by refusing to show party endorsement on the election ballot. But the Constitution provides no authority for federal courts to prescribe such a course. The First Amendment creates an open marketplace where ideas, most especially political ideas, may compete without government interference. See *Abrams v. United States,* 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173 (1919) (Holmes, J., dissenting). It does not call on the federal courts to manage the market by preventing too many buyers from settling upon a single product.

Limiting respondents' court-mandated îfair shot at party endorsementî to situations of one-party entrenchment merely multiplies the impracticable lines courts would be called upon to draw. It would add to those alluded to earlier the line at which mere party popularity turns into ìone-party dominance.î In the case of New

York's election system for Supreme Court Justices, that line would have to be drawn separately for each of the 12 judicial districtsóand in those districts that are ìcompetitiveî the current system

[552 U.S. 209]

would presumably remain valid. But why limit the remedy to *one*-party dominance? Does not the dominance of two parties similarly stifle competing opinions? Once again, we decline to enter the morass.

* * *

New York State has thrice (in 1846, 1911, and 1921) displayed a willingness to reconsider its method of selecting Supreme Court Justices. If it wishes to return to the primary system that it discarded in 1921, it is free to do so; but the First Amendment does not compel that. We reverse the Second Circuit's contrary judgment.

It is so ordered.

Justice STEVENS, with whom Justice SOUTER joins, concurring.

While I join Justice SCALIA's cogent resolution of the constitutional issues raised by this case, I think it appropriate to emphasize the distinction between constitutionality and wise policy. Our holding with respect to the former should not be misread as endorsement of the electoral system under review, or disagreement with the findings of the District Court that describe glaring deficiencies in that system and even lend support to the broader proposition that the very practice of electing judges is unwise. But as I recall my esteemed former colleague, Thurgood Marshall, remarking on numerous occasions: ìThe Constitution does not prohibit legislatures from enacting stupid laws.î

Justice KENNEDY, with whom Justice BREYER joins as to Part II, concurring in the judgment.

The Court's analysis, in my view, is correct in important respects; but my own understanding of the controlling principles counsels concurrence in the judgment and the expression of these additional observations.

[552 U.S. 210]

I

When a state-mandated primary is used to select delegates to conventions or nominees for office, the State is bound not to design its ballot or election processes in ways that impose severe burdens on First Amendment rights of expression and political participation. See [128 S.Ct. 802] *Kusper v. Pontikes,* 414 U.S. 51, 57ñ58, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973); see also *California Democratic Party v. Jones,* 530 U.S. 567, 581ñ582, 120 S.Ct. 2402, 147 L.Ed.2d 502 (2000); cf. *Lubin v. Panish,* 415 U.S. 709, 716, 94 S.Ct. 1315, 39 L.Ed.2d 702 (1974); *Bullock v. Carter,* 405 U.S. 134, 144, 92 S.Ct. 849, 31 L.Ed.2d 92 (1972); *Gray v. Sanders,* 372 U.S. 368, 380, 83 S.Ct. 801, 9 L.Ed.2d 821 (1963). Respondents' objection to New York's scheme of nomination by convention is that it is difficult for those who lack party connections or party backing to be chosen as a delegate or to become a nominee for office. Were the state-mandated-and-designed nominating convention the sole means to attain access to the general election ballot there would be considerable force, in my view, to respondents' contention

that the First Amendment prohibits the State from requiring a delegate selection mechanism with the rigidities and difficulties attendant upon this one. The system then would be subject to scrutiny from the standpoint of a ìreasonably diligent independent candidate,î *Storer v. Brown,* 415 U.S. 724, 742, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974). The Second Circuit took this approach. 462 F.3d 161, 196 (2006).

As the Court is careful to note, however, New York has a second mechanism for placement on the final election ballot. *Ante,* at 797. One who seeks to be a Justice of the New York Supreme Court may qualify by a petition process. The petition must be signed by the lesser of (1) 5 percent of the number of votes last cast for Governor in the judicial district or (2) either 3,500 or 4,000 voters (depending on the district). This requirement has not been shown to be an unreasonable one, a point respondents appear to concede. True, the candidate who gains ballot access by petition does not have a party designation; but the candidate is still considered by the voters.

[552 U.S. 211]

The petition alternative changes the analysis. Cf. *Munro v. Socialist Workers Party,* 479 U.S. 189, 199, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986) (ìIt can hardly be said that Washington's voters are denied freedom of association because they must channel their expressive activity into a campaign at the primary as opposed to the general electionî).

This is not to say an alternative route to the general election exempts the delegate primary/nominating convention from all scrutiny. For instance, the Court in *Bullock,* after determining that Texas' primary election filing fees were so ìpatently exclusionaryî on the basis of wealth as to invoke strict scrutiny under the Equal Protection Clause, rejected the argument that candidate access to the general election without a fee saved the statute. 405 U.S., at 143ñ144, 146ñ147, 92 S.Ct. 849 (ì[W]e can hardly accept as reasonable an alternative that requires candidates and voters to abandon their party affiliations in order to avoid the burdens of the filing feesî). But there is a dynamic relationship between, in this case, the convention system and the petition process; higher burdens at one stage are mitigated by lower burdens at the other. See *Burdick v. Takushi,* 504 U.S. 428, 448, 112 S.Ct. 2059, 119 L.Ed.2d 245 (1992) (KENNEDY, J., dissenting) (ìThe liberality of a State's ballot access laws is one determinant of the extent of the burden imposed by the write-in ban; it is not, though, an automatic excuse for forbidding all write-in votingî); Persily, Candidates v. Parties: Constitutional Constraints on Primary Ballot Access Laws, 89 Geo. L.J. 2181, 2214ñ2216 (2001). And, though the point does not apply here, there are certain injuries (as in *Bullock*) that are so severe they are unconstitutional no matter how minor the burdens at the other stage. As the Court recognized in *Kusper,* moreover, there is an individual [128 S.Ct. 803] right to associate with the political party of one's choice and to have a voice in the selection of that party's candidate for public office. See 414 U.S., at 58, 94 S.Ct. 303. On the particular facts and circumstances of this case, then, I reach the same conclusion the Court does.

[552 U.S. 212]

II

It is understandable that the Court refrains from commenting upon the use of elections to select the judges of the State's courts of general jurisdiction, for New York has the authority to make that decision. This closing observation, however, seems to be in order.

When one considers that elections require candidates to conduct campaigns and to raise funds in a system designed to allow for competition among interest groups and political parties, the persisting question is whether that process is consistent with the perception and the reality of judicial independence and judicial excellence. The rule of law, which is a foundation of freedom, presupposes a functioning judiciary respected for its independence, its professional attainments, and the absolute probity of its judges. And it may seem difficult to reconcile these aspirations with elections.

Still, though the Framers did not provide for elections of federal judges, most States have made the opposite choice, at least to some extent. In light of this longstanding practice and tradition in the States, the appropriate practical response is not to reject judicial elections outright but to find ways to use elections to select judges with the highest qualifications. A judicial election system presents the opportunity, indeed the civic obligation, for voters and the community as a whole to become engaged in the legal process. Judicial elections, if fair and open, could be an essential forum for society to discuss and define the attributes of judicial excellence and to find ways to discern those qualities in the candidates. The organized bar, the legal academy, public advocacy groups, a principled press, and all the other components of functioning democracy must engage in this process.

Even in flawed election systems there emerge brave and honorable judges who exemplify the law's ideals. But it is unfair to them and to the concept of judicial independence if

[552 U.S. 213]

the State is indifferent to a selection process open to manipulation, criticism, and serious abuse.

Rule of law is secured only by the principled exercise of political will. If New York statutes for nominating and electing judges do not produce both the perception and the reality of a system committed to the highest ideals of the law, they ought to be changed and to be changed now. But, as the Court today holds, and for further reasons given in this separate opinion, the present suit does not permit us to invoke the Constitution in order to intervene.

III

With these observations, I concur in the judgment of the Court.

Notes:

[*] The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Running for Judicial Office:
Getting on the Ballot in New York

Matthew J. Clyne

I. Overview

Designation vs. Nomination:

In New York, with one notable exception, judicial candidates are elected.[1] To be elected, a candidate's name must appear on the ballot. This is accomplished in one of five (5) ways: 1) the designation (primary election) process; 2) party nominating caucus; 3) opportunity to ballot; 4) independent (non-party) nomination; and 5) judicial convention.

Most candidates seeking county-wide judicial office are nominated by political parties and all receive their party nominations by way of the designation (primary election) process. The same is true for judicial candidates running in cities and, for the most part, large suburban towns. A person is "designated", i.e., "proposed", as a candidate for nomination by a political party by filing with the relevant board of elections (state or county) a "designating petition" containing the requisite number of signatures by enrolled members of the party in question. If more than one candidate files a designating petition, the party nomination is determined at the primary election. If only one candidate files a designating petition which is not invalidated, there is no primary and the candidate is deemed nominated, and his or her name will appear on the ballot in the general election. The form of the designating petition is governed by Election Law § 6-132; the rules governing the collection of signatures are set forth in 6-134; and the signature requirements, in terms of numbers, are contained in 6-136.

With respect to town elections, except in counties having a population of more than 750,000 inhabitants, the political parties are permitted to nominate their candidates directly, at a party nominating caucus, rather than at the primary election, if the rules of the county committee so provide, unless the members of the county committee from a given town adopt, by a two-thirds vote, a rule providing that the party candidates for town offices shall be nominated at the primary election (6-108[1]).[2]

With respect to village elections, party nominations are made at a party nominating caucus except if the rules of the county committee provide that party nominations for village offices be made at a village primary election (15-108[2]).

A non-designated candidate may secure a party nomination through the primary election process by filing a petition for an opportunity to ballot, pursuant to Section 6-

[1] The exception pertains to nominations to the Court of Appeals. Such nominations are made directly by the Governor, from a list of candidates recommended by a 12-member Commission on Judicial Nomination, subject to Senate confirmation (NY Const., Art. VI, §2[c],[d],[e]).

[2] In counties having a population of more than 750,000, party nominations for town offices must be made at the primary election.

166 of the Election Law, thereby creating a primary election wherein such candidate's name does not appear on the ballot. He or she must convince a sufficient number of enrolled members of the party in question to write in his or her name in a space provided for that purpose on the ballot. If successful, such candidate receives the party nomination. The obvious logistical hurdles involved in such an endeavor effectively limit its utility to local elections, usually with respect to nominations by one or more of the minor parties.

For non-party nominations, one may also get his or her name on the general election ballot by circulating and filing an independent nominating petition (see, 6-138, 6-140, 6-142). However, independent nominating petitions are rarely used outside of a village or town due to a variety of factors, the principal one being poor ballot position.

Candidates for State Supreme Court are nominated by political parties at the judicial district convention (6-106, 6-124, 6-126), chosen by delegates who qualify as such by filing with the relevant board of elections designating petitions. The delegates are selected from each assembly district or part thereof within the judicial district. The number of delegates and alternates, if any, is determined by party rule but they must be apportioned, generally, by the vote cast for the party's candidate for governor in the preceding gubernatorial election.

Political Calendar:

All nominations for judicial office are subject to the political calendar. The political calendar is, in the case of nominations obtained through the designation process or secured at a party nominating caucus, keyed to the date of the primary election;[3] and, in the case of nominations obtained by way of an independent nominating petition or secured at a judicial convention, keyed to the general election.[4] The following dates are relevant:

- First date to circulate a party designating petition - 37 days before the last day to file designating petitions for the primary (6-134[4]).
- Last day to file designating petition – not later than the ninth Thursday preceding the primary election (6-158[1]).
- First date to hold a party nominating caucus – not earlier than the first day on which designating petitions for the fall primary election may be signed (6-108[1]).

[3] In New York, the primary election is held on the first Tuesday after the second Monday in September, "unless otherwise changed by an act of the legislature" (Election Law § 8-100[1][a]).

[4] In New York, the general election is held on the Tuesday next succeeding the first Monday in November (Election Law § 8-100[1][c]).

- Last day to file certificate of nomination from a party nominating caucus - not later than 7 days after the fall primary election (6-158[6]).
- First date to circulate an independent nominating petition – not earlier than 6 weeks prior to the last day to file independent nominating petitions (6-138[4])
- Last day to file independent nominating petition – not later than 11 weeks preceding the general election (6-158[9]).
- Dates for holding a judicial district convention – not earlier than the third Monday in September preceding the general election and not later than the fourth Monday in September preceding such election (6-158[5])[5]

Mandatory Nature of Filing Dates:

Equally as relevant to the candidate, party operative or practitioner is the following statutory prescription regarding late filings:

> The failure to file any petition or certificate relating to the designation or nomination of a candidate for party position or public office or to the acceptance or declination of such designation or nomination within the time prescribed by the provisions of this chapter shall be a fatal defect (1-106[2]).

Self-Policing of Petitions:

Each candidate bears the responsibility to police his or her own petitions. Because of the short timeline for securing a designation or nomination, any document intended to be filed with the board of elections should be scrutinized carefully with respect to its legal sufficiency before the filing, when corrections thereto can still be made, rather than after he filing, when very few corrections can be made. Equally as important, each candidate should monitor the document subsequent to its filing to determine whether any objections thereto have been interposed. In that regard, it should be observed that the boards of election are under no statutory obligation to inform a candidate of any deficiency regarding his or her nomination (Matter of Hicks v. Egan, 166 AD2d 735, 736 [2nd Dept., 1990]).

Judicial Review:

Any petition filed with the board of elections is "presumptively valid" if it is in proper form and appears to bear the requisite number of signatures (6-154[1]). This so-

[5] A certificate of party nomination made at a judicial district convention must be filed not later than the day after the last day to hold convention, and the minutes of such convention must be filed within seventy-two hours after adjournment of the convention.

called presumption of validity is one of the weakest presumptions in the law and relates more to the duty of the board to accept the petition for filing than to any inference of legal sufficiency. The sufficiency of the petition can be challenged on many grounds, and the board's determination as to its validity or invalidity is itself subject to review in a summary proceeding commenced pursuant to Article 16 of the Election Law.

II. Party Nominations

Party Nominating Caucus:

As previously stated, party nominations at the town or village level may, subject to party rule, be secured by way of a party nominating caucus. A town or village caucus is the functional equivalent of a primary and affords the enrolled members of a political party the opportunity to nominate a candidate for a public office within the town or village.

The caucus is convened by "proper party authorities" upon 10-days' notice posted and filed with the town or village clerk, as the case may be, and the board of elections, and either by newspaper publication once within the town or village, as the case may be, at least one week and not more than two weeks preceding the caucus, or by posting in ten public places (town) or six public places (village), as the case may be. The caucus is run by a chairman and secretary who, at the conclusion thereof, issue a certificate of party nomination, which is filed with the board of elections, in the case of a town, or with the village clerk, as the case may be. In the case of a village, there shall be filed, together with the certificate of nomination, a list of enrolled members of the party who participated in the caucus (see, generally, 6-108; 15-108). The failure to comply with the caucus notification requirements invalidates the nomination (Matter of Seaman v. Bird, 176 AD2d 1061, 1062 [3rd Dept., 1991]; Matter of Feldman v. Bulloch, 144 AD2d 102, 103-104 [3rd Dept., 1988] ["Time limitations in the Election Law are mandatory"]).

A person seeking to challenge the validity of the party nomination may file an objection thereto within the time prescribed therefor (three days in the case of a certificate of party nomination filed with the board of elections, and no later than one day following the last day upon which such certificate may be filed, in the case of a certificate filed with a village clerk) (6-154[2]; 15-108[10]). Written specifications of the grounds of the objection must be filed within six days of the filing of the general objection with the board of elections or within two days after the filing of the general objection with the village clerk. The failure to file such written specifications within the time prescribed therefor renders the original objection null and void (id).

Three (3) observations are in order regarding the filing of objections: 1) any voter entitled to vote for the public office or party position in question may file an objection (6-

154[2]).[6] The objection not only forces a determination by the board of elections[7] it also confers upon the objectant standing to commence an Article 16 proceeding for judicial review of the board's determination; 2) the board of elections is authorized to adopt local rules of practice regarding the filing and disposition of petitions, certificates, objections and specifications (6-154[2]); consequently, would be a good idea to make inquiry regarding the existence and application of any such rules (see, Young v. Thalmann, 286 AD2d 550 [3rd Dept., 2001]); and 3) the issue of standing is somewhat nuanced where the candidate or objectant is a non-party member. In such a case, a distinction is made between challenges to a nomination predicated upon an alleged failure to comply with statutory requirements governing the nomination, where standing will be found (see, Matter of Occhipinti v. Westchester County BOE, 49 AD3d 674, 675 [2nd Dept., 2008]), and challenges to a nomination made by a non-party candidate or objectant predicated upon an alleged failure to comply with the internal operating protocols of a political party, in which event standing will not be found (see, Nicolai v. Kelleher, 45 AD3d 960, 961-963 [3rd Dept., 2007]).

Opportunity to Ballot:

A person seeking the nomination of a party may circulate a petition for an opportunity to ballot (6-166). This is simply a petition, akin to a designating petition, requesting the opportunity, at a primary election, to write in the name or names of an undesignated candidate or candidates for public office or party position. It is usually employed where the candidate is not a member of the party in question and has no reasonable expectation of receiving the party's authorization to appear as a candidate on the primary ballot.[8] But it can also be employed as a last-minute strategy to force a primary after one knows whose name will appear on the ballot or after it becomes obvious that a designating petition will be ruled invalid or, more commonly, where there is a declination by a candidate who filed a designating petition.[9] The OTB petition has no practical application to judicial races since candidates for judicial office can secure a party nomination without being members of the party and without party authorization.

---

[6] Such a voter must reside in the political subdivision where the office or position is being contested and, in the case of a party position, such voter must be enrolled as a member of the party (see, Lucariello v. Niebel, 72 NY2d 927, 928 [1988]).

[7] It should be noted in that regard that the board of elections rules upon objections filed with a village clerk (15-108[10]).

[8] See the section below for an explanation of the requirement of party authorization for non-party members.

[9] This is so because the last day to file a petition for an opportunity to ballot is one week later than the last day to file a designating petition, or two weeks later in the case of a declination (compare 6-158[1] with 6-158[4]).

Party Designations:

It should be noted preliminarily that the designation process pertains exclusively to party nominations. Thus, a candidate seeking the nomination of a political party other than by way of a nominating caucus or convention circulates a petition seeking to be "designated" (proposed) for nomination by enrolled members of a given political party who register their support (approval) by signing the designating petition. It stands to reason that any such candidate should be an enrolled member of the party in question. And that is the general rule, embodied in Section 6-120(1), which provides, in material part, that a designating petition shall be valid only if the person so designated is an enrolled member of the party referred to in said designating petition. If a candidate is seeking the designation of a party in which he or she is not enrolled, such candidate must receive a formal authorization by the party committee constituted within the relevant political subdivision, or by such other committee as the party rules my provide. This authorization is evidenced by a certificate which must be filed with the relevant board of elections not later than four days after the last day to file the designating petition (6-120[3]).

There are three important exceptions to the requirement that a candidate seeking the designation of a political party must be enrolled in that party or receive its authorization to run. The restriction does not apply to a newly-created political party designating or nominating candidates for the first time, to candidates nominated by party caucus, or to candidates for judicial office (6-120[4]). Thus, to receive a party designation, a candidate for judicial office need not be an enrolled member of the party in question nor does such a candidate need party authorization. He or she may secure a place on the primary ballot simply by filing the requisite number of signatures on a party designating petition.

A related exception pertaining to candidates for judicial office concerns the statutory requirement that a non-party-member candidate formally accept a party designation by filing a certificate of acceptance with the board of elections (6-146[1]) within the time prescribed therefor.[10] The failure to file such a certificate renders the designation or nomination "null and void" (6-146[1]). However, a candidate for judicial office who receives a party designation or nomination, otherwise than at a primary election[11] is not required to file a certificate of acceptance, since the statute, by its terms, only applies to public offices "other than a judicial office" (id).

---

[10] In the case of a designation, "not later than the fourth day after the last day to file such designation" (6-158[2]; in the case of a party caucus nomination, "not later than the third day after the last day to file the certificate of such party nomination" (6-158[7]).

[11] See 6-146(4) for the special rules of acceptance and declination for candidates nominated without designation for public office at a primary election.

The general rules pertaining to designating petitions are found in Sections 6-132, 6-134 and 6-136 of the Election Law. Annexed hereto is a copy of a sample designating petition prepared by the NYS Board of Elections and posted on its website. Designating petitions which mirror the sample prepared by the State Board of Elections are deemed to meet the statutory requirements as to form set forth in Section 6-132 of the Election Law (6-132[4]).

Challenges to a designating petition often start with an attack upon the sufficiency of the description of the public office or party position. One can certainly wonder how such an issue could even arise, yet it is a recurring theme. The general test is whether the description is "sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections" (Matter of Levine v. Turco, 43 AD3d 618, 621 [3rd Dept., 2007] [internal citations and quotations omitted]). An example of an insufficient description can be found in Matter of Sears v. Kimmel, 76 AD3d 1113 [3rd Dept., 2010]), where a candidate for a seat in the NYS Assembly described the public office as "114th New York State Assembly District". Compare the result in Sears with the ruling in Liepshutz v. Palmateer, 112 AD2d 1101 (3rd Dept., 1985), where the court determined that the designation of the office being sought as "County Judge" without making reference to the county in which the office was being sought (Greene County) was sufficiently descriptive so as not to create a "reasonable probably of confusing or deceiving the signers, voters or board of elections" (112 AD2d at 1102, quoting Matter of Donnelly v. McNab, 83 AD2d 896 [2nd Dept., 1981], and cases cited therein). The basis for the court's ruling in Liepshutz was that the voting public could figure out the county where the candidate was running by his address, which was listed on the petition. Compare that result with Matter of Ighile v. NYC BOE, 66 AD3d 899 (2nd Dept., 2009), where the court invalidated the petition because the candidate, who was seeking a seat on the New York City Council, failed to identify the council district. Suffice it to say that this type of inquiry is one which is easily avoided.

It should be noted parenthetically that, in many instances, multiple offices are combined in the same petition. This arises most frequently in the case of town-wide or county-wide offices where it makes sense to combine the offices to cut down on the number of petitions. While, in such a case, the designating petition is treated as unique to each candidate (see, Matter of Buchanan v. Espada, 88 NY2d 973, 975 [1996]), the corollary rule is that joining multiple offices in one petition opens it to attack by a rival candidate for any of the offices set forth in the designating petition (Matter of Colaiacovo v. Aberle, 10 AD3d 464, 465-466 [3rd Dept., 2004]).

In reviewing individual signatures on a designating petition, the first point of inquiry concerns the date the signatory affixes his or her name to the petition. Section 6-130 provides that the sheets of a designating petition must set forth in every instance

the name of the signer, his or her residence address, town or city (in the City of New York, the county), and the date when the signature is affixed. The date is critical for two reasons, the first being that it is essential to determine the period during which the petition was circulated, so as to ensure compliance with the political calendar, and the second being to ensure proper application of the rule, expressed in 6-134(3), that if a voter shall sign any petition or petitions designating a greater number of candidates for public office or party position than the number of persons to be elected thereto, his signatures, if they bear the same date, shall not be counted upon any petition, and if they bear different dates shall be counted in the order of their priority of date, for only so many designees as there are persons to be elected. Consequently, the failure to affix a date to the signature results in the invalidation of that signature (Matter of DiSanzo v. Addabbo, 76 AD3d 655, 656 [2nd Dept., 2010]).

With respect to the qualifications of the signatory, each voter signing a designating petition must be an enrolled member of the party whose petition is being circulated, must reside in the political subdivision corresponding to the public office identified in the petition, and must not have previously signed a competing petition. Moreover, the signature affixed to the designating petition must correspond with the signature on the voter's registration application filed with the board of elections. In that regard, it is not permissible for a voter to use a printed signature as opposed to one written in script, if the voter signed his or her voter registration application in script (Matter of Lord v. NYSBOE, 98 AD3d 622, 623 [2nd Dept., 2012]; Matter of Henry v. Trotto, 54 AD3d 424, 426 [2nd Dept., 2008]).

As stated, a voter may not sign a designating petition if he or she has previously signed a competing petition, and this is so even where the prior designating petition is invalidated (Keenan v. Chemung County Board of Elections, 43 AD3d 623, 624 [3rd Dept., 2007], lv denied, 9 NY3d 804).

The statute also requires that the city or town wherein the signatory resides be indicated on the petition sheet. The failure to so indicate invalidates the signature (Matter of Stoppenbach v. Sweeney, 98 NY2d 431, 433 [2002]; Matter of Stark v. Kelleher, 32 AD3d 663, 664 [3rd Dept., 2006]).

The signatures on a designating petition are authenticated by way of the attestation of a "subscribing witness", who signs a subscribing witness statement at the bottom of the petition. The subscribing witness merely certifies that each of the individuals who signed the petition sheet did so in the presence of the witness on the dates indicated and identified himself or herself to be the person who signed the sheet. The subscribing witness must be an enrolled member of the political party whose petition is being circulated and must reside in the State of New York. The party

enrollment requirement is substantive in nature (Matter of Hochhauser v. Grinblat, 307 AD2d 1007 [2nd Dept., 2003].

The subscribing witness also certifies the number of signatures witnessed. Pursuant to 6-134(11), if the number of signatures on any petition sheet is understated in the witness statement, such petition sheet will be deemed to contain the number so indicated, and any signatures in excess of such number are deemed not to have been filed. Thus, if the subscribing witness omits to insert the number of signatures witnessed, the entire sheet is deemed not to have been filed. This result obtains since the statement of a subscribing witness setting forth the total number of signatures on a sheet of a designating petition is "essential to the integrity of the petition process" (Matter of Jonas v. Velez, 65 NY2d 954, 955 [1985]; Matter of Quinlin v. Pierce, 254 AD2d 690, 691 [4th Dept., 1998]).

Any uninitialed or unexplained alteration made to the subscribing witness statement invalidates the sheet (Matter of Jonas v. Velez, supra; Matter of Abraham v. Ward, 43 AD3d 1271, 1272 [4th Dept., 2007]). However, if the proponent of the petition can demonstrate, by affidavit or testimony adduced at a hearing, an adequate explanation for the uninitialed change, the underlying signatures need not be nullified (Matter of Curley v. Zacek, 22 AD3d 954, 957 [3rd Dept., 2005]).

One final note on designating petitions is in order, and that relates to the statutory provision for a committee to fill vacancies. Such a committee is authorized to fill a vacancy caused by the death, declination or disqualification of the designee, or by a tie vote at a primary (6-148[1]). The vacancy is filled by a majority of the committee to fill vacancies shown upon the face of the petition or certificate of nomination (6-148[2]). The committee does so by filing a certificate of substitution. Thus, a candidate who did not circulate a designating petition (or receive a prevailing vote at a nominating caucus) can receive a party nomination through simple appointment by a committee to fill vacancies. However, a committee to fill vacancies may act only if the designating petition itself is valid (Matter of Owens v. Sharpton, 45 NY2d 794, 796 (1978); Matter of Hunter v. NYSBOE, 32 AD3d 662, 663 [3rd Dept., 2006]).

Objections:

Any voter entitled to vote for a public office or party position may challenge a designating petition or certificate of nomination, or a certificate of substitution relating thereto, by filing a general objection to such petition or certificate within three days of the filing of the petition or certificate to which objection is made (6-154[2]). This is so even though the objectant is not enrolled in the same party as the designee or nominee, provided, however, that the challenge is not directed to the internal affairs or operating functions of such party but, rather, to legislatively mandated requirements of the

Election Law (see, generally, Matter of Breslin v. Connors, 10 AD3d 471 [3rd Dept., 2004]).

As previously noted, written specifications upon the general objection must be timely filed or the objection is null and void. The filing of objections with the board of elections confers standing upon the objectant to commence an Article 16 proceeding for judicial review of the board's determination or to invalidate the petition or certificate at issue in the event that the board fails to rule on the objections in a timely manner. And, as previously indicated, each board of elections is authorized to adopt its own rules of practice in regard to the filing and disposition of petitions, certificates, objections and specifications (6-154[2]).

III. Judicial Review

Commencement:

Article 16 of the Election Law provides the procedural mechanism to judicially challenge or judicially validate a candidacy, whether such candidacy arises by way of designation, nominating caucus or judicial district convention.

It is important to realize that proceedings commenced pursuant to Article 16 are summary proceedings which, because of the short political calendar, are geared toward expeditious resolution. They are commenced upon a verified petition[12] and upon "such notice...as the court or justice shall direct" (16-116). In other words, they must be initiated by way of show cause order rather than a notice of petition. In that regard, it should be noted that the method of service provided for in the show cause order is jurisdictional in nature and must be strictly complied with (Matter of Nunziato v. Messano, 87 AD3d 647, 647 [2nd Dept., 2011]; Matter of Hennessey v. DiCarlo, 21 AD3d 505, 505 [2005]), a fact which takes on increased significance in light of the rule that the failure to join all necessary parties in an Article 16 proceeding is jurisdictionally fatal (Flores v. Kapsis, 10 AD3d 432, 433 [2nd Dept., 2004]; Quis v. Putnam County BOE, 22 AD3d 585 [2nd Dept., 2005]; Matter of McGrath v. Abelove, 87 AD3d 803, 804 [3rd Dept., 2011]). "Necessary parties" are those whose interests might be "inequitably affected" (Matter of Wood v. Castine, 66 AD3d 1326, 1328 [3rd Dept., 2009]), and includes those who filed objections in the board of elections (Matter of Gadsen v. NYCBOE, 57 NY2d 751, 752 [1982]; Matter of Plochocki v. Onondaga County BOE, 21 AD3d 710, 710-711 [4th Dept., 2005]). Thus, a petitioner raising a challenge to a designating petition pursuant to Article 16 must commence the proceeding and complete service upon all the necessary parties within the limitations period (Matter of Nunziato v. Messano, supra, at 648).

[12] A requirement which is jurisdictional in nature (see, Matter of Niebaurer v. NYCBOE, 76 AD3d 660 [2nd Dept., 2010]).

Filing with the Clerk:

To properly commence the proceeding, the petition must be filed with the county clerk, who is the clerk of the Supreme Court (CPLR 304[c]). At the time of filing, the papers shall be date-stamped by the clerk, who shall file them and maintain a record of the date of the filing and who shall return forthwith a date-stamped copy to the filing party (except where the filing is by electronic means) (id). In Matter of Mendon Ponds Neighborhood Assn. v. Dehm, 98 NY2d 450 (2002), the court held that the filing of the initiatory papers with the Supreme Court clerk, as opposed to the county clerk, constitutes a fatal jurisdictional defect which required dismissal of the proceeding. Although the Mendon Ponds case leaves no room for doubt as to the statutory prescription regarding filing with the county clerk, a recent decision of the Third Department raises questions regarding the effect of a failure to actually file the papers with the county clerk (see, Matter of Conti v. Clyne, Slip Op., decided 08/21/2014 [Case # 519471]). This is an issue which a candidate does not want litigated.

Standing:

Standing to commence an Article 16 proceeding with respect to the nomination or designation of any candidate for public office or party position is governed by Election Law §16-102(1), which provides, in relevant part, that such a proceeding may be instituted by any aggrieved candidate, or by the chairman of any political committee, or by a person who shall have filed objections, except that the chairman of a party committee may not bring a proceeding with respect to a designation or the holding of an otherwise uncontested primary. As a practical matter, most Article 16 proceedings are commenced by candidates or those who filed objections. The standing issue usually arises within the context of a challenge by a non-party member to the internal designating or nominating protocols of a political party, either with respect to the issuance of a certificate of authorization (a so-called Wilson-Pakula certificate), the conduct of a nominating caucus, or the proceedings at a judicial convention. As a general proposition, a non-party member may not challenge the internal operations of a political party relating to a designation or nomination unless the alleged deficiency pertains to a legislatively mandated requirement of the Election Law (e.g., a mandatory filing date) which transcends the mere regulation of the affairs of a political party (see, Matter of Breslin v. Connors, 10 AD3d 471, 473-474 [3rd Dept., 2004]).

Limitations Period:

The limitations period for challenging or seeking to validate a petition is set forth in Section 16-102(2) of the Election Law, which provides, in relevant part, that a proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom

or which such petition was filed makes a determination of invalidity with respect to such petition, whichever is later.

The 14-day limitations period must be considered within the context of the objection process. Let's suppose that a designating petition is filed with the board of elections on the last day to file (a common practice). If a general objection thereto is filed on the third day after the filing of the petition, and specifications thereof are filed six days later, a period of nine days has elapsed, leaving only five days for the board to make a determination of the objection and, more importantly, leaving only five days within which to commence an Article 16 proceeding to invalidate, in the event the petition is sustained by the board. If the petition is invalidated by the board, the candidate whose petition was invalidated must commence his or her validation proceeding in Supreme Court within three business days of the board's determination or within fourteen days from the last day to file the petition, whichever period is later. In either case, there is a very small window of opportunity to commence the proceeding, usually a matter of days.

It should be noted that the three-business-day extension only pertains to situations where the petition has been invalidated; where a petition has been sustained, a proceeding to invalidate is subject to the 14-day limitations period, measured from the last day to file the petition. It should also be noted that the 14-day limitations period obtains irrespective of whether the board renders a determination, since a proceeding pursuant to Election Law § 16-102 is not a proceeding to challenge a determination by a board of elections but a proceeding to challenge the petition itself (Matter of Sorensen v. Hill, 43 AD3d 1201, 1202 [3rd Dept., 2007], citing Matter of Cheevers v. Gates, 230 AD2d 948, 950 [3rd Dept., 1996]).

Dated: September 9, 2014

Evaluation Processes

Moderator:
April M. Dalbec, Esq.

Panelists:
Timothy P. O'Keefe
Christopher Massaroni, Esq.

Independent Judicial Election Qualification Commissions Informational Booklet

In 2006, the Administrative Board of the Courts, consisting of the Chief Judge and the four Presiding Justices of the Appellate Division, adopted court rules establishing a system of "Independent Judicial Election Qualification Commissions" (IJEQCs) for New York State.[1] The IJEQCs, one in each of the state's judicial districts, represent a nonpartisan statewide screening process to review the qualifications and experience of candidates seeking election to judicial office.

The purpose of the IJEQCs is to provide voters with relevant information about the candidates in judicial elections. The voting public can confidently rely on the rating assigned to a candidate by an IJEQC based on a thorough, independent review of the candidate's background and qualifications to serve on the bench.

A. History of the IJEQCs

In 2003, Chief Judge Judith S. Kaye appointed a panel of 29 respected professionals to the Commission to Promote Public Confidence in Judicial Elections. She named as chair John D. Feerick, former Dean of Fordham Law School, and asked the Commission to study New York State's judicial elective system and offer recommendations to improve the process and reaffirm public confidence in judicial elections.

One of the most important recommendations contained in the Feerick Commission's Reports of December 2003 and June 2004[2] was the creation of an independent screening process for candidates seeking election to judicial office. Research by the Feerick Commission found both that the voting public does not have access to adequate information about judicial candidates and that there is a direct correlation between this lack of information and low voter participation in judicial elections. To promote more informed voter participation, the Feerick Commission recommended establishing nonpartisan

---

[1] (McKinney's 2008 New York Rules of the Chief Administrator of the Courts, Part 150 [22 NYCRR §150]).

[2] The Feerick Commission issued a total of three reports: an Interim Report dated December 3, 2003, a Report dated June 29, 2004, and a Final Report dated February 6, 2006. The Interim Report was incorporated as Appendix A to the Commission's second report.

screening panels to independently review the qualifications of judicial candidates and to publish a list of those candidates found qualified.

In February 2006, the Administrative Board took action on the Feerick Commission's independent screening recommendation and promulgated Part 150 of the Rules of the Chief Administrator. Appendix A, detailing the operating procedures of the IJEQCs, was subsequently promulgated in February 2007.

Part 150 establishes the IJEQC system and addresses, among other things, the appointment of commissioners and the criteria and procedures used to evaluate candidates. Appendix A elaborates on the working process of the IJEQCs and creates uniform guidelines regarding public notification of judicial vacancies (§ 1), commission meetings (§ 2), candidate ratings (§ 3), use and composition of subcommittees (§ 4), the scope and nature of the investigation of a candidate (§ 5), dissemination of the IJEQCs' ratings (§ 6), and reconsideration of a candidate (§ 7).

B. Role of IJEQCs

There are approximately 1,200 full-time judges presently serving in New York, and over 70% of these are elected. The IJEQCs evaluate candidates for all elected judgeships on the supreme court, county court, family court, surrogate's court, district court, city court, and New York City civil court.[3] The IJEQCs do not screen justices of town and village courts. The IJEQC operating in a candidate's judicial district screens applicants for elective judicial office in that district and offers a rating which voters can use to assess the slate of candidates on the ballot. Candidates who participate in the screening process receive a public rating of qualified, highly qualified or not qualified. Chief Judge Kaye described the role of the IJEQCs in her 2006 State of the Judiciary Address: "These commissions do not alter the current elective system but rather bolster it by providing credible, independent local bodies to evaluate the qualifications of judicial aspirants. The ratings issued

[3] Appointed judges are not subject to the IJEQC screening process, including judges of the court of appeals, court of claims, and New York City criminal and family courts. These appointed judges generally are evaluated by "judicial screening panels" created expressly to perform this evaluative function and offer recommendations on qualified candidates to the appointing authority - the Governor or the Mayor of New York City.

by these panels will stand as assurance to the public that whoever ultimately appears on the ballot has been found qualified for judicial service."

C. Composition of the IJEQCs

1. Independence of IJEQCs

The credibility of the IJEQC screening process and the ratings assigned to judicial candidates demand that each IJEQC commissioner act in an independent, fair and impartial manner (§ 150.2[e]). Commissioners must be free of political connections. Persons who presently hold or have in the past three years run for or held public office or a political party post are barred from IJEQC service (§ 150.9). If a commissioner has a relationship with a candidate under review by the IJEQC which could cause the commissioner's participation to be, or appear to be, unfair to the public or the candidate, the commissioner must withdraw from evaluating the candidate (§ 150.9[b]). Once appointed, commissioners serve without compensation (§ 150.7) and cannot personally seek judicial office or act on behalf of a candidate for judicial office (§ 150.9). Persons found guilty of professional misconduct or a class B misdemeanor or more serious crime are also barred from service (§ 150.9[c][4]). Court system employees are ineligible to serve (§ 150.9[c][3]).

2. IJEQC Commissioners

Each IJEQC consists of eleven (11) lawyers and four (4) nonlawyers who must reside in or have a place of business in the judicial district which they represent. Membership is designed to reflect the overall population of the judicial district, including "geographic, racial, ethnic and gender diversity" (§ 150.2). Commissioners are appointed for three-year terms and are eligible to serve one additional three-year term (§ 150.3[a]). The Chief Judge selects one of the commissioners to serve as chairperson (§ 150.2[b]).

The 15 IJEQC commissioners in each judicial district are appointed as follows:

- five (5) are appointed by the Chief Judge, two (2) of whom are not lawyers

- five (5) are appointed by the Presiding Justice of the Appellate Division in the respective judicial districts, two (2) of whom are not lawyers

- one (1) member is appointed by the President of the New York State Bar Association

- four (4) members are individually and independently selected by four different local bar associations (designated by the Presiding Justice of the Appellate Division) within that judicial district.

D. The Screening Process

The commissioners carefully examine the background and qualifications of each candidate who participates in the screening process. The IJEQCs hold regular meetings throughout the year to perform this evaluative function (Appendix § 2[A]). The IJEQCs may establish subcommittees composed of at least three commissioners to assist in the investigation and evaluation of applicants (§ 4). Commissioners are obliged to keep IJEQC proceedings, files and work product confidential (§ 150.8).

1. Evaluating the Candidates

Candidates for judicial office must satisfy rigorous criteria relating to their professional qualifications and personal attributes before they may receive a rating of "qualified" or "highly qualified" from the IJEQCs. The criteria for evaluation include: "professional ability; character, independence and integrity; reputation for fairness and lack of bias; and temperament, including courtesy and patience" (§ 150.5[b]). "Candidates found 'highly qualified' must be preeminent members of the legal profession in their community; have outstanding professional ability, work ethic, intellect, judgment and breadth of experience relevant to the office being sought; possess the highest reputation for honesty, integrity and good character, including the absence of any significant professional disciplinary record; and either demonstrate or exhibit the highest capacity for distinguished judicial temperament, including courtesy, patience, independence, impartiality and respect for all participants in the legal process" (§ 150.5[b]).

Data for the IJEQC investigation is provided, in large part, by a comprehensive uniform application which the candidates must complete (Appendix A, §5). The application elicits background information about the candidate and contains questions about professional and educational experience, job performance, work ethic, character and temperament, integrity, ability to be fair, managerial skills and decisiveness.

The commissioners contact lawyers, judges, supervisors and others who have direct knowledge of the candidate's professional and personal qualities and fitness for the bench. The IJEQCs also personally interview the candidates and the commissioners may question the candidates directly about their qualifications and background (Appendix A, §5[C]). Commissioners may not question applicants about their political affiliations, or their personal views on issues that may one day come before them on the bench.

The overall scope and depth of this evaluative process informs the reliability of the IJEQCs' ratings of judicial candidates.

2. Screening of Current and Former Judges (Appendix A, § 5[B][1])

For a candidate with at least one year of judicial experience, the IJEQCs typically solicit opinions from (1) the attorneys, public defenders, legal aid attorneys, district attorneys or employees of governmental agencies who have appeared before the candidate in a professional context, and (2) the administrative or supervising judges familiar with the applicant's professional performance, abilities and character. The IJEQCs review written decisions and orders authored by the judicial candidate. Also relevant to the evaluation is data relating to the candidate's docket management and case dispositions, and decisions on appeals from the candidate's opinions and orders. The IJEQCs contact the Commission on Judicial Conduct concerning any prior professional disciplinary action involving the candidate.

3. Screening of Lawyers and New Judges (Appendix A, §5[B][2])

For candidates who are practicing attorneys or judges with less than one year on the bench, the IJEQCs reach out to lawyers who have supervised the candidate and to judicial or quasi-judicial officers who have personally observed the candidate's professional skills and manner. The IJEQCs also seek input from attorneys with whom the candidate has worked with or opposed in litigation or other legal matters. The commissioners read and evaluate the

candidate's professional writings, such as legal briefs. The commissioners seek feedback about the candidate from persons familiar with the candidate's service or involvement in state and local bar activities as well as charitable, cultural, civic or social organizations. Finally, the IJEQCs contact the appropriate attorney disciplinary committee.

E. Rating the Candidates

Following the screening process, the commissioners vote by secret ballot. To be rated qualified, a candidate must receive the votes of a majority of the commissioners present where a quorum exists. To be rated highly qualified, a candidate must receive the votes of a two-thirds majority of the commissioners present where a quorum exists. Once found qualified or highly qualified, the candidate retains that status for three years, absent new information that negatively affects that finding.

Candidates are notified in writing whether they have been found highly qualified, qualified or not qualified for election to judicial office. The notice is accompanied by a copy of the ethical guidelines governing appropriate use of the IJEQC's rating in a campaign for judicial office. In the event that a candidate disagrees with the IJEQC's rating of not qualified, the candidate may request reconsideration within seven business days. The request may be accompanied by additional materials and the candidate can ask for another interview.

The IJEQCs' lists of judicial candidates found highly qualified, qualified or not qualified are announced by publication in local newspapers and on the Unified Court System's website, and by notification to bar associations, local civic groups, and state and local boards of election (Appendix A, §6[B][1]). The IJEQCs do not offer any additional commentary or information regarding the candidates' ratings.

F. Conclusion

The statewide IJEQC screening process established under Part 150 of the Rules of the Chief Administrator provides voters with important, relevant information by identifying those judicial candidates who have been found highly qualified, qualified or not qualified for the bench after a thorough and independent evaluation. In this regard, IJEQCs help promote voter participation and confidence in the judicial election process.

Additional information about New York's IJEQCs is available at http://www.ny-ijeqc.org/ .

Securing a Nomination in Supreme Court

Moderator:

Hon. Doris M. Gonzalez

Panelists:

Paul Caputo

Richard Jacobson, Esq.

Hon. Karen K. Peters

Hon. Leslie E. Stein

Securing Nomination in Supreme Court

1. New York State Election Law, Article 6

2. From the Bar to the Bench: remarks of Judge Peters: October 30, 2003

3. Conti v Clyne, et al.: Decision and Judgement of Hon. Thomas McNamara: August 5, 2014

4. Matter of Conti v. Clyne: Memorandum and Order of the State of New York Supreme Court, Appellate Division Third Department: August 21, 2014

5. Judicial Campaign Ethics Handbook: New York State Advisory Committee on Judicial Ethics

Election Law § 6-106. Party nominations; justice of the supreme court.

Party nominations for the office of justice of the supreme court shall be made by the judicial district convention

Election Law Section 6-124:

1. Conventions; judicial

A judicial district convention shall be constituted by the election at the preceding primary of delegates and alternate delegates, if any, from each assembly district or, if an assembly district shall contain all or part of two or more counties and if the rules of the party shall so provide, separately from the part of such assembly district contained within each such county. The number of delegates and alternates, if any, shall be determined by party rules, but the number of delegates shall be substantially in accordance with the ratio, which the number of votes cast for the party candidate for the office of governor, on the line or column of the party at the last preceding election for such office, in any unit of representation, bears to the total vote cast at such election for such candidate on such line or column in the entire state. The number of alternates from any district shall not exceed the number of delegates therefrom. The delegates certified to have been elected as such, in the manner provided in this chapter, shall be conclusively entitled to their seats, rights and votes as delegates to such convention. When a duly elected delegate does not attend the convention, his place shall be taken by one of the alternates, if any, to be substituted in his place, in the order of the vote received by each such alternate as such vote appears upon the certified list and if an equal number of votes were cast for two or more such alternates; the order in which such alternates shall be substituted shall be determined by lot forthwith upon the convening of the convention. If there shall have been no contested election for alternate, substitution shall be in the order in which the name of such alternate appears upon the certified list, and if no alternates shall have been elected or if no alternates appear at such convention, then the delegates present from the same district shall elect a person to fill the vacancy.

Election § 6-126. Conventions; rules for holding.

1. The time and place of meeting of a convention shall be fixed, within the times prescribed herein, by a committee appointed pursuant to the rules of the state committee. The room designated for the meeting place of a convention shall have ample seating capacity for all delegates and alternates. Every convention shall be called to order by the chairman of the committee from which the call originates or by a person designated in writing for that purpose by such chairman, or, if he fails to make such designation, then, by a person designated in such manner as the rules of the party shall prescribe. Such chairman or person designated shall have the custody of the roll of the convention until it shall have been organized. No such convention shall proceed to the election of a temporary chairman or transact any business until the time fixed for the opening thereof nor until a majority of the delegates or respective alternates named in the official roll shall be present. The roll call upon the election of a temporary chairman shall not be delayed

more than one hour after the time specified in the call for the opening of the convention, provided a majority of delegates, including alternates sufficient to make up such majority by substitution, are present. The person who calls the convention to order shall exercise no other function than that of calling the official roll of the delegates upon the vote for temporary chairman and declaring the result thereof. 2. The temporary chairman shall be chosen upon a call of the official roll. The committees of the convention shall be appointed by the convention, or by the temporary chairman, as the convention may order. Where only one candidate is placed in nomination for any office, the vote may be taken viva voce. When more than one candidate is placed in nomination for an office the roll of the delegates shall be called and each delegate when his name is called shall arise in his place and announce his choice, except that the chairman of a delegation from any unit of representation provided for by party rules, unless a member of such delegation objects, may announce the vote of such delegation. The convention may appoint a committee to nominate candidates to fill vacancies in nominations made by the convention and caused by the death, declination or disqualification of a candidate. The permanent officer shall keep the records of the convention.

FROM THE BAR TO THE BENCH
National Association of Women Judges
NYS Bar Association Task Force on Increasing Diversity
Judge Peters' remarks October 30, 2003

I know that you all agree with me that it is critical that there be wide diversity within the judiciary. As Judge Kaye has reminded us "diversity is important not because people's brains are microscopically different, but because it is essential that we have the rich perspective of different life experiences in the vital role of adjudicating our fellow citizens' disputes. A diverse bench gives the public a feeling of inclusion in our justice system which allows an individual to place trust and faith in the system and not feel alienated from it.

If you take a look at the judges you know I think you will find that most everyone has had some experience in a semi-public arena. Either they worked for the district attorney's office, the public defender, the county attorney, corporation counsel or as a law clerk.

Also, if you are interested in serving on the judiciary, it is critical that you acquire a name in your community. You can become involved in high profile litigation (that's what I did/Culhane McGivern), get active in civic, professional and religious organizations or get involved in political parties.

My career began when I ran for family court in the County of Ulster. I became an a candidate only because noone else wanted to. No democrat had ever been elected a family court judge in ulster county so it was not difficult to get the democratic

nomination. Getting elected was a whole different matter.

Whatever position you begin from, be it private practice or public service, if you want to become a judge there are certain prerequisites that I believe are critical. First, you should set an example in whatever position you hold: be timely; be prepared; treat lawyers, litigants and judges alike with the respect they deserve. Second, remain scrupulously ethical: never set aside your principles when engaging in decision making in the political arena: As Lillian Helman reminded the world "I will never cut my conscience to fit this year's fashions." and third, if you are elected or if you are employed in public service remain continuously aware of the fact that your job is to serve the public. It is not the reverse.

If you choose to run for office consider accepting each and every public speaking engagement from anyone who asks you to appear unless appearing before that group is inconsistent with your ethics. Even if you are not a candidate for judicial office, accept speaking engagements. Discuss the law, the concepts of justice we live and work by on a daily basis, the needs of the community you live in, the critical nature of the electoral process and the judiciary.

If you are truly interested in public office, never ignore the press when they come calling. I spent nine years as a family court judge and while I was prohibited from discussing any information about a particular case I was hearing, I always returned the phone calls from the press. I always spoke with the reporter. And instead of talking about the particular case he or she wanted to know about I talked in general about the

problems of family court, the caseload difficulties we face, the problems in our community with regard to crack addiction, alcohol services, the problems of domestic violence, anything I could think to talk about that would help educate the reporter -- never lose an opportunity to discuss with the press the needs of our justice system -- always take advantage of it.

If you really want to run for judicial office and you really want to win you need to do some serious soul searching. Sit down with a couple of people you truly trust that you know you will listen to and then say "I promise I won't hate you. Tell me the worst things about me you can think of." Listen carefully to what they say. Ask them about your position in the community. What is your reputation for truthfulness, are you considered reliable, are you considered timely. What about your personality, how do you approach people. Is there something that turns people off. Listen to everything they say, and don't run for office until you have resolved whatever difficulties they brought to your attention.

And don't seek the nomination for judicial office unless you intend to accept it. I mean that seriously. I sought the nomination and an appointment to the supreme court by Governor Cuomo when I was sitting on the family court bench. If I was nominated by the governor, sworn in as a supreme court justice and then lost the contested election, I knew I'd be out of a job. As a single parent of a five-year-old that was a difficult future to face, but I was willing to accept that risk. Remember, don't run for office unless you are both willing to win and willing to lose. You can't assume you will be cross-endorsed -- I never have been. When you run for office whatever office it is, run as if you're going to lose.

When I ran for supreme court I had only one line on the voting ballot. All of my opponents, all white men, had more than one and they had a distinct financial advantage. I ran as if I was going to lose and never stopped moving to meet every voter that I could possibly interact with.

There are several advantages to entering the judiciary at a local level rather than a county or district level. First of all many of these positions are part-time, courts are held at night, and you can maintain a private practice or employment elsewhere while at the same time gaining judicial experience. Or, you can focus upon family obligations and still maintain a legal presence in the community. This is also an opportunity to gain confidence and learn whether or not the judiciary is the direction you want to go in.

If you seek countywide office you will be nominated at the judicial nominating convention in your county but if you seek to serve on the supreme court you will have a different experience altogether. You will be nominated at a judicial convention for the judicial district in which you sit. The number of delegates and alternates are determined by party rules. Often, the date of the convention is a closely guarded secret and is usually held late in September. This gives you only a short period of time to raise money and get your name known in a massive geographic district. Usually, you will need to know before the convention is held whether you have the votes to win the nomination.

Remember, whatever you do, <u>do it with dignity</u>. The first time I tried to win the nomination for supreme court in this judicial district it became apparent that I did not have the votes. The nominees were all going to be white males. I had two choices, one

was to be angry and walk away in a huff and the other was to act in a dignified manner and accept the fact that it was not my time in history. Since I was the first woman to be nominated in the history of the convention I made sure that when I withdrew my name from candidacy I did it with the view that I was not just withdrawing my name but that I was the first woman ever to do so. I chose my words carefully. I explained that in the spirit of party unity I was withdrawing my candidacy. It became clear to me later that it was not just my words but my approach to the situation that later enabled me to run as the first woman candidate for justice of the supreme court in the 301 year history of the Third Judicial District.

In creating a campaign committee make sure that you have two types of people: one, the rich and/or powerful people who will give you their names and their money and two, the people who aren't rich or powerful but will do everything else. I was blessed with a brilliant, dedicated law clerk, shari gold, who worked only part-time for me at the time so she was able to manage my campaign. And I was also blessed with a core of dedicated volunteers.

If you choose to run you must be aware that campaigning for public office is the most demanding, exhausting and financially draining activity you will ever engage in. It is more challenging than law school or child rearing. Despite having experienced campaigning for countywide office in a very hotly contested race here in ulster county, I never knew what I was in for when running district wide. I campaigned in seven counties, worked full-time and raised a family. And while I was often overworked and

exhausted, I tried my best to continue to express my appreciation for those individuals who worked on my campaign. They weren't being elected, I was trying to be elected. They were volunteers and deserved continuous appreciation for their efforts.

Remember that if you decide to run for office you will probably use up your life savings, and that one person will win and one person will lose: it may be you.

When you do run there are certain basic rules that hopefully you will follow. The first is that no matter what happens during your campaign, you must always remember that when you begin throwing dirt, you start losing ground. Don't lower yourself to the level of a candidate who runs a dirty campaign, particularly in the judicial arena since you might find yourself before the commission on judicial conduct. And remember that when you are running for office, if you are a female, the effect of your candidacy is not just personal to you, it affects the impression people have about women in general. I'm not saying this is a good thing but it's reality. The truth is when a white male runs for office and loses, he just loses. And if he wins and does a poor job, he just does a poor job. But when a woman or a member of an ethnic minority runs everybody remembers the good things that person did and the bad things whether they won or whether they lost. We women act not just for ourselves but for those who came before us and those that will come after us and we must always remember this.

Attorneys running for judicial office are governed by rules of judicial conduct. I do not intend, during the short time we're spending together, to discuss this litigation in this arena. I also don't intend to review each and every rule of judicial conduct so that, if

you run for judicial office you are aware of the constraints upon your activity. Rather, I suggest you keep abreast of developments in this litigated arena, and, if you are running for public office, that you study the rules as well as the reports of the commission on judicial conduct concerning individuals who have been disciplined for violation of the rules, and that you become aware of the fact that in certain communities committees exist to deal with violations of the rules during a campaign.

It is an extraordinary privilege to sere as a member of the judiciary. If you love the law and you love public service consider the judiciary.

PRESENT: HON. THOMAS J. McNAMARA
Acting Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

RICHARD S. CONTI, JAMES M. GAUGHAN, CHRISTOPHER T. HIGGINS, PAMELA C. ROBBINS, GLORIA DESOLE, JOHN M. CLARKSON, CARA J. BROUSSEAU, JEFFREY KUH, JUDY L. DOESSCHATE, DALE A. GETTO, DANIEL W. COFFEY, SUE H.R. ADLER, MEREDITH BUTLER, and DANIEL C. CURTIS,

Petitioners,

-against-

MATTHEW J. CLYNE and RACHEL L. BLEDI, COMMISSIONERS CONSTITUTING THE ALBANY COUNTY BOARD OF ELECTIONS,

Respondents,

- and -

JOHN H. CUNNINGHAM, as Objector,

Respondent-Objector.

JUDGMENT
Index No.: 3839-14
RJI No.: 01-14-114336

WILLIAM F. FARAGON, ELLEN C. ROSANO, DAVID LEVY, SUSAN DONSBACH, JO D. SAMUELS, MELVYN LEVY, SCOTT EDWARDS and and HENRY G. LANDAU,

Petitioners,

-against-

MATTHEW J. CLYNE and RACHEL L. BLEDI, COMMISSIONERS CONSTITUTING THE ALBANY COUNTY BOARD OF ELECTIONS,

Respondent,

- and -

RICHARD P. JACOBSON, as Objector,

Respondent-Objector.

Index No.: 3840-14
RJI No.: 01-14-114335

Conti, et al. v. Clyne, et al.; Index No.: 3839-14
Faragon, et al. v. Clyne, et al.; Index No.: 3849-14
Faragon, et al. v Clyne, et al.; Index No.: 3857-14

WILLIAM F. FARAGON, ELLEN C. ROSANO, DAVID LEVY, SUSAN DONSBACH, JO D. SAMUELS, MELVYN LEVY, SCOTT EDWARDS and and HENRY G. LANDAU,

Petitioners,

Index No.: 3857-14
RJI No.: 01-14-114360

-against-

MATTHEW J. CLYNE and RACHEL L. BLEDI, COMMISSIONERS CONSTITUTING THE ALBANY COUNTY BOARD OF ELECTIONS,

Respondent,

- and -

RICHARD P. JACOBSON, as Objector,

Respondent-Objector.

(Supreme Court, Albany County, Motion Term)

APPEARANCES: Kenneth J. Dow, Esq.
Attorney for Petitioners
P.O. Box 25, 31 Kinderhook Street
Chatham, New York 12544

and

Christopher T. Higgins
Attorney for Petitioners
277 Hudson Avenue
Albany, New York 12210

Matthew J. Clyne, Esq.
Attorney for Respondent, Board of Elections
Albany County Board of Elections
32 North Russell Road
Albany, New York 12206

Conti, et al. v. Clyne, et al.; Index No.: 3839-14
Faragon, et al. v. Clyne, et al.; Index No.: 3849-14
Faragon, et al. v Clyne, et al.; Index No.: 3857-14

Murphy, Burns, Barber & Murphy, LLP
(By: Peter G. Barber, Esq. of Counsel)
Attorneys for Respondent-Objectors,
John H. Cunningham and Richard P. Jacobson
226 Great Oaks Boulevard
Albany, New York 12203

McNamara, J.

These proceedings[1] were brought to challenge a determination by the Albany County Board of Elections (Board) which invalidated designating petitions naming petitioners as candidates for the Democratic Party position of Delegate to the Third Judicial District judicial nominating convention.[2] The designating petitions were invalidated on the basis that they violated public policy which prohibits an individual from running for two public offices simultaneously when the candidate would be precluded from holding both offices at the same time. According to the Board, the designating petitions serve as a vehicle to promote a candidate who is ineligible to run for the office of Supreme Court Justice because the candidate is also a candidate for Judge of the Family Court. Petitioners argue that their efforts to be selected as delegates to the convention cannot be restrained based on the stated public policy since it has no direct application to their circumstances. In their answers to the petitions the Board respondents and the respondent-objector (collectively referred to as respondents) have both raised as an objection in point of law

---

[1] Separate proceeding were brought by prospective delegates residing in the 109th Assembly District and the 110th Assembly District each of which covers a portion of Albany County.

[2] Party nominations for the office of Justice of the Supreme Court are made by a judicial district convention (Election Law § 6-106) and delegates to the convention are elected at the primary preceding the convention (Election Law §6-124).

a lack of subject matter jurisdiction based on petitioners' failure to file the petitions with the County Clerk.

In an affidavit by one of the petitioners (petitioner) he sets out the events surrounding the presentation of the petition and related papers for filing and although there were two separate instances, one on July 24th and another on July 25th, the events are described as having unfolded in an identical manner. Each time copies of the Order to Show Cause, Verified Petition and Memorandum of Law were taken to the Albany County Clerk's office for filing and an application for an index number and Request for Judicial Intervention were filled out. According to the petitioner, all papers were then handed to the clerk who stamped some, assigned an index number and provided receipts for the fees paid. According to petitioner, stickers were affixed and the papers were then taken to a judge for review. After the judge executed the Order to Show Cause the papers were taken to the Supreme Court Clerk's office for assignment. Petitioner maintains that he was informed that the procedure in election law matters was for the Supreme Court Clerk to stamp the papers and immediately forward them to the assigned judge. Petitioners argue that given the circumstances set out in the affidavit, the petition was properly filed either under CPLR 304 or CPLR 2102 or alternatively, that any defect in filing may be excused under CPLR 2001.

Under CPLR 304 (a) a special proceeding is commenced by filing a petition. Filing is accomplished by "delivery of the ... petition ... to the clerk of the court in the county in which the ... special proceeding is brought" (CPLR 304 [c]). The County Clerk is the clerk of the Supreme Court and County Court within his or her county (County Law § 525 [1]). At the time of filing, the clerk is required to date stamp the filed papers, file them, maintain a record of the date of the filing and return a date stamped copy, together with an index number, to the filing party (CPLR 304 [c]). The papers submitted to the court comport with some aspects with the events described by petitioner. Each Request for Judicial Intervention is stamped "Paid

Albany County Clerk" and each bears a sticker from the Albany County Clerk which shows the document number and the date and time received. Each Order to Show Cause is signed by the appropriate judge and each bears the date and time stamp of the Supreme Court Clerk as does each RJI. However, none of the petitions, among the documents alleged to have been handed to the clerk, have stickers indicating that they were filed. Notwithstanding the absence of a sticker, petitioners contend that handing the petition to the clerk satisfies the delivery requirement under CPLR 304 and therefore, constitutes filing.

In this regard petitioners rely on *Matter of Ryan v Carlo*, 224 AD2d 804 (3rd Dept 1996), lv denied 87 NY2d 808 (1996). There, petitioner's attorney hand-delivered the order to show cause and petition, together with the appropriate filing fee, to an employee in the office of the Albany County Clerk. The employee took the check and instructed petitioner's attorney to take the papers to the clerk of the Supreme and County Courts across the hall, which petitioner's attorney did. The court found that CPLR 304 does not require that the petition be stamped by the County Clerk or placed on file under the assigned index number and that the statute does not specify who must process the papers after their initial delivery to the County Clerk. Subsequent cases in the Appellate Division have held that papers are filed upon "physical receipt" by the County Clerk (*Sharrait v Hickey*, 298 AD2d 956, 957 [2002]; *Matter of Laidlaw Energy & Envtl., Inc. v Town of Ellicottville*, 60 AD3d 1284 [4th Dept 2009]; see *Matter of Johnson v Goord*, 288 AD2d 811 [3d Dept 2001] earlier decided) or when "delivered" (*Resch v Briggs*, 51 AD3d 1194, 1196 [3rd Dept 2008]; *Peace v Yumin Zhang*, 15 AD3d 956, 958 [4th Dept 2005]).

Here, petitioner avers that he handed the papers to the clerk who date stamped some but not all of the originals. No explanation was given to him as to why a date stamp was not affixed to the petitions. He then took the papers to the judge to have the Order to Show Cause signed and then turned the papers over

to the Supreme Court clerk. Having physically delivered the petitions to the clerk of the court for filing, petitioners complied with the requirements of CPLR 304and the action was properly commenced. " After the papers are delivered, it is the clerk of the court who is required to take further action by date-stamping the filed papers, filing them, maintaining a record of the date of filing and returning a date-stamped copy ... to the filing party (*Matter of Laidlaw Energy & Envtl., Inc. v Town of Ellicottville*, 60 AD3d 1284, 1286 [4th Dept 2009]).

Respondents have also challenged the proceedings on the basis that the petitions were not properly served. CPLR 2103 [a] provides "[e]xcept where otherwise prescribed by law or order of court, papers may be served by any person not a party of the age of eighteen years or over." In this instance the Orders to Show Cause and Petitions were served by one of the petitioners, a party to the action. However, such service was merely irregular (*Sullivan v Albany County Board of Elections*, 77 AD2d 959 [3d Dept 1980]) and in the absence of prejudice to a substantial right of the respondents, should be disregarded (CPLR 2001). Respondents have not demonstrated any substantial prejudice.

Having concluded that the action was properly commenced, the merits of the petitions are addressed. In separate letters the Board advised the prospective candidates that their designating petitions were being invalidated because the designation was "violative of public policy prohibiting an individual from running for two public offices simultaneously when said candidate would be precluded from holding both offices at the same time. More specifically, the subject petition serves as a vehicle to promote a candidate (Margaret T Walsh) who is ineligible to run for the office of Supreme Court Justice."

As a preliminary matter petitioners argue that the Board acted outside its authority by invalidating the designating petitions on the stated basis. "It is settled that boards of election have no power to deal with

questions of fact or with objections involving matters not appearing upon the face of the [designating] petition, and that such extrinsic matters, if any, are to be determined in court proceedings only" (*Schwartz v Heffernan*, 304 NY 474, 480 [1952]). "Boards of election are vested only with the authority to perform a 'ministerial examination' of a designating petition" (*Matter of Scaturro v Maloney*, 76 AD3d 688 [2d Dept 2010], quoting *Schwartz v Heffernan*, 304 NY at 480). The designating petitions involved here identify only those individuals seeking election as convention delegates and contain no reference to any candidate for judicial office. Consequently, the conflict on which the Board relied is extrinsic to a ministerial examination of the petitions and therefore, beyond the scope of the Board's authority.

In their answers the respondent-objectors have asserted counterclaims and cross-petitions seeking to have the designating petitions invalidated by the court. The counterclaims and cross-petitions are based on the ground relied on by the Board: that the candidates are part of an orchestrated effort to nominate a candidate who is ineligible to run for Supreme Court. Petitioners have raised a number of affirmative defenses in their respective replies including the Statute of Limitations and failure to obtain leave of the court to bring the cross-petitions. Considering, for the purpose of these proceedings, that the cross-petitions were properly brought the substance of the counterclaims raised must be rejected. As noted, the designating petitions contain no reference to any candidate for judicial office. In addition, the respondent-objectors/cross-petitioners have not pointed to any provision of law by which a delegate is bound to vote for a particular candidate at the judicial nominating convention. A nominating convention involves a collaborative process for selecting a candidate and in any number of instances, no individual arrives at the convention with a sufficient number of delegates to claim the nomination. Any proceeding by which a delegate is tied to a particular candidate would necessarily undermine the process established by the Election

Conti, et al. v. Clyne, et al.; Index No.: 3839-14
Faragon, et al. v. Clyne, et al.; Index No.: 3849-14
Faragon, et al. v. Clyne, et al.; Index No.: 3857-14

Law for selecting candidates for Supreme Court and if the convention produces a candidate not otherwise eligible for the office, that result may be addressed in a post-convention challenge.

Accordingly it is

ORDERED AND ADJUDGED, that the determination of the Albany County Board of Elections invalidating the designating petitions of the named petitioners is vacated and it is further

ORDERED AND ADJUDGED, that the counterclaims and cross-petitions are dismissed.

This constitutes the judgment of the Court. The original judgment is returned to the attorney for petitioners. A copy of the judgment and the supporting papers have been delivered to the County Clerk for placement in the file. The signing of this judgment, and delivery of a copy of the judgment shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provisions of that rule respecting filing, entry and notice of entry.

SO ORDERED.
ENTER.

Dated: Saratoga Springs, New York
August 5, 2014

Thomas J. McNamara
Acting Supreme Court Justice

Conti, et al. v. Clyne, et al.; Index No.: 3839-14
Finagon, et al v. Clyne, et al.; Index No.: 3849-14
Finagon, et al. v Clyne, et al.; Index No.: 3857-14

PAPERS CONSIDERED (Action #1; Index 3839-14):

1. RJI dated July 24, 2014;
2. Order to Show Cause dated July 24, 2014;
3. Verified Petition dated July 24, 2014;
4. Petitioner's Memorandum of Law dated July 24, 2014;
5. Verified Answer of Respondent dated July 28, 2014;
6. Answer of Respondent-Objector with Counterclaim and Cross-Petition dated July 28, 2014;
7. Notice of Cross-Petition dated July 24, 2014;
8. Cross-Petition of Respondent-Objector, dated July 24, 2014;
9. Memorandum of Law in Opposition to Petition; dated July 28, 2014;
10. Respondent-Objector's Memorandum of Law in Support of Motion to Dismiss Pursuant to CPLR 304, dated July 28, 2014;
11. Respondent-Objector's Memorandum of Law in Support of Motion to Dismiss for Improper Service, dated July 28, 2014;
12. Petitioners' Memorandum of Law dated July 29, 2014;
13. Answer in Reply to Cross-Petition and Counterclaim dated July 29, 2014.
14. Petitioners' Memorandum of Law in Response to Respondents' Allegation that the Court Lacks Subject Matter Jurisdiction dated July 31, 2014;
15. Respondent-Objectors' Letter Memorandum of Law dated August 1, 2014;
16. Petitioners' Letter Memorandum of Law dated August 1, 2014;
17. Letter dated 7/22/14 to Sue Adler from the Albany County Board of Elections'
18. Affirmation of Christopher T. Higgins dated July 31, 2014; and
19. Letter from Matthew J. Clyne dated July 31, 2014.

(Action #2; Index 3840-14):

1. RJI dated 7/24/14;
2. Order to Show Cause dated July 24, 2014;
3. Verified Petition dated July 24, 2014;
4. Petitioner's Memorandum of Law dated July 24, 2014;
5. Notice of Cross-Petition dated July 24, 2014;
6. Cross-Petition of Respondent-Objector dated July 24, 2014;
7. Answer of Respondent-Objector with Counterclaim and Cross-Petition dated July 28, 2014;

Conti, et al. v. Clyne, et al.; Index No.: 3839-14
Faragon, et al. v. Clyne, et al.; Index No.: 3849-14
Faragon, et al. v. Clyne, et al.; Index No.: 3857-14

8. Respondent-Objector's Memorandum of Law in Opposition to Petition dated July 28, 2014;
9. Respondent-Objector's Memorandum of Law in Support of Motion to Dismiss dated July 28, 2014;
10. Verified Answer of Respondent dated July 28, 2014;
11. Answer in Reply to Cross-Petition and Counterclaim dated July 29, 2014;
12. Respondent-Objectors' Letter Memorandum of Law dated August 1, 2014; and
13. Petitioners' Letter Memorandum of Law dated August 1, 2014.

(Action #3; Index 3857-14):

1. RJI dated 7/24/14;
2. Letter dated 7/22 to David Levy from the Albany County Board of Elections
3. Order to Show Cause dated July 25, 2014;
4. Verified Petition dated July 24, 2014;
5. Petitioner's Memorandum of Law dated July 24, 2014;
6. Answer of Respondent-Objector with Counterclaim and Cross-Petition dated July 28, 2014;
7. Respondent-Objector's Memorandum of Law in Support of Motion to Dismiss dated July 28, 2014;
8. Verified Answer of Respondent dated July 28, 2014;
9. Petitioners' Memorandum of Law in Response to Respondents' Allegation that the Court Lacks Subject Matter Jurisdiction dated July 31, 2014;
10. Petitioners' Memorandum of Law in Support of Reply to Cross-Petition;
11. Affirmation of Christopher T. Higgins dated July 31, 2014;
12. Respondent-Objectors' Letter Memorandum of Law dated August 1, 2014; and
13. Petitioners' Letter Memorandum of Law dated August 1, 2014.

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: August 21, 2014 519471

In the Matter of RICHARD S. CONTI et al.,
Respondents,
v

MATTHEW J. CLYNE et al., as Commissioners Constituting the Albany County Board of Elections, et al.,
Appellants.

(Proceeding No. 1.)

In the Matter of WILLIAM F. FARAGON et al.,
Respondents,
v

MATTHEW J. CLYNE et al., as Commissioners Constituting the Albany County Board of Elections, et al.,
Appellants.

(Proceeding No. 2.)

In the Matter of WILLIAM F. FARAGON et al.,
Respondents,
v

MATTHEW J. CLYNE et al., as Commissioners Constituting the Albany County Board of Elections, et al.,
Appellants.

(Proceeding No. 3.)

MEMORANDUM AND ORDER

Calendar Date: August 21, 2014

Before: McCarthy, J.P., Garry, Egan Jr. and Clark, JJ.

Matthew J. Clyne, Albany County Board of Elections, Albany, for Matthew Clyne and another, appellants.

Murphy, Burns, Barber & Murphy, Albany (Peter G. Barber of counsel), for John H. Cunningham and another, appellants.

Kenneth J. Dow, Chatham, for Richard S. Conti and others, respondents.

Per Curiam.

Appeals from a judgment of the Supreme Court (McNamara, J.), entered August 8, 2014 in Albany County, which, among other things, granted petitioners' applications, in three proceedings pursuant to Election Law § 16-102, to annul determinations of the Albany County Board of Elections invalidating the designating petitions naming petitioners as candidates for the party positions of delegate and alternate delegate to the Democratic Party Judicial Nominating Convention, Third Judicial District, from the 109th and 110th Assembly Districts in the September 9, 2014 primary election.

These proceedings arise out of designating petitions filed by candidates for the party positions of delegate and alternate delegate to the Democratic Party Judicial Nominating Convention for the Third Judicial District. Petitioners in proceeding No. 1 are candidates in the 109th Assembly District, while petitioners in proceedings Nos. 2 and 3 are candidates in the 110th Assembly

District (see Election Law § 6-124).[1] Objectors allege that, in the event that petitioners succeed in their primary candidacies, petitioners would then seek to nominate Margaret Walsh, currently an Albany County Family Court Judge, at the subsequent Democratic Party Judicial Nominating Convention as the Democratic Party candidate for the public office of Justice of the Supreme Court for the Third Judicial District (see Election Law § 6-106). Walsh is already running for reelection as Albany County Family Court Judge on the Democratic Party line. Objections were filed to the designating petitions in both Assembly Districts, alleging that they were invalid because Walsh could not simultaneously run for both offices (see Matter of Lufty v Gangemi, 35 NY2d 179, 181 [1974]; Matter of Burns v Wiltse, 303 NY 319, 323-326 [1951]; see also County Law § 411). The Albany County Board of Elections agreed with said objections and invalidated the petitions.

Petitioners commenced the present proceedings to annul the Board's determinations. Respondents answered and argued that, among other things, the petitions were jurisdictionally defective because petitioners had failed to file them with the Albany County Clerk and that personal jurisdiction had not been obtained over respondent John H. Cunningham in proceeding No. 1. The objectors, namely, Cunningham in proceeding No. 1 and respondent Richard P. Jacobson in proceeding Nos. 2 and 3, also cross-petitioned for an order declaring the designating petitions to be invalid. Supreme Court ultimately dismissed the cross petitions and annulled the determinations of the Board. Respondents now appeal.

Dealing first with the issue of subject matter jurisdiction, the record reflects that petitioner Christopher T. Higgins personally delivered the orders to show cause, petitions, and filing fees to the office of the Albany County Clerk. After paying the fees, Higgins took the papers to the Clerk of the Supreme and County Courts in order to have a judge assigned, to whom the papers were transmitted directly. While the papers were

---

[1] Proceeding No. 3 was apparently commenced to correct a typographical error in the order to show cause in proceeding No. 2.

not physically placed in the County Clerk's case file, they were nevertheless deemed filed when Higgins delivered them to the County Clerk in the first instance, and Supreme Court correctly found petitioners to have complied with the filing requirements of CPLR 304 and 2102 (see CPLR 304 [c]; Matter of Resch v Briggs, 51 AD3d 1194, 1196 [2008]; Matter of Ryan v Carlo, 224 AD2d 804, 804 [1996], lv denied 87 NY2d 808 [1996]; compare Matter of Mendon Ponds Neighborhood Assn. v Dehm, 98 NY2d 745, 746 [2002]). The County Clerk should have retained the papers and provided a date-stamped copy of them to Higgins when they were delivered (see CPLR 304 [c]), but the failure to do so constituted nothing more than a ministerial error in the method of filing that may be overlooked pursuant to CPLR 2001 (see Goldenberg v Westchester County Health Care Corp., 16 NY3d 323, 327-328 [2011]).

We further agree with Supreme Court that petitioners obtained personal jurisdiction over Cunningham in proceeding No. 1. Service upon Cunningham was effected by Higgins, which runs afoul of the requirement that "papers may [only] be served by any person not a party" (CPLR 2103 [a] [emphasis added]). While there has been disagreement among the Appellate Divisions as to the effect of this type of error, this Court has consistently held that it "is a mere irregularity which does not vitiate service" (Matter of Schodack Concerned Citizens v Town Bd. of Schodack, 148 AD2d 130, 133 [1989], lv denied 75 NY2d 701 [1989]; see Matter of Sullivan v Albany County Bd. of Elections, 77 AD2d 959, 959 [1980]). We perceive no reason to depart from our precedent, particularly in light of the Court of Appeals' holding that CPLR 2001, as amended in 2007, permits a court to overlook technical defects in the manner of service that do not prejudice the person or persons being served (see Ruffin v Lion Corp., 15 NY3d 578, 582 [2010]).

Turning to the merits, respondents argue that permitting delegates to run who would allegedly support Walsh at the judicial nominating convention raises the appearance of her staging impermissible runs for two judicial posts at the same time. Assuming without deciding that any legitimate concerns exist as to the eligibility of Walsh as a candidate for Supreme Court (but see Election Law § 6-146 [5]), however, the obvious point is that she is not a named candidate in the designating

petitions at issue here. The present matters relate to delegates and alternate delegates to the judicial nominating convention and, upon appeal, respondents do not dispute that petitioners "could, if elected, take and hold the office[s]" they seek. (Matter of Burns v Wiltse, 303 NY at 325; cf. Election Law § 6-122 [2]). The Board instead invalidated the petitions out of a misguided interest in what the candidates might do at the convention if elected, a matter that plainly does "not appear[] upon the face of the petition[s]" and is beyond the Board's power to review (Schwartz v Heffernan, 304 NY 474, 480 [1952]; see Matter of Lucariello v Commissioners of Chautauqua County Bd. of Elections, 148 AD2d 1012, 1012-1013 [1989], lv denied 73 NY2d 707 [1989]). Supreme Court thus properly invalidated the determinations of the Board, which amounted to little more than an unreasonable and unjustified restraint upon the right of primary voters to choose among eligible and qualified candidates (see NY Const, art II, § 1; Matter of Hopper v Britt, 204 NY 524, 532 [1912]). Moreover, given the absence of any legally cognizable defect in the designating petitions or the candidates named thereon, petitioners satisfied their "burden of demonstrating that [the] designating petition[s] should be validated" such as to warrant the grant of the petitions and dismissal of the cross petitions (Matter of Mannarino v Goodbee, 109 AD3d 683, 685 [2013]).

McCarthy, J.P., Garry, Egan Jr. and Clark, JJ., concur.

ORDERED that the judgment is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court

2013 Edition
Judicial Campaign Ethics Handbook

New York State Advisory Committee on Judicial Ethics

*Indicates judges and lawyers of the Judicial Campaign Ethics Subcommittee.

JUDICIAL CAMPAIGN ETHICS HANDBOOK
of the New York State Advisory Committee on Judicial Ethics
(2013 Edition)

TABLE OF CONTENTS

ACKNOWLEDGMENTS

Special thanks are due to the ACJE's Judicial Campaign Handbook subcommittee for the initial draft of the Handbook in 2003: Hon. Edward P. Borrelli, Hon. Lawrence J. Bracken, Hon. Jerome C. Gorski, and Maryrita Dobiel, Esq.

The 2013 Edition of the Handbook was prepared by a subcommittee appointed by Hon. George Marlow and headed by Laura Smith, Esq., with assistance from Hon. Edward Borrelli, Maryrita Dobiel, Esq., and Josefina Lessey. The 2013 Edition includes opinions decided as of December 31, 2012.

June 2013

FOREWORD

Although many judges and justices of the New York State Unified Court System are chosen through a partisan electoral process, they are prohibited from engaging in political activities, except as authorized by the Rules Governing Judicial Conduct (22 NYCRR Part 100) or other provisions of law. While the Rules prescribe the parameters of ethically permissible political activities, applying those rules in specific situations can be challenging. As a result, incumbent judges and non-judge candidates for judicial office (collectively, "judicial candidates") are encouraged to submit any campaign-related ethics questions to the Judicial Campaign Ethics Center (the "JCEC") to receive guidance about the propriety of various forms of campaign-related political activity. Judges and quasi-judicial officials should submit all *other* ethics inquiries to the New York State Advisory Committee on Judicial Ethics (the "ACJE").

The Advisory Committee on Judicial Ethics

In 1987, the ACJE was formed to help New York State judges and justices adhere to the high standards set forth in the Rules. In 1988, the legislature codified the ACJE's creation in Judiciary Law §212(2)(l), which provides that whenever a judge acts in accordance with an advisory opinion of the ACJE, that act is "presumed proper" for purposes of any subsequent investigation by the New York State Commission on Judicial Conduct. Since then, the ACJE has issued between 100 and 250 formal opinions annually in response to questions from judges and justices about the propriety of their own political and other activities. Those opinions set forth the ACJE's interpretations of the Rules regulating political activities of judicial candidates, providing guidance for circumstances not specifically governed by a particular rule.

The Judicial Campaign Ethics Center

The New York State Unified Court System established the JCEC in the Fall of 2004. Among its several roles, the JCEC serves as liaison to a subcommittee of the ACJE to issue quick and reliable responses to judicial candidates with campaign-related ethics inquiries and provides campaign ethics training programs for judicial candidates. It also pursues projects to educate New York State voters about judicial elections. In its role as liaison to the ACJE's Judicial Campaign Ethics Subcommittee (the "Subcommittee"), the JCEC provides judicial candidates with responses to campaign-related ethics questions during the campaign to help them avoid actionable misconduct and help ensure that candidates act in a way that will maintain public confidence in the judiciary.

Members of the Subcommittee, who also are members of the ACJE, review all written inquiries from judicial candidates. The JCEC sends each inquiring candidate a written response from the Subcommittee by e-mail. To facilitate a rapid response (generally within three business days), judicial candidates should e-mail their inquiries to the JCEC. Please visit our website at http://www.nycourts.gov/ip/jcec/contactus.shtml#howtoask for details.

Please note that the JCEC responses apply only to the particular candidate who submitted the inquiry and are valid only for the duration of that candidate's campaign season. By written agreement with the Commission on Judicial Conduct, a judicial candidate who makes an inquiry

and subsequently conforms his/her conduct during that window period to the advice contained in the JCEC's response is presumed to have acted properly for purposes of any subsequent investigation by the Commission.

The JCEC is only authorized to answer inquiries from a candidate about his/her own proposed conduct and will not answer questions about the conduct of a candidate's opponent or inquiries from third parties other than a candidate's authorized representative. All inquiries, whether by telephone, in writing or via electronic mail are, by law, treated as strictly confidential by the JCEC and the Subcommittee.

The Judicial Campaign Ethics Handbook

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

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

* * *

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

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

CONTACT INFORMATION

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

Address:	Judicial Campaign Ethics Center Office of Court Administration 25 Beaver Street, 11th Floor New York, New York 10004
Telephone:	1-888-600-JCEC (5232)
Fax:	1-212-401-9029
E-mail:	jcec@nycourts.gov
Web site:	www.nycourts.gov/ip/jcec

Advisory Committee on Judicial Ethics (for all other judicial ethics inquiries)**

Address:	Advisory Committee on Judicial Ethics Attn: Maryrita Dobiel, Esq., Chief Counsel New York State Unified Court System 4 Empire State Plaza, Suite 2001 Albany, New York 12223-1450
Telephone:	1-866-79-JUDGE (toll-free) or 1-518-474-7469
Fax:	1-212-295-4881
Web site:	www.nycourts.gov/ip/acje

Informal Inquiries on General Matters of Judicial Ethics***

Chair:	Hon. George D. Marlow (ret.) at 1-866-79-JUDGE (58343) or 1-845-454-2125
Vice-Chairs:	Hon. Betty Weinberg Ellerin (ret.) and Hon. Jerome C. Gorski (ret.)
Chief Counsel:	Maryrita Dobiel, Esq. at 1-866-79-JUDGE (58343) or 1-518-474-7469
Special Counsel:	Hon. Edward P. Borrelli, JHO at 1-866-79-JUDGE (58343) or 1-914-824-5329
Staff Counsel:	Laura L. Smith, Esq. at 1-212-428-2504

** ***Note that the ACJE does not accept e-mail inquiries.***

*** In addition to the names listed here, all judicial members of the ACJE are also available by telephone for informal inquiries.

JUDICIAL CAMPAIGN ETHICS HANDBOOK

1. Basic Rule: No Partisan Political Activity

The Rules generally prohibit full- or part-time judges, or judicial candidates seeking election to judicial office, from directly or indirectly engaging in any partisan political activity (22 NYCRR 100.5; 100.6[A]; pt. 1200 Rule 8.2[b]). As further explained in Section 3.1, *infra*, one very important exception is that all judges and judicial candidates may at all times be members of political parties.

As discussed in the following sections of this Handbook, the Rules define certain limited permissible political activity and conduct so that an individual can advance his/her own candidacy for elective *judicial* office (22 NYCRR 100.5[A]).

By contrast, as explained further in Section 2.2.4, *infra*, a judge who becomes a candidate for elective *non-judicial* office must resign from judicial office.

2. Becoming a Candidate

The definition of "candidate" under the Rules (22 NYCRR 100.0[A]) does not in any way depend on obtaining a political party's nomination or support (*see* Section 2.2, *infra*).

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

2.1 Pre-Candidacy Activities

2.1.1 Testing the Waters

A judge may meet privately with the head of a local political committee, political party members and leaders, or may appear privately before a party executive committee at any time to discuss the possibility of becoming a candidate for public office (Opinions 02-34 [judicial candidacy]; 97-65 [Vol. XV] [Lieutenant Governor]; 93-55 [Vol. XI] [district attorney]; 91-44 [Vol. VII] [another judicial office]; 22 NYCRR 100.0[Q]).

Such private preliminary discussions with political leaders or officials about a possible candidacy are not proscribed political activities under the Rules (Joint Opinion 04-143 and 05-05), and a judge need not form a campaign committee before testing the waters (Opinion 94-30 [Vol. XII]). Accordingly, the pendency of a criminal investigation or indictment against a party leader does not render such private discussions impermissible (Joint Opinion 04-143 and 05-05).

By contrast, a judge may not contact community residents before his/her window period begins to determine if they would support the judge's candidacy for judicial office, as such activity "does not involve a 'testing of the waters' about the possibility of receiving backing from a political party, but rather determining what the likelihood is of being supported by the voters themselves" (Opinion 02-34).

2.1.2 Anticipated Vacancies

Until there is a vacancy in a judicial office, or it is a known fact that a vacancy in such office will occur, a prospective candidate cannot be deemed a candidate for that judicial office (Opinions 08-189; 99-14 [Vol. XVII]; 97-45 [Vol. XV]).

The fact that the incumbent "has publicly stated that [he/she] is considering retiring from the bench" is not sufficient to establish that there is an actual, known judicial vacancy (Opinion 99-14 [Vol. XVII]). Similarly, an anticipated vacancy in County Court based on the incumbent's pending appointment to Supreme Court does not exist unless and until the appointment becomes effective (Opinion 97-45 [Vol. XV]).

In practice, this means that a prospective candidate for an anticipated vacancy may not announce his/her candidacy, allow the solicitation of funds, or engage in other political activity that would otherwise be permissible in furtherance of a judicial campaign, unless and until it is known that there is to be a vacancy and therefore an election to fill it (Opinions 08-189; 97-45 [Vol. XV]).

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

2.2 Candidacy and Window Period Defined

Until an individual is an announced candidate (*infra* Section 2.2.1) for an actual, known opening for elective judicial office (*supra* Section 2.1.2) within his/her window period (*infra* Section 2.2.3), he/she may not engage in political activity under the Rules, but may only "test the waters" (*supra* Section 2.1.1) through private meetings to discuss whether he/she may be able to obtain the support of a political party or leader.

2.2.1 Announcement of Candidacy

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

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

The Rules do not mandate a particular method for declaring oneself a candidate. Sitting judges traditionally write a letter to the Chief Administrative Judge (as the promulgator of the rules) and/or an appropriate local Administrative Judge (as the local representative of the Chief Administrative Judge).[1] However, conduct such as forming a campaign committee, issuing a press release, or meeting with community residents, are examples of alternative ways to publicly manifest one's candidacy for elective judicial office within the meaning of the Rules (Opinions 02-34; 00-11 [Vol. XVIII]; "Observations and Recommendations," 2001 CJC Ann. Rep. at 21-22).

2.2.2 Unopposed Candidates

Judicial candidates who are running unopposed may participate in permissible campaign activities, such as appearing with other candidates in door-to-door campaigning (Joint Opinion 97-118 and 97-122 [Vol. XVI]). However, the ACJE has noted that "there may be limitations in certain areas, such as post-election fund-raising" (*id.*); see section 7.3, *infra*, for discussion.

2.2.3 "Window Period" Defined

The "window period" is the period during which judges and non-judges who seek an elective judicial office may engage in political activity pursuant to Section 100.5 of the Rules Governing Judicial Conduct (Opinion 96-29 [Vol. XIV]). There is no geographic limitation on permissible campaign activities during a candidate's window period (Opinions 06-152; 03-122; 95-109 [Vol. XIII]).

Calculating the Start of the Window Period. The start of the window period for a particular elective judicial office is nine months before the primary election, judicial nominating convention, party caucus or other party meeting held to nominate candidates for that elective judicial office, or at which a committee or other organization may publicly solicit or support a candidate for that office (22 NYCRR 100.0[Q]).

Thus, to determine the start of the applicable window period, a judicial candidate may either count back nine months from the date of the formal nomination, *i.e.*, the scheduled primary, nominating convention, or party caucus for that judicial office; or (if earlier) count back nine months from the date of an official party meeting at which a candidate for the judicial office will be designated and endorsed, even if that designation is subject to being contested at a subsequent primary; or (if earlier) the date of the commencement of the petition process for that judicial office (Opinions 07-152; 06-152; 05-97; 02-90; 94-97 [Vol. XII]).

---

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

The window period for Supreme Court candidates commences nine months prior to the earlier of the following dates: (1) the date of formal nomination by convention; or (2) the date of a recognized party-sponsored caucus or committee meeting within the candidate's judicial district held for the purpose of discussing or considering judicial nominations, even if a resulting designation or endorsement would be subject to a subsequent contest (Opinion 08-196).

If no date for such an official party meeting has yet been set, the candidate may assume that the previous year's official date will be used again for the upcoming party meeting and then count back nine months from that presumed date (Opinions 08-196; 07-152).

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

If the candidate is not a candidate in the general election, the window period ordinarily ends six months after the date of the primary election, convention, caucus or meeting at which he/she would have been nominated (22 NYCRR 100.0[Q]; Opinions 03-122; 01-111; 97-121 [Vol. XVI]). The window period for a judicial candidate who submitted his/her name to a party screening panel but did not receive the party's endorsement or nomination, and whose name ultimately did not appear on the ballot for the primary election, ends exactly six months from the last date on which the candidate could have filed an independent nominating petition for the judicial office sought (Opinion 08-53).

When a candidate for Supreme Court Justice formally withdraws his/her name from consideration before the judicial nominating convention takes place, his/her window period ends six months from the date of his/her withdrawal or six months from the date of the nominating convention, whichever is earlier (Opinion 09-194).

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

2.2.4 Judge as Candidate for Non-Judicial Office (Incumbent Judges Only)

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

---

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

see also Opinion 97-65 [Vol. XV]). See also Section 2.1.1, *supra*, for further discussion of testing the waters.

2.3 Mandatory Education Program

The Rules require all judicial candidates (except for those seeking town or village justice positions) to attend a mandatory judicial ethics education program (22 NYCRR 100.5[A][4][f]). The rule provides that all judge and non-judge candidates for elective judicial office "shall complete" the ethics training program "any time after the candidate makes a public announcement of candidacy or authorizes solicitation or acceptance of contributions for a known judicial vacancy, but no later than 30 days after receiving the nomination for judicial office" (*id.*). For candidates running in a primary election, the date of nomination is defined as "the date upon which the candidate files a designating petition with the Board of Elections" (*id.*).

This ethics program is administered by the JCEC. Contact the JCEC at 1-888-600-5232 for more information and to register.

2.4 Mandatory Financial Disclosure

The Rules require all judicial candidates (other than candidates for justice of a town or village court) to file a financial disclosure statement with the Ethics Commission for the Unified Court System within 20 days following the date on which the judge or non-judge becomes a judicial candidate, unless the candidate was already required to file a financial disclosure statement for the preceding calendar year pursuant to Part 40 of the Rules of the Chief Judge (22 NYCRR 100.5[A][4][g]).

The JCEC has prepared an online F.A.Q. to help candidates determine whether and when they must file (http://www.nycourts.gov/ip/jcec/financialdisclosure.shtml).

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

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

2.5 Independent Judicial Election Qualification Commissions

The independent judicial election qualification commissions were established by the chief administrator of the courts in February 2007 (22 NYCRR 150). All judicial candidates, other than candidates for town or village justice, are invited to submit specified information to one of these commissions for evaluation (22 NYCRR 100.5[A][7]; 22 NYCRR 150 & Appendix A[5][A]; Opinion 07-91). Please visit http://www.ny-ijeqc.org for more information.

These independent judicial election qualification commissions are different from, and in addition to, any other screening panels that may be offered by bar associations and political

parties or other entities. See Section 3.3.2, *infra*, for further discussion of screening panels and their ratings.

3. Limits on Permissible Political Activity

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

3.1 Membership in Political Parties; Voting; Signing Nominating Petitions

All judges and judicial candidates may maintain membership in a political party and identify themselves as a member of a political party, regardless of whether they are in their window period (22 NYCRR 100.5[A][1][ii]; 100.5[A][1][b]; Opinion 91-68 [Vol. XI]). However, a judge may not pay any dues to a political party, even during the window period of his/her election year (Opinion 91-68 [Vol. XI]).

The following paragraphs describe activities in which a judge or non-judge may participate at any time. The discussion focuses on judges, however, because it is describing exceptions to the rule barring judges from participating in political activities outside of their applicable window period.

In any year, whether a judge is or is not standing for election during that year, the judge also may vote in a party primary in which the judge, as a registered party member and voter, is eligible to vote. The Committee previously advised that a judge who is a registered voter/member of a party may attend an official party caucus to nominate political candidates if all eligible registered voters/members are allowed to attend, provided that the vote is by secret ballot and the judge does not participate in the discussion or otherwise indicate a preference in any way for a specific candidate (22 NYCRR 100.5[A][1][ii]; Opinions 90-153 [Vol. VI]; 90-139 [Vol. VI]). The Committee has subsequently advised, modifying those prior opinions, that a judge may attend a political party caucus held for the purpose of nominating and voting for political candidates and may vote for the candidate(s) of his/her choice even if voting is accomplished other than by secret ballot (Opinion 09-180).

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

3.2 Membership in Political Clubs or Organizations

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

Sitting judges may not be members, leaders, or officers of political clubs or organizations, whether or not they are in their window period (22 NYCRR 100.5[A][1][a]-[b]; Opinion 90-88 [Vol. VI]), and may not pay dues to such organizations (Opinion 91-68 [Vol. XI]).

A *non-judge candidate* for judicial office may be a member of a political organization (22 NYCRR 100.5[A][3]). If the non-judge candidate is elected, he or she must resign from the political club or organization.

Although non-judge candidates may continue to maintain ordinary membership during their campaign, they may not serve as officers in a political club or organization (Opinion 01-44 [non-judge candidate may not retain the position of ward committee person]; 22 NYCRR 100.5[A][1][a]). This means that when a non-judge becomes a candidate for elective judicial office (22 NYCRR 100.0[A]), he/she must resign any leadership position he/she may have held in any political club or organization.

3.3 Endorsement by Political Organizations and Other Persons and Entities

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

Improper Pressure or Appearance of Impropriety. Any solicitation or acceptance of support or endorsements must be done in a time, place and manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). Among other things, the judge must not create the appearance or reality of improper pressure on attorneys who have cases pending before him/her (*compare* Joint Opinion 05-105, 05-108, and 05-109; Opinion 97-99 [Vol. XVI]; 2009 CJC Ann. Rep. at 176-80 [disciplinary determination] *with*

---

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

Opinion 04-94 [judge may accept an offer of support for his/her candidacy from an elected official who recently appeared before him/her on a family court matter, made after the parties and their attorneys resolved the matter by stipulation without the judge's intervention on their first court appearance]). A judge who is a judicial candidate within his/her window period may ask attorneys who regularly appear before him/her to attend a reception and speak to attendees about their experience appearing before the judge, as long as the candidate takes care to avoid any appearance of undue pressure on the attorneys in making this request (Opinion 08-152; *cf.* 2009 CJC Ann. Rep. at 176-80 [disciplinary determination]). But, to avoid any appearance of undue pressure, a town justice should not ask individual court officers of the town court to publicly support his/her re-election (Opinion 11-65).

Improper Pledges or Promises. A candidate must be careful when seeking or accepting an endorsement not to make any commitments, pledges or promises of conduct that are inconsistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.5[A][4][d]; Opinions 99-33 [Vol. XVII]; 93-99 [Vol. XI]; 93-52 [Vol. XI] [candidate may not sign a pledge to support a party's platform]; *cf.* Opinion 99-44 [Vol. XVII]). (Restrictions on campaign speech are covered in more detail in Section 5, *infra.*) Sitting judges must at all times refrain from public comment about a pending or impending proceeding in any court within the United States or its territories (22 NYCRR 100.3[B][8]). These restrictions on a judicial candidate's speech during the campaign do not preclude the candidate from commenting on measures that would impact the administration of justice, such as, for example, a proposal to build a new courthouse, the adequacy of judicial salaries, or proposals to relieve calendar congestion.

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

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

Disclosure (Sitting Judges). Mere endorsement, in and of itself, does not trigger any recusal obligations for a judicial candidate who is a sitting judge. That is, the fact that a particular person or entity was among those endorsing his/her candidacy, without more, does not warrant a conclusion that the candidate's impartiality as a judge might reasonably be questioned and therefore does not mandate disqualification when that person or entity appears before the judge (22 NYCRR 100.3[E][1]; Opinions 07-24 [mere endorsement by a party of the judge's candidacy]; 04-106 [mere attendance of a party or attorney at a fund-raising event for the judge]; 03-64 [mere listing of attorney as a supporter of the candidate]).

However, if a sitting judge is aware that a person or entity who is appearing before him/her has endorsed his/her candidacy, the ACJE has advised:

> The judge should disclose the fact that a named party to the litigation endorsed his/her candidacy and should give all counsel and parties the opportunity to be heard. The judge may preside, even if a party objects, provided the judge determines that he/she can be fair and impartial.
>
> In deciding whether to recuse, however, the judge should consider all relevant factors, including, but not limited to: (a) the merits of any objections voiced by the parties or counsel, (b) any additional involvement by the labor union in the judge's campaign, and (c) the period of time since the election. If, after considering all relevant factors, the judge concludes in his/her discretion that the specific circumstances might give rise to an appearance of partiality, the judge should recuse.

(Opinion 07-24.) Other potential campaign-related disqualifications are covered in Section 8, *infra*.

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

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

3.3.1 Questionnaires

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

endorsement are subject to the same ethics rules as the candidate's other campaign statements, as explained further in Section 5, *infra*.

3.3.2 Screening Panels

The Rules Governing Judicial Conduct do not require a judicial candidate to participate in any screening process to determine his/her qualifications for judicial office, whether conducted by a political party, a bar association, or an independent judicial election qualification commission (22 NYCRR 100.5; Opinion 07-91).[4]

However, "appearing before a bar association's judicial screening committee is not a prohibited activity" under the Rules (Opinion 94-86 [Vol. XII] [noting that non-participation "could result in serious repercussions to the judge's candidacy, especially if bar association or screening committee approval is a requirement of the political body nominating or appointing the judge"]). Thus, for example, a judge or non-judge judicial candidate for election to town or village justice may fully participate as a candidate in a local bar association's screening process, subject to generally applicable limitations on judicial campaign speech (Opinion 12-97).

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

Disqualification is not automatically required if attorneys on the screening committee later appear before the judge as attorneys (Opinion 11-64). See discussion in Section 8.3, *infra*.

A judicial candidate may answer the questions posed in a questionnaire of a bar association's judicial screening committee, subject to the limitations on judicial campaign speech (Opinion 93-106 [Vol. XI]).

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

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

---

[4] The independent judicial election qualification commissions were established by the chief administrator of the courts (22 NYCRR 150). Please see Section 2.3, *supra*, or visit http://www.ny-ijeqc.org for more information.

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

Asking individuals to provide information directly to a screening panel. The Committee has addressed two specific situations so far. For other situations not directly covered by these opinions, candidates may seek further guidance from the JCEC or the Committee.

- *Asking attorneys.* A judge who is seeking re-election may request attorneys who regularly appear before him/her to furnish comments or testimony to a bar association's screening committee, but only if such materials are given directly and exclusively to the screening committee and not to the judge (Opinion 97-99 [Vol. XVI]).

- *Asking judges.* By contrast, a judicial candidate should not ask sitting judges to write to a political party's screening panel directly but, instead, should give the panel names of sitting judges the candidate wishes the panel to contact (Joint Opinion 12-84/12-95[B]-[G], at Question 3).[5]

The ACJE has held that a judicial candidate's decision about whether to sign a waiver of the privilege of confidentiality at the request of a screening committee is a personal decision, which does not raise a question of judicial ethics (Opinion 94-86 [Vol. XII]).

Use of screening panel ratings. A judicial candidate may inform the public that an independent judicial election qualification commission has found the candidate qualified for the judicial position he/she seeks and may publish an exact copy of the commission's press release about such finding (Joint Opinion 07-150 and 07-151). However, if an independent judicial qualifications commission issues only one of two ratings – "qualified" or "not qualified" – a judicial candidate may not state that he/she has received the "highest" or "best" rating from the commission (Opinion 09-162).[6] A judicial candidate may also comment about his/her

---

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

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

opponent's rating by an independent judicial qualifications commission as long as his/her comments are accurate and not misleading (Opinion 09-162).

A judicial candidate may also truthfully refer to a local bar association evaluation committee rating of his/her qualifications in his/her campaign materials (Opinion 12-97). The ACJE has also recognized, without specifically commenting on the practice, that a local bar association's rating of a candidate may be used by that candidate's organization as an "endorsement" in campaign advertising (Opinions 07-130; 88-100 [Vol. II]).

A judicial candidate may not, however, participate in the screening of other candidates (*Matter of Raab*, 100 NY2d at 315; Joint Opinion 05-105, 05-108, and 05-109).

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

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

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

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

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

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

- *Campaign Literature.* A Supreme Court candidate may use his/her own campaign funds to pay for campaign literature or mailings in which the judicial candidate will ask voters to vote in a primary election for the judicial convention delegates who will support his/her nomination, but again the candidate must make clear that his/her endorsement of the delegate candidates is for the purpose of furthering his/her own candidacy (Joint Opinion 10-101/11-

01). In such campaign literature or mailings, the Supreme Court candidate may announce and comment on the fact that particular delegate candidates have pledged to support him/her but should not further describe or comment on the delegate candidates' views or stances on issues (*see id.*).

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

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

3.4 Nominating and Designating Petitions[7]

A judicial candidate may circulate a nominating or designating petition only if the petition includes the candidate's own name as a nominee or designee (Opinions 09-148; 03-42; 98-99 [Vol. XVII]; 91-96 [Vol. VIII]; 91-94 [Vol. VIII]). Judicial candidates may be listed together on a petition with other candidates on their slate (Opinions 03-06; 02-64). Thus, a judicial candidate may circulate a petition for several candidates that includes his/her own name, but may not circulate individual petitions for other candidates (Opinions 09-148; 02-64; 98-99 [Vol. XVII]; 91-94 [Vol. VIII]).

A judge may sign a petition to place the name(s) of an individual or individuals on an electoral ballot in any year, whether the judge is or is not standing for election in that year (Opinions 99-125 [Vol. XVIII]; 89-89 [Vol. IV]).

3.5 Attendance at Political Gatherings

During the judicial candidate's window period, the candidate may, unless otherwise prohibited by law or rule, attend and speak at gatherings on behalf of his/her own candidacy (22 NYCRR 100.5[A][2][i]-[v]). The candidate may attend a wide variety of events as part of his/her campaign, including his/her own fund-raising events (Opinion 91-37 [Vol VII]), fund-raisers for other elected officials (Opinions 03-51; 01-17 [Vol. XIX]; 91-94 [Vol. VIII]), a fund-raiser sponsored by a not-for-profit advocacy organization that promotes equal rights for gay and lesbians (Opinion 03-45), politically sponsored golf tournaments (Opinion 12-129[A]-[G], at Question 3), or a rally sponsored by civic associations in opposition to a shopping mall project in the candidate's township (Opinion 00-82 [Vol. XIX] [decided without reference to Part 100.5]). However, a judicial candidate must faithfully follow the prohibition against personally soliciting funds and other campaign speech restrictions (22 NYCRR 100.5[A][1][h]; 100.5[A][4][d]). These restrictions are covered in more detail in Section 5, *infra*.

---

[7] The Rules do not define the terms "nominating petition" and "designating petition," and the terms appear to be used interchangeably in published ethics opinions. Sample petition forms are available on the Board of Elections web site.

Purchasing tickets to politically-sponsored events. Judicial candidates may not make contributions to any political organization or candidate (22 NYCRR 100.5[A][1][h]; *see also* Election Law 17-162). Thus, a judicial candidate may not contribute money to assist in covering the cost of the music at a political fund-raising event (Opinion 88-72 [Vol. II]). However, the Rules expressly permit a judicial candidate to purchase two tickets to, and attend, a politically-sponsored dinner or event, including a fund-raising event for other elected officials or candidates (Opinion 01-17 [Vol. XIX]; 88-87 [Vol. II]), subject to certain restrictions to help prevent the appearance of an impermissible political contribution (22 NYCRR 100.5[A][2][v]).

Number of tickets: Judicial candidates may not purchase more than two (2) tickets to a politically-sponsored dinner or event (22 NYCRR 100.5[A][2][v]). A judicial candidate may not purchase an entire table (*i.e.*, more than two tickets), even when the price per ticket falls under the $250 limit (Joint Opinion 06-80 and 06-81).

Price of tickets: The ticket price "shall not exceed the proportionate cost" of the event (22 NYCRR 100.5[A][2][v]). A ticket price of $250 or less is deemed to be the proportionate cost of the function (*id.*). Judicial candidates may purchase two tickets for $250 or less, regardless of whether other attendees pay more than $250 per ticket (Joint Opinion 06-80 and 06-81).

In addition, a judicial candidate may not purchase tickets at a price higher than the price all other attendees are required to pay, because that would be an impermissible political contribution (Opinions 03-122 ["The payment may not exceed the cost of the ticket."]; 92-97 [Vol. X] [where tickets are offered at multiple prices, the candidate "must purchase those with the lowest price"]; 88-26 [Vol. I] [judicial candidate "may purchase the lowest priced dinner ticket to the political club fundraiser, but should not purchase the more expensive tickets denominated as 'Sponsor' or 'Patron'"]; 22 NYCRR 100.5[A][1][h]).

A candidate may not pay more than $250 per ticket unless he or she obtains a statement from the sponsor of the event that the amount paid represents the candidate's proportional cost of the function (22 NYCRR 100.5[A][2][v]).

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

Source of funds: The Rules do not specify whether personal funds (as opposed to campaign funds) may be used to purchase tickets to political events. However, it appears that both "campaign contributions" and the "personal funds" of judicial candidates may be used to pay for campaign-related goods and services, subject to the fair value rule (22 NYCRR 100.5[A][6]; *cf.* Opinions 08-43 [noting that a campaign may be entirely self-financed]; 03-122 [permitting judicial candidate to substitute a personal check for a

committee check, where the event sponsor states that the committee check cannot legally be accepted, as "payment in a legally required manner would not be prohibited"]; Joint Opinion 98-132 and 98-136 [Vol. XVII] [holding that "reimbursement of personal funds used solely for campaign-related expenses is not prohibited" under the circumstances presented]).

No involvement in internal workings of a political party. Although a judicial candidate may attend political functions during his/her window period, he/she may not be involved in the political process other than in furtherance of his/her own campaign or as a voter (*see generally* 22 NYCRR 100.5[A][1]-[2]; *Matter of Raab*, 100 NY2d at 315). Thus, a judicial candidate may not sit in on a political party's interviews of candidates for elective office, even if requested to do so by the party (Opinion 00-64 [Vol. XIX]). Similarly, if a judge who is a judicial candidate wishes to attend the national convention of a political party, he/she must do so strictly as a spectator (Opinion 99-156 [Vol. XVIII]; *see also* Opinion 95-83 [Vol. XIII]).

Speaker or guest of honor. A judicial candidate must not be a speaker, guest of honor, or award recipient at a politically sponsored event, unless either (a) the event is not a fund-raiser, or (b) the candidate's participation is unannounced prior to the event (Joint Opinion 12-84/12-95[B]-[G], at Question 1). During his/her window period, a judicial candidate may nonetheless attend fund-raising events sponsored by a political organization, be introduced as a judicial candidate, and briefly acknowledge the introduction (Opinions 07-09; 03-51 [candidate may attend Congressman's fund-raiser, but may not accept a Congressional Merit Award at the event]; 01-27 [candidate may attend political party's fund-raiser, but may not accept an award]; 22 NYCRR 100.5[A][1][d]; *see also* 2007 CJC Ann. Rep. at 127-35 [disciplinary determination] [judicial candidate engaged in impermissible political activity by serving as a keynote speaker for a political party's fund-raiser]). A judicial candidate may not permit his/her name to be listed as a "Contributor" on an invitation to a political club's fund-raising dinner (Opinion 88-26 [Vol. I]).

Political functions held after the election but during the window period.[8] A judicial candidate who has been elected as a judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions 92-29 [Vol. IX]; 91-67 [Vol. VII] [recently elected judge may not attend political event held "six months and one day after the general election"]; 91-24 [Vol. VII]; 89-136 [Vol. IV]). The judge's campaign committee may purchase these tickets using campaign funds (Opinion 92-29 [Vol. IX]; 91-24 [Vol. VII].) A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion 07-187).

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

Political functions held after the window period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering

---

[8] See Section 2.2.3, *supra*, for a discussion of how to calculate the window period.

sponsored by a political organization, even if the gathering is of a laudable, non-political nature ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27). A non-candidate judge may not escort his/her spouse (who was a candidate for elective office) to fund-raising events held for the spouse, even where the judge did not participate in the event and was not introduced at the event (Opinions 07-169; 06-147; *see also* 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). This restriction has no geographic limitations, insofar as it has been extended to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion 99-156 [Vol. XVIII]; *cf.* Opinion 95-109 [Vol. XIII]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

3.6 Attendance at Charitable Gatherings or Events

The ACJE has recognized that a judicial candidate may promote his/her candidacy at events that are not politically sponsored, including charitable fund-raisers (Opinion 07-137). For instance, a judicial candidate may purchase an advertisement on a T-shirt that will be distributed to participants in a charitable event, so long as neither the candidate's name nor the prestige of judicial office will be used for fund-raising purposes (Opinion 07-137). However, a candidate may not use campaign funds to make charitable donations unless they directly benefit the campaign, because charitable contributions per se are not a traditional part of the election process and are impermissible under prior opinions, unless they are used to secure campaign-related advertising, goods or services, or to attend charitable events in furtherance of the candidate's campaign (Opinion 07-137; 22 NYCRR 100.5[A][6]).

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

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

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

A judicial candidate may, of course, contribute to his or her *own* campaign to the extent permitted by the Election Law (Opinions 01-21 [Vol. XIX]; 91-68 [Vol. XI]; 22 NYCRR 100.5[A][2]). If the candidate is not soliciting or accepting money from any other person (i.e., if he/she is running an entirely self-funded campaign), he/she is not ethically required to form a campaign committee (Opinion 08-43; *cf.* Opinion 89-05 [Vol. III]).

However, a judicial candidate may not personally solicit or accept campaign contributions or funds (22 NYCRR 100.5[A][1][h]; 100.5[A][5]; *see also, e.g.*, Opinion 92-43 [Vol. IX] [recently elected judge may not personally sell tickets to a political victory celebration]; 2013 CJC Ann. Rep. at 75-94 ["While it is improper for a judicial candidate to personally accept campaign contributions..., a disguised contribution is equally impermissible."]). Therefore, if a candidate wishes to accept any campaign contributions, he/she must form a campaign committee (22 NYCRR 100.5[A][4][c]; 100.5[A][5]). Candidates should, of course, comply with any Election Law requirements with respect to reporting and/or registration of their committee.

4.1 Campaign Committees

A judicial candidate may establish one or more committees of "responsible persons" to solicit and accept reasonable campaign contributions and support from the public (including lawyers), manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy (22 NYCRR 100.5[A][5]; Opinions 07-135; 95-62 [Vol. XIII]).[9] The campaign committee may also conduct the candidate's campaign through media advertisements, brochures, mailings, candidate forums, etc. (22 NYCRR 100.5[A][5]).

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

Who may serve on the campaign committee. Although the Rules do not set forth a list of qualifications for persons who may serve on a campaign committee, it is the judicial candidate's obligation to make sure that all individuals serving on the campaign committee are "responsible persons" (22 NYCRR 100.5[A][5]; "Observations and Recommendations," 2001 CJC Ann. Rep. at 26-27; *cf.* Opinion 07-64 [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). Attorneys may serve on the campaign committee, and a judge who is a candidate for judicial office may personally ask individual attorneys to join his/her campaign committee (Opinion 92-19 [Vol. IX]), although this must be done in a manner consistent with the impartiality, integrity and independence of the judiciary (22 NYCRR 100.4[A][4][a]). In December 2008, a judge was publicly disciplined for requesting support for his/her candidacy from an attorney in his/her courtroom shortly before the attorney was scheduled to appear before the judge (2009 CJC Ann. Rep. at 176-80). For specific issues relating to family and court employees serving on a campaign committee, please see Section 6, *infra*.

When the committee may be formed. The committee may be formed during a candidate's window period. However, if a judicial candidate has run an entirely self-funded campaign, without a campaign committee, he/she may not form a campaign committee after the election "to

---

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

recoup costs [he/she] incurred and paid personally during the campaign period" (Opinion 89-05 [Vol. III]). *See generally* Section 7, *infra*, regarding post-election fund-raising.

No joint campaign committees. Judicial candidates may not establish a joint campaign committee with other candidates, because participation by the candidate, directly or indirectly, in the activities and functioning of the single joint re-election committee constitutes an involvement in a political campaign other than his/her own campaign for judicial office (Opinions 03-06; 02-64; 88-04 [Vol. I]; *compare infra* Sections 4.2 [joint fund-raising]; 5.5 [joint campaigning]). Similarly, a judicial candidate may not participate in a campaign bank account maintained by a political organization, in which contributions received by the organization on behalf of the judge are mingled with contributions received on behalf of other judicial and non-judicial candidates (Opinion 97-80 [Vol. XVI]).

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

A judicial candidate should not personally send a letter to persons who contributed funds to his/her election campaign, because such a letter would clearly signify knowledge of those who contributed (Opinion 02-06). The campaign committee, however, may send a letter thanking contributors for their financial support, provided that the committee sends it within the candidate's window period (Opinion 02-06). Such a letter may even include a direct quote from the candidate expressing thanks, but the campaign committee should make clear in the letter that the candidate has not been informed of the identities of the contributors (*id.*).[10]

Although dinners and other fund-raising affairs are permitted during the window period, it is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because "[i]t would be unrealistic to expect that the judge would be unaware of the names appearing in and contributors to such publication" and "it is conceivable that one or more

---

[10] The ACJE has recognized that a judge or judicial candidate may inadvertently or incidentally become aware of some of his/her campaign contributors through attendance at fund-raisers (Opinions 07-88; 04-106), through a litigant's decision to seek the judge's disqualification based on campaign contributions (Opinion 10-135), or through reading a newspaper (Opinion 04-106). Such knowledge, inadvertently gained, does not automatically require a judge's disqualification, as long as the judge concludes that he/she can be impartial. *See* Section 8.2, *infra*. In 2011, the Administrative Board adopted Part 151, a case assignment rule, to help ensure that cases involving a judge's larger campaign contributors are not assigned to the judge for a two-year period (22 NYCRR 151). Part 151 is designed to operate at the administrative level, without any involvement by the judge, parties, or counsel.

subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence" the judge (Opinion 87-27 [Vol. I]).

Permissible contributors. The campaign committee may solicit and accept reasonable contributions from the public, including lawyers (Opinion 03-06).

The New York State Bar Association has taken the position that a judge's campaign committee may not knowingly solicit or accept contributions from a party to litigation that is before the judge, nor one employed by, affiliated with, or a member of the immediate family of a party to litigation before the judge. In addition, a judicial candidate's campaign committee should not solicit or accept contributions from a party which may reasonably be expected to come before the candidate if elected or from one who has come before the candidate so recently that it manifests an appearance of impropriety (NYSBA Opinion 289).

The campaign committee may accept a campaign contribution from a local elected official who is not a judge, when the source of the funds is the official's own political campaign committee account (Opinion 02-109).

The committee may also accept campaign contributions from an already existing political committee or a group of lawyers who raise funds on the candidate's behalf, as long as neither the existing political committee nor the group of lawyers uses the judicial candidates' names to raise funds for other non-judicial candidates or for a political party (Opinion 03-06).

4.1.1 Specific Fund-Raising Strategies and Techniques

Permissible methods of fund-raising. Although the Rules do not set forth a list of permissible and impermissible methods for a campaign committee to use in raising funds for the judicial candidate's campaign, any method chosen must be consistent with the dignity, impartiality, integrity and independence of the judiciary (22 NYCRR 100.5[A][4][a]). The ACJE has ruled on a few specific methods of fund-raising:

> *Dinners and fund-raising affairs:* The campaign committee may hold dinners and other fund-raising events during the window period (Opinion 87-27 [Vol. I]).
>
> *Campaign committee's website:* The campaign committee may solicit campaign contributions on a website it sponsors, provided that the contributors are directed to send all donations to the campaign committee and not to the candidate himself/herself (Opinion 07-135). The judicial candidate may not solicit campaign contributions on his/her own website (*id.*).
>
> *Raffle:* The campaign committee may, if permitted by law, sell raffle tickets and conduct a raffle at a fund-raiser for the candidate (Opinion 07-88). The judicial candidate may be present during the raffle, but must not personally participate in selling tickets (*id.*).

No souvenir journals: It is impermissible to publish a Souvenir Journal with advertisements solicited from various businesses, because "[i]t would be unrealistic to expect that the judge would be unaware of the names appearing in and contributors to such publication" and "it is conceivable that one or more subscribers would use such Souvenir Journal to convey that they are in a position to improperly influence" the judge (Opinion 87-27 [Vol. I]).

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

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

4.2 Joint Fund-Raising

A judicial candidate may not hold a joint fund-raiser with a non-judicial candidate (Opinion 08-40).

Two judicial candidates may participate in a joint fund-raising event if the proceeds are divided equally between the two campaigns, provided neither candidate comments on the other's qualifications or endorses the other (Opinions 01-99; 91-113 [Vol. VIII]).

The candidates may not establish a single joint campaign committee, however, as each candidate would then be perceived as a participant in another candidate's campaign, and would readily be seen as endorsing the other candidate (Opinions 03-06; 02-64; 88-04 [Vol. I]).

A judicial candidate may not participate in a political organization's campaign bank account that would co-mingle the funds contributed to the judge's campaign with contributions received on behalf of other judicial or non-judicial candidates (Opinion 97-80 [Vol. XVI]).

For a discussion of joint campaigning see Section 5.5, *infra*.

4.3 Proper Utilization of Campaign Funds

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

Campaign contributions may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]; Election Law §14-130) and thus should not be used for personal

expenses unrelated to the campaign (Opinion 89-152 [Vol. V]). See Section 7.1.2, *infra*, for a discussion of several prohibited uses of campaign funds.

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

4.3.1 Special Considerations - Payments to Political Committees

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

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

Nor may the candidate pay for a share of a political party's headquarters or general campaign mailings, such as those generally encouraging voters to vote for that party's candidates without specifying the names of particular candidates (*Matter of Raab*, 100 NY2d at 316 [candidate sanctioned for, among other things, paying a substantial sum to a political party without verifying that the payment was used to cover expenditures for his own campaign as opposed to other candidates' races or general party needs]; Opinions 01-21 [Vol. XIX] [candidate may not pay $2,500 to party to "support the endorsed candidates for town offices in the payment of campaign expenses"]; 92-97 [Vol. X]; *cf.* Opinion 91-94 [Vol. VIII] [paying more than the candidate's proportionate share of actual campaign services would constitute an impermissible contribution]).

However, a candidate may reimburse such a committee or organization for his/her proportionate share of the actual campaign costs (Opinions 92-97 [Vol. X]; 91-94 [Vol. VIII]). The ACJE has held that a candidate for Supreme Court "may reimburse the county committee for expenses it incurred in the preparation and the printing of petitions and distribution for judicial delegates, for postage for notices, audio and refreshment expenses for the judicial convention and for the printing of campaign materials ..., provided that the candidate or the candidate's treasurer on a reasonable basis of fact believes that these expenses are reasonable and actual costs actually and proportionately relating to the candidate's judicial campaign" (Opinion 92-97 [Vol. X]; *see also* Opinion 01-21 [Vol. XIX]; *Matter of Raab*, 100 NY2d at 316).

4.3.2 Post-Election Window Period

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

> During the six-month post-election Window Period, a judge or candidate for judicial office may use campaign funds for those activities permitted under Section 100.5(A)(2) of the Rules Governing Judicial Conduct and for some expenditures that are considered a "traditional part of the total election process". For example, during his/her Window Period, a judicial candidate may continue to use campaign funds to purchase two tickets to and attend political dinners and other events, "provided that the event's organizer sells tickets to judicial candidates or their campaign committees [at] a price not exceeding $250 per ticket, even if the price per ticket for other attendees exceeds $250". This Committee also has advised that a successful candidate for judicial office may use a small amount of campaign funds for "a modest victory celebration during the six-month post-election period (Window Period)" because it is a "traditional part of the total election process".
>
> At the end of their Window Periods, candidates for judicial office must return any unexpended campaign funds to donors on a pro rata basis.

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

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

A judicial candidate may not use unexpended campaign funds to purchase tickets and a journal advertisement as part of a charitable fund-raising event which will take place after the expiration of the window period (Opinion 99-56 [Vol. XVII] [purchase of tickets for a charitable dinner that will not take place until after the window period expires "amounts to a contribution to the charity and is therefore, in our opinion, an improper expenditure of campaign funds"]).

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

The Committee has advised that funds raised for one judicial campaign may not, after that campaign has concluded, be transferred or retained for use in another judicial campaign, whether for the same or a different office, even if the donors consent (Opinions 01-81; 92-68 [Vol. IX]; 90-06 [Vol. V]; 88-89 [Vol. II]). Of particular note, the Committee reasoned that "the contributions were given for the candidate's election to a specific judicial office and not for another office," and that a donor who supported a candidate against one opponent "may not

support [him/her] against a different opponent" (Opinions 90-06 [Vol. V]; 88-89 [Vol. II]; *cf.* 22 NYCRR 100.5[A][4][a]).

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

5. Communications with Voters

Judicial candidates "are encouraged to educate the voting public on the qualities and qualifications that would make them the best candidate for the office sought" and all campaign communications "should be designed to instill confidence in the candidate's ability to fairly and impartially discharge the duties of the office" (Opinion 04-95). Judicial candidates may also use campaign slogans that are consistent with the Rules (*e.g.,* Opinion 05-117 ["vote experience not politics"]).

5.1 Form of Advertisements

Any form of media, including but not limited to radio, television, the Internet, newspapers, periodicals, palm cards, lawn signs, flyers, billboards, posters and handbills, may be used in a judicial campaign (*e.g.,* Opinions 07-135; 05-99; Joint Opinion 05-23 and 05-24). A judicial candidate may personally appear in media advertisements and may distribute pamphlets and other literature to support his/her candidacy (22 NYCRR 100.5[A][2][i]-[ii]). The ACJE has ruled on a few specific methods of advertising:

Promotional Items. A judicial candidate may distribute promotional materials of no more than nominal value, such as pens, pencils, letter openers and the like, to support his/her candidacy (Opinion 98-97 [Vol. XVII] [noting that "these items have campaign slogans imprinted on them" and thus are treated as campaign literature]; *compare* 2007 CJC Ann. Rep. at 127-35 [candidate disciplined for distributing items of value to voters, such as $5 coupons and drinks at a local bar]).

A judicial candidate may purchase an advertisement on a T-shirt, along with the names or business logos of the other eligible donors, that will be given at no cost to participants in a charitable event, so long as neither the candidate's name nor the prestige of judicial office will be used for fund-raising purposes (Opinion 07-137).

Political Journals. A judicial candidate may use campaign funds to purchase the lowest priced full-page advertisement in a political organization's journal, in which the candidate's supporters are thanked, where the journal is being distributed at a politically sponsored dinner held after the election but during the window period (Opinion 99-38 [Vol. XVII] [suggesting the possibility that paying $3,000 for an advertisement might be

regarded as an impermissible political contribution]). For situations not directly covered by Opinion 99-38, please contact the Subcommittee for an opinion.

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

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

> Cautionary Note: In light of the position taken by the Commission on Judicial Conduct in its 2001 Annual Report, the Committee suggests that a judicial candidate should seek guidance from the JCEC before including a link from his/her campaign website to any other partisan political websites beyond the specific circumstances addressed in the Committee's published opinions (*cf.* "Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

A candidate may include a link on his/her campaign website to newspaper articles about him/her, provided that nothing in the article is misleading and provided the article maintains the dignity of judicial office (Opinion 07-135; 22 NYCRR 100.5[A][4][a]).

Radio. A judicial candidate may be endorsed for re-election in a radio advertisement by a non-judicial candidate for elective office, provided the radio advertisement does not suggest the judge is endorsing that candidate (Joint Opinion 05-23 and 05-24).

Photographs with Others. While a judicial candidate may include a photograph taken with a relative in a state trooper uniform, neither the photograph or its context may suggest that the candidate would support law enforcement interests over other parties that may appear before his or her court (Opinion 07-136).

A judicial candidate who is married to a sitting judge may include in his/her campaign literature a photograph of the candidate's family, which includes and identifies the spouse, as long as the spouse's judicial title and position are not mentioned or featured (Opinion 96-07 [Vol. XIV]; *cf.* Opinion 06-94).

A judicial candidate may be photographed with other candidates for elective office and use this photograph in his/her campaign, although use by another candidate which "might

imply an endorsement by the judge of the candidate is to be avoided, and the judge should take steps to prevent such use to the extent possible" (Opinion 03-64).

A judicial candidate may not use a photograph taken at a social event with an elected local public official who is not part of the candidate's slate and who has not endorsed the candidate, unless the official consents to use of the photograph in the judicial candidate's campaign (Opinion 12-114).

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

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

Hosting a Free "Meet and Greet" Event. A judicial candidate may hold a free "meet and greet" event at which modest and reasonable refreshments are served (Opinion 12-129[A]-[G], at Question 2).

5.2 Use of Judicial Title, Robes, and Courthouse

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

Use of Judicial Title and Robes. An incumbent judge running for re-election or for election to another judicial position may be identified as "judge" (or "justice," as may be appropriate) on campaign signs and other literature (Opinion 94-50 [Vol. XII] [part-time town justice]; 22 NYCRR 100.5[A][4][d][iii]). A Housing Court judge, although not a judge of the Unified Court System, is still a judge and thus may refer to himself/herself as a "judge" in campaign literature (Opinion 03-90).

An incumbent judge may circulate campaign literature with a photograph of himself/herself in judicial robes (Opinions 05-101; 03-90).

A judicial candidate may not use the term "re-elect" when seeking an office other than the one in which he/she is currently serving by election (Opinion 94-50 [Vol. XII] [town justice who received nomination for county court judge]; 22 NYCRR 100.5[A][4][d][iii]). This limitation applies even if the candidate was previously elected to the judgeship sought and, although defeated for re-election, currently holds the office by appointment (Opinion 97-18 [Vol. XV] [noting that the judge has held the same judicial title on a continuing basis]).

A non-judge judicial candidate who formerly held the position of village justice may use the phrase "former village justice" and may use photographs in which he/she appeared in judicial robes for use with that designation in campaign literature (Opinion 04-16). A former judge may not, however, be referred to as a "judge" or ask the voters to "re-elect" him/her (Opinion 97-72 [Vol. XV] [former judge may not use the phrase "Vote for Judge (name)" or "Re-elect Judge (name)"]).

Use of Juror Contact Information. Neither a judge nor the judge's campaign committee may contact jurors who have served on cases over which the judge has presided, to ask their support in the judge's re-election campaign (Opinion 90-93 [Vol. VI]). A law clerk must refrain from post-trial contact with jurors at all times, including during his/her campaign for judicial office (Opinion 01-36).

Use of Judicial Letterhead or Stationery. A judge should not use court stationery in a re-election campaign, even if the stationery is marked "personal and unofficial" (Joint Opinion 04-143 and 05-05; Opinion 99-155 [Vol. XVIII]).

Use of Courthouse. Because the courthouse may not be used for political purposes, "care must be taken to avoid using photographs that might convey the impression that the courthouse is being used for political purposes and, in particular, to facilitate the candidacy of a sitting judge" (Opinion 05-101). The judge may not "be filmed inside his/her chambers, or inside the courthouse while asking viewers to vote for him/her" (Opinion 07-139).

Judicial candidates who are incumbent judges are permitted to use photographs depicting them in judicial robes and taken in any public place, or in chambers or the court library, provided that there is no indication of the official nature of the location and administrative permission is obtained (Opinion 05-101; 22 NYCRR 29.1 [requirements for obtaining administrative permission for photographs or videorecording in a courthouse]). Subject to the rules relating to the permissible scope of comment by candidates, the campaign committee of a judge seeking re-election may reproduce excerpts of audio and video recordings and photographs of court proceedings which were authorized by existing rules (Opinion 94-67 [Vol. XII]). With appropriate administrative approval, a judge who is a judicial candidate may use a photograph of himself/herself in a public hallway of the courthouse, in front of the door to his/her chambers (Opinion 07-139; 22 NYCRR 29.1).

Published Courtroom Photographs. A judge who is a judicial candidate may use photographs of himself/herself that a photographer took in the courtroom during a public trial with appropriate administrative permission and that were thereafter published by a newspaper (Opinion 07-135). A judge who is a judicial candidate may also use administratively approved,

published photographs of himself/herself hosting visitors to the court while the court was not in session (Opinion 07-137).

Photographs of Swearing In Ceremony. An incumbent judge who is currently a judicial candidate may use a photograph from his/her public swearing-in ceremony held in the town hall that was published as a news item in the local newspaper, provided such use does not in any way imply that the judge who was administering the oath of office endorses the judicial candidate (Opinion 07-89; 22 NYCRR 100.5[A][1][e]).

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

5.3 Content of Campaign Speech

With very limited exceptions, *an incumbent judge* may not comment publicly about any proceeding that is pending or impending in any court within the United States or its territories (22 NYCRR 100.3[B][8]). This restriction applies at all times, whether or not the judge is a candidate for judicial office, and both within and outside the window period (Opinion 90-67 [Vol. V]).

Although *non-judge candidates for judicial office* are not prohibited from publicly commenting on pending or impending cases, they must exercise caution, with respect to any particular cases, controversies or issues that are likely to come before the court, to avoid making any commitments that are inconsistent with the performance of the adjudicative office (22 NYCRR 100.5[A][4][d][ii]).

Non-judge candidates for judicial office who are simultaneously holders of other political offices are given some flexibility to make statements or participate in activities which might otherwise be prohibited for judicial candidates, assuming those statements or acts are necessary as a function of the non-judicial public office (22 NYCRR 100.5[A][1][c]).

All judicial candidates must refrain from making improper pledges or promises (*Matter of Watson*, 100 NY2d 290 [2003]; 22 NYCRR 100.5[A][4][d][i]), and any promises of conduct in office must be consistent with the impartial performance of the adjudicative duties of the office (22 NYCRR 100.3[B][9][a]; 100.5[A][4][d][i]-[ii]). A candidate must consider the import of his/her statements in the context of the campaign as a whole to determine whether he/she has articulated a pledge or promise that compromises the faithful and impartial performance of judicial duties (*Matter of Watson*, 100 NY2d 290 [candidate sanctioned for explicit and repeated statements that he intended to "work with" and "assist" police and other law enforcement personnel if elected to judicial office]; Opinion 04-95 [candidate may not make campaign statements indicating a refusal to participate in the lawful and accepted practice of plea bargaining in criminal cases]). A candidate may not promise to set up and fund a "legal scholarship" if elected (Opinion 03-28). A candidate may sign a "Statement of Principles" pledging that the candidate intends to use fair campaign practices during his/her campaign

(Opinion 05-119), but may not sign a pledge to support a political party's platform (Opinion 93-52 [Vol. XI]). The Commission on Judicial Conduct has publicly admonished a judge for use of campaign literature advertising a lecture the judge planned to give with a "tenant attorney and activist" on how to "beat your landlord, ... and win in court!" (2010 CJC Ann. Rep. at 124-28 [disciplinary determination]). The Commission has also publicly admonished a judge for statements which, when viewed in their entirety, conveyed bias because they "single[d] out a particular class of litigants for special treatment" (2011 CJC Ann. Rep. at 120-24). Further, if a judicial candidate has made an improper promise during his/her campaign, he/she may be required to disqualify him/herself in certain matters (22 NYCRR 100.3[E][1][f]; *see also infra* Section 8.4).

Campaign material may include a truthful, dignified discussion of the candidate's qualifications and the qualifications of his/her opponent(s), as long as the discussion is accurate and not misleading (Opinions 04-16; 90-67 [Vol. V]; 2007 CJC Ann. Rep. at 115-18 [disciplinary determination]). A judicial candidate may not, in the guise of discussing qualifications, make an otherwise prohibited statement (NYSBA Opinion 289).

A judicial candidate may refer to his/her current and past employment in campaign materials, including service on the staff of sitting judges (Opinion 97-32 [Vol. XV] [noting that the mere listing of the names and titles of these judges does not constitute impermissible participation by those judges in the judicial campaign]).

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

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

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

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

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

A judicial candidate may comment on an opponent's conduct, subject to certain limitations (Opinion 12-129[A]-[G], at Question 4). During a campaign for judicial office, a candidate may bring to the public's attention the fact that his/her opponent has been publicly admonished or censured by the Commission on Judicial Conduct as long as such reference is made in a manner that maintains the dignity appropriate to judicial office (Opinion 01-98).

It is also permissible to refer to ratings by screening panels and independent judicial election qualification commissions; see Section 3.3.2, *supra*, for a discussion of relevant opinions.

A judicial candidate may respond to personal attacks or attacks on the candidate's record as long as the response is consistent with the requirements of the rules, i.e., dignified, truthful, etc. (22 NYCRR 100.5[A][4][e]).

A judicial candidate is prohibited from appealing directly or indirectly to the fear, passion or prejudice of the electorate or from appealing purposefully to or against members of a particular race, sex, ethnic group, religion or similar group (Opinion 05-119; NYSBA Opinion 289).

5.4 Judicial Decisions Affecting Campaign Activities and Comments

5.4.1 "Announce Clause" Restrictions Struck Down

In June 2002, the Supreme Court of the United States determined that a section of the Minnesota Code of Judicial Conduct known as the "announce clause," which prohibits candidates for judicial election from announcing their views on disputed legal and political issues, violated the First Amendment to the United States Constitution (*Republican Party of Minnesota v. White*, 536 US 765 [2002]).

Although New York's Rules do not include an "announce clause," some precedential authority in New York has restricted campaign statements similar to those previously prohibited by Minnesota's now invalid "announce clause" (Opinion 90-67 [Vol. V]; NYSBA Opinion 289). Following the U.S. Supreme Court opinion, in July 2002, the New York State Court of Appeals

determined that it was not misconduct for a candidate for judicial office to refer to himself/herself as a "law and order" candidate (*Matter of Shanley*, 98 NY2d 310 [2002]).

5.4.2 "Pledge and Promise" Restrictions Remain in Effect

The United States Supreme Court specifically refrained from addressing or striking down other language in the Minnesota rules that prohibited a candidate for judicial office from making pledges or promises of conduct in office (*Republican Party of Minnesota v. White*, 536 US 765 [2002]).

In *Matter of Watson*, the Court of Appeals reviewed a Commission on Judicial Conduct determination that an elected judge should be disciplined for improper statements made while he was a non-judge candidate for elective judicial office (100 NY2d 290 [2003]). The Commission had held that these statements gave the appearance that the newly elected judge would not be impartial, would not decide cases on an individual basis, and would be biased against defendants in criminal cases. The statements at issue included: an exhortation to "put a real prosecutor on the bench"; representations that the candidate (then employed as an assistant district attorney) had "proven experience in the war on crime" and could, if elected, use bail and sentencing to make the municipality "very unattractive" for certain criminal defendants; promises to "work with" and "assist" law enforcement personnel if elected to judicial office; and statements that his opponents were to blame for an increase in crime (*Matter of Watson*, 100 NY2d at 296-97, 299).

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

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

In light of the above-described cases, candidates for judicial office in New York must take great care not to run afoul of existing restrictions on campaign language. Until there has been a dispositive ruling from a court of final jurisdiction, the only prudent course for a judicial candidate to follow is to adhere to the standards called for within New York's existing Rules as interpreted and applied by the ACJE and to seek guidance wherever needed by contacting the JCEC.

5.5 Joint Campaigning

A judicial candidate is prohibited from publicly endorsing or publicly opposing (other than by running against) any other candidate for political or judicial office (22 NYCRR

100.5[A][1][e]). This prohibition includes both direct and indirect endorsement of any other candidate for elective office (22 NYCRR 100.5[A][1]).[11] The ACJE has stated that a judicial candidate may not indirectly endorse an incumbent judge who is running for re-election by stating that he/she is the unanimous choice to "join the incumbent" judge on the bench (Opinion 05-117). Judicial candidates on the same slate may jointly advertise their candidacies and refer to the number of years of judicial experience of each candidate, but may not refer to the total number of years of judicial experience of the candidates collectively (Opinion 99-117 [Vol. XVIII]). Judicial candidates may not make statements directly in support of another candidate (Opinion 91-94 [Vol. VIII]), and they are also prohibited from distributing literature on behalf of another candidate (Opinion 91-94 [Vol. VIII]), erecting signs on their real property supporting other candidates, displaying "bumper stickers" on their vehicles supporting other candidates, or engaging in similar partisan conduct. (*See* Section 6.2, *infra*, for a discussion of political activity by a judicial candidate's spouse on jointly owned property.)

The judicial candidate's name may, however, appear in media advertisements and may be listed on election materials along with the names of other judicial and non-judicial candidates for elective office as part of a single "slate" of candidates (22 NYCRR 100.5[A][2][iii]-[iv]; Opinions 05-99; 91-94 [Vol. VIII]). Thus, a judicial candidate may display campaign signs promoting his or her own candidacy, even if the sign also lists other candidates on the slate (Opinion 07-167), and may similarly distribute joint campaign literature on which his or her name appears (Opinion 91-94 [Vol. VIII]).

Two judicial candidates may display campaign lawn signs that have both candidates' names printed on them, but they may not send voters one letter conveying both candidates' qualifications and bearing both candidates' signatures that is printed on letterhead comprising both candidates' names (Opinion 09-176).

A judicial candidate may allow a political party to issue joint campaign literature with other candidates for elective office (22 NYCRR 100.5[A][2][iii]; Opinion 01-99). In addition, a candidate may advertise with one or more candidates for elective office, including those running for non-judicial office, provided that the candidate does not endorse any other candidate and pays no more than his or her *pro rata* share of the cost of the advertisements (Opinions 05-99; 01-99; 91-107 [Vol. VIII] [suggesting a disclaimer that neither judicial candidate is endorsing another candidate]).

A judicial candidate may appear at gatherings and otherwise campaign with other candidates for elective office (including campaigning door-to-door), but must take great care to ensure that he/she does not endorse or comment on the qualifications of other candidates (22 NYCRR 100.5[A][2][ii]; Opinions 91-94 [Vol. VIII]; 90-166 [Vol. VI]).

---

[11] The ACJE has recognized one very limited exception. See Section 3.3.3, *supra* (discussing Opinion 08-157 and Joint Opinion 10-101/11-01).

5.6 Debates

A judicial candidate may participate in a debate with other judicial candidates, as long as he/she adheres to the Rules Governing Judicial Conduct (Opinions 05-119; 94-78 [Vol. XII]). For instance, judicial candidates should be careful to maintain the dignity of judicial office, avoid making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office, and avoid making statements that commit or appear to commit him/her with respect to cases, controversies or issues that are likely to come before the court (Opinions 05-119; 94-78 [Vol. XII]; 22 NYCRR 100.5[A][4][d]). A sitting judge must not publicly comment on pending or impending matters in the United States or its territories (Opinion 94-78 [Vol. XII]; 22 NYCRR 100.3[B][8]). A judicial candidate may need to make clear to organizers of a debate that, as a candidate for judicial office, he or she must comply with the Rules, and that such compliance may constrain his or her participation in any debate (Opinion 05-119).

6. Involvement of Friends, Family, and Colleagues in Judicial Campaigns

A judicial candidate may personally "seek sign locations and campaign workers" (Opinion 94-30 [Vol. XII]). See also Section 4.1, *supra*, regarding campaign committees.

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

All nonjudicial court employees, whether or not they are members of a judge's staff, are subject to Part 50 of the Rules of the Chief Judge governing the political activities of non-judicial employees. Court employees should contact the Unified Court System's Office of Court Administration for guidance on how Part 50 applies to their particular circumstances. (Contact: ETHICS HELPLINE: 1-888-28ETHIC.)

Court employees are barred from holding elective office in a political party, club or organization, subject to certain limited exceptions set forth in the rule itself (22 NYCRR 50.5[e]; Opinion 94-35 [Vol. XII]).

Court employees may, in general, attend political fund-raising events (subject to the $500 limit if a personal appointee), pass nominating petitions, attach campaign bumper stickers to their cars, post campaign signs at their residences, hold a non-elected or otherwise permissible positions in a political organization and participate in any other permissible political activity as long as it takes place (a) outside of scheduled work hours and (b) away from the workplace (22 NYCRR 50.1[III][B]; 50.2[c]; 50.5; 100.5[C]; Opinions 07-11; 03-111 [circulating, reviewing and drafting petitions]; 94-35 [Vol. XII] [joining political club]; 93-100 [Vol. XI] [political bumper stickers and campaign signs]; 93-36 [Vol. XI] [soliciting and coordinating volunteers, designating persons to organize volunteer efforts, canvassing for signatures on nominating petitions, conducting telephone polls for a candidate]; 91-77 [Vol. VII] [participating in political campaign of law clerk's spouse]; 90-102 [Vol. VII]; 90-85 [Vol. V] [carrying nominating petitions]; 89-101 [Vol. IV] [attending political fund-raiser]).

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

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

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

Personal Appointees. An incumbent judge shall prohibit members of the judge's staff who are the judge's personal appointees (such as the judge's law clerk, personal secretary, etc.) from contributing, directly or indirectly, money or other valuable consideration (e.g., non-monetary contributions) in amounts exceeding $500 in the aggregate during any calendar year, to all political campaigns or other partisan political activity (22 NYCRR 100.5[C][2]; Opinions 10-76; 97-103 [Vol. XVI] [judge's part-time law clerk should not donate office space to a political party which, if rented on the open market, could have a value of over $500]; 89-101 [Vol. IV] [judge's law assistant may attend political fund-raisers, subject to the aggregate calendar year limit]).

The $500 limit does not apply to a staff member's contribution to his/her own campaign (22 NYCRR 100.5[C][2]; Opinion 07-189).

A judge's personal appointee may not personally sell tickets to or promote a fund-raising event of a political candidate, political party or partisan political club (22 NYCRR 50.2[c]; 100.5[A][4][b]-[c]; 100.5[C][3]; Opinion 90-102 [Vol. VII]).

A judge's personal appointee also is prohibited from serving as treasurer of the judge's re-election committee (22 NYCRR 50.2[c]; 100.5[C][3]; Opinions 03-48 [law clerk]; 00-05 [Vol. XVIII] [court attorney]).

Quasi-Judicial Employees. Quasi-judicial employees, such as judicial hearing officers, court attorney-referees and support magistrates, are subject to the same limitations on political activity as judges (22 NYCRR 100.6[A]; Opinions 05-14; 00-117 [Vol. XIX]; 95-119 [Vol. XIII]).

6.2 Participation of a Judicial Candidate's Family

The Rules define a member of the judicial candidate's family to include "a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship" (22 NYCRR 100.0[H]).

The Rules do not restrict the bona fide, independent political activity of a judicial candidate's spouse or any other member of the judicial candidate's family (Opinion 06-147).

Generally, a spouse or other member of the judicial candidate's family may exercise his/her individual political rights, including circulating and authenticating nominating petitions, attending politically sponsored events, holding office in a political organization, making contributions to political campaigns or organizations and participating in other activities that would not be permissible for the candidate, as long as the actions are those of the family member and not intended to be the indirect political activity of the candidate (Opinions 06-142; 98-99 [Vol. XVII]). A judge or judicial candidate should, however, make a concerted effort to convince his/her spouse to refrain from referring to him/her when supporting or soliciting support for another candidate, to avoid the appearance that the judge or judicial candidate also supports that candidate (22 NYCRR 100.5[A][1]; Opinion 06-142).

The judicial candidate must, however, encourage family members to adhere to the same standards of political conduct in support of the candidate as apply to the candidate himself/herself (22 NYCRR 100.5[A][4][a]). The judicial candidate must further, except to the extent permitted by Rule 100.5(A)(5), prohibit his/her family from undertaking any activities on the candidate's behalf that the candidate is prohibited from doing himself/herself or which may appear to be the candidate's indirect activity (22 NYCRR 100.5[A][1]; 100.5[A][4][c]; Opinion 98-99 [Vol. XVII]). Family members may also serve on a judicial candidate's campaign committee as long as the candidate determines that they are "responsible persons" who will abide by applicable laws and ethics rules (22 NYCRR 100.5[A][5]; *cf.* Opinion 07-64 [noting that a candidate must instruct his/her representative about the limitations on campaign speech and conduct that he/she should observe when acting on the candidate's behalf]). See also Section 4.1, *supra*.

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

Campaign Signs. A judicial candidate should not display campaign signs endorsing another candidate on his/her real property (22 NYCRR 100.5[A][1][c]-[e]), other than a sign listing the candidate as a member of a slate of current candidates (22 NYCRR 100.5[A][2][ii]-[iv]; Opinion 07-167). A judicial candidate should "strongly urge" his/her spouse not to place signs endorsing other political candidates on the real property where the judicial candidate and spouse reside, even if the spouse is the sole titled owner of the property (Opinions 07-169; 99-118 [Vol. XVIII]; 96-112 [Vol. XIV]). Once the candidate has done so, he/she is not required to take further action (Opinion 07-169). A judicial candidate or judge whose spouse is a candidate for public office is not required to discourage the spouse-candidate from placing the spouse's own campaign sign on jointly-owned property (Opinion 06-94).

Political Contributions. Because a judicial candidate may not make political contributions (22 NYCRR 100.5[A][1][h]), if family members of the candidate make political contributions, these should be made from the family member's separate funds (Opinion 95-138 [Vol. XIII]). It is inadvisable for a judicial candidate's family member to make a political

contribution using a joint bank account, even if the candidate's name is deleted from the check (Opinions 98-111 [Vol. XVII]; 96-29 [Vol. XIV]). Any contribution should specify that it is the contribution of the family member and not that of the judicial candidate (Opinion 96-29 [Vol. XIV]). If a judicial candidate's spouse has no independent source of income, however, he/she may make political contributions from funds that have been set aside for the spouse's sole discretionary use, again provided that the spouse does not use a check from a joint checking account with the candidate (Opinion 98-111 [Vol. XVII]).

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

7.1 Unexpended or Surplus Campaign Funds

A judicial candidate may continue to make certain campaign expenditures during his/her post-election window period, including the purchase of tickets to events that will take place during the window period. See Section 4.3.2, *supra*.

7.1.1 Permissible Uses and Closing of the Campaign Account

Permissible campaign expenditures are discussed in more detail in section 4.3, *supra*, and 7.3, *infra*. Judicial candidates should make every reasonable effort to return unexpended campaign funds to contributors on a *pro rata* basis at the conclusion of the window period (Opinions 07-187; 93-80 [Vol. XI]; 91-12 [Vol. VII]; 90-06 [Vol. V]; 89-152 [Vol. V]; 88-89 [Vol. II]; 88-59 [Vol. II]; 87-02 [Vol. I]; *see also* Opinion 92-94 [Vol. X] [funds left over from prior non-judicial campaign]). A judicial candidate who receives a cross-endorsement may even, if he/she wishes, return most of the funds *pro rata* before the election while retaining a small sum for possible use during the window period (Opinion 05-21; see also section 2.2.2, *supra*, regarding unopposed candidates).

Nevertheless, if the remaining unexpended funds are *de minimis* or otherwise so limited that, under the circumstances, returning the balance to contributors will be significantly unworkable or impracticable, unexpended funds may be used to purchase items which the court system or municipality does not otherwise provide, for use by the judge in the performance of judicial duties (Opinions 12-95[A] [funds totaling less than $1,000 are *de minimis* and need not be returned to contributors on a *pro rata* basis]; 06-162). In determining whether it is impracticable to return the unexpended campaign funds to contributors, the judicial candidate may consider factors such as the total number of contributors and the cost of returning the funds (Opinions 07-65; 06-162). A candidate should, to the extent possible, take steps to minimize the risk of uncashed checks that will delay the closing of his or her campaign account (Opinion 07-65). When returning unexpended campaign funds *pro rata* to contributors, however, a candidate may not decline to issue checks under a specific monetary threshold (*e.g.*, $10 or less), even if the funds would be distributed *pro rata* to other contributors (*id.*).

Subject to the considerations set forth in Opinions 07-65 and 06-162, a small amount of unexpended campaign funds may be used to purchase an item such as a modestly-priced laptop, if it is necessary to the performance of judicial duties and is not otherwise provided by the court system or the municipality (Opinion 06-162). Any items so purchased must be donated to the

Unified Court System (Opinions 98-139 [Vol. XVII] [office furniture]; 95-36 [Vol. XIII] [carpeting in chambers]; 93-56 [Vol. XI] [office equipment]). The donation may be formalized by writing a letter to the local District Administrative Judge identifying the designated items (Opinion 04-06).

It is not appropriate for a judge to use significant amounts of unexpended campaign funds to purchase numerous items, or items which the court system or municipality readily provide (Opinion 06-162 [unexpended campaign funds may not be used to purchase a fax machine, desk or chair for a state-paid judge when such items are provided by the Unified Court System]). Nor may they be used to purchase an item that requires an ongoing service agreement that would be billed to the Unified Court System, such as a cell phone (Opinion 06-162). Unexpended campaign funds may not be used to purchase a television (Opinion 06-162).

Some otherwise unexpended campaign funds may, however, be used to finance a "modest and reasonable" post-election victory reception within the window period (Opinions 07-187; 93-19 [Vol. X]; 89-152 [Vol. V]; 87-16 [Vol. I] [authorizing "a modest reception to which contributors and campaign workers are invited"]). The ACJE has noted that "[t]he 'induction', 'robing', or 'victory' party or reception is a traditional part of the total election process and a reasonable expenditure is expected for this purpose by those persons who contributed to the campaign fund" (Opinion 87-16 [Vol. I]). In 2003, the Commission on Judicial Conduct sanctioned a judicial candidate who spent nearly $20,000 in unexpended campaign funds on an induction reception and dinner for over 250 guests (2004 CJC Ann. Rep. at 153-56 [disciplinary determination]). The Commission concluded that "[t]he amount expended for the dinner was an unreasonably large amount of campaign funds to be spent for a dinner to celebrate respondent's induction as a Supreme Court Justice" (*id.* at ¶11). After the expiration of the window period, a judge may hold a victory party "only if it is financed with the judge's private funds" (Opinion 93-19 [Vol. X]) (noting that "a victory party is a private party and not a political activity as long as no campaign funds are used to finance the event").

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

Judicial candidates should be aware that the Rules further prohibit the use of campaign funds to pay for any campaign-related goods or services for which fair value is not received (22 NYCRR 100.5[A][6]).

Time frame for closing the campaign account. Although the Rules do not specify a time-frame for the disposition or return of funds or the closing of the campaign account, it should be done as soon as practicable on expiration of the window period, and in compliance with the requirements of the Election Law (22 NYCRR 100.5[A][2]; 100.5[A][5]; Opinions 07-187; 05-21; 04-87; 01-81). A judge's intention to purchase unspecified items for the courthouse at some indeterminate time in the future is not an adequate basis for leaving the campaign account open beyond the window period (Opinion 04-87).

7.1.2 Prohibited Uses

Unexpended campaign funds may not be used for the private benefit of the candidate or others (22 NYCRR 100.5[A][5]). Thus, they may not be donated (either directly or through the purchase of gifts) to any:

- Political party or entity (Opinions 90-193 [Vol. VI]; 88-59 [Vol. II]; 87-02 [Vol. I]).
- Charitable fund or institution, even if designated in the State tax return (Opinions 08-151; 03-109; 90-04 [Vol. V]; 87-02 [Vol. I]).
- Bar association (Opinion 92-29 [Vol. IX]).
- Community legal assistance group (Opinions 93-80 [Vol. XI]).
- Graduates of the drug court program (Opinion 05-132).
- Campaign workers (Opinion 98-06 [Vol. XVI] [even "token gifts"]).

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

Similarly, the ACJE has held that the definition of the window period "makes each campaign finite, allowing no campaign fund-raising action between campaigns. Nor does it permit any coalescence of the funds solicited for one campaign with another campaign" (Opinion 94-21 [Vol. XII]). Accordingly, a judicial candidate may not transfer, use or retain any campaign funds:

- to satisfy debts from past campaigns (Opinions 97-04 [Vol. XV]; 94-21 [Vol. XII] [repayment of loans made by judge and spouse in prior campaigns]).
- for use in any future campaign for any office, judicial or otherwise, including the candidate's anticipated campaign for election or re-election to the same bench or election to a higher judicial office (Opinions 01-81; 92-68 [Vol. IX]; 90-06 [Vol. V] [same or other office]; 89-152 [Vol. V]; 88-89 [Vol. II] [higher judicial office]).

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

The ACJE has also held that a judicial candidate may not use unexpended campaign funds from a prior non-judicial campaign for a present judicial campaign, for general party use, or for the campaigns of other candidates on the same slate (Opinions 93-15 [Vol. XI]; 92-94 [Vol. X]).

7.2 Post-Election Fund-Raising

Post-election fund-raising, where permitted, must be held within the candidate's window period (Opinion 02-13). Accordingly, a judge must instruct his/her campaign committee not to undertake any fund-raising events after the window period has expired, even if there are unpaid campaign debts (*id.*). The following paragraphs discuss several specific types of post-election fund-raising events for which candidates have sought guidance from the ACJE.

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

Raising funds to satisfy outstanding election debts to third parties. A judicial candidate's campaign committee may, within the applicable window period, hold a post-election fund-raising event, the proceeds of which will be used to satisfy outstanding election debts to third parties (Opinions 97-41 [Vol. XV] [legal obligations of the campaign committee for the recently concluded campaign]; 96-31 [Vol. XIV] [outstanding campaign debts to third parties]; 87-27 [Vol. I]). It is advisable that the campaign committee disclose that the funds raised will be used to pay off the debts of the campaign (Opinion 03-122). The judicial candidate may attend such a post-election fund-raising event held on his/her behalf (Opinions 03-122; 97-41 [Vol. XV]). To the extent that any such post-election fund-raiser succeeds in raising more funds than necessary to discharge the debts owed to third party creditors, any such excess funds must be returned to the campaign contributors on a *pro rata* basis (Opinion 03-119).

Raising funds to reimburse the candidate or his/her spouse. The campaign committee may not raise funds after the election to repay loans made to the committee by the candidate or the candidate's spouse, or to permit the candidate to recoup campaign expenses he/she incurred and paid personally during the campaign period (Opinions 05-136; 03-119; 96-31 [Vol. XIV] [repaying loans made by candidate to campaign committee]; 94-21 [Vol. XII] [repaying loans made by candidate and spouse to prior campaigns]; 89-05 [Vol. III] [reimbursement for campaign expenses paid by the candidate]). The fact that the campaign treasurer executed a promissory note in return for the candidate's loan to the campaign committee does not change the result (Opinion 05-136).

Raising funds to benefit or reimburse political party. The campaign committee may not raise funds to reimburse a political leader for campaign costs incurred by the leader, absent a legal obligation to make such reimbursement (Opinion 90-195 [Vol. VI]). A judicial candidate may not authorize a political party to hold a post-election fund-raising event on behalf of the judge, where it is intended that any funds remaining after payment of campaign debts would belong to the political party organization (Opinion 98-146 [Vol. XVII]).

Third party fund-raiser honoring newly elected judge. A newly elected full-time judge may be the honoree of a dinner sponsored by a civic organization where any profits will be transferred to the judge's campaign committee, provided that this event takes place within the judge's window period (Opinion 93-20 [Vol. X]).

7.3 Other Post-Election Conduct

A recently elected judge may continue to attend political functions throughout his/her window period, which ends exactly six months after the general election (Opinions 92-29 [Vol. IX]; 91-67 [Vol. VII] [recently elected judge may not attend political event held "six months and one day after the general election"]; 91-24 [Vol. VII]; 89-136 [Vol. IV]). The judge's campaign committee may purchase these tickets using campaign funds (Opinion 92-29 [Vol. IX]; 91-24 [Vol. VII]). A recently elected judge may retain a small portion of unexpended campaign funds to pay for tickets and to attend political events during his/her window period (Opinion 07-187). See also section 4.3 and 7.1.1, *supra*, for further discussion of post-election use of campaign funds.

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

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

However, a judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27). A non-candidate judge may not escort his/her candidate spouse to fund-raising events held for the spouse, even where the judge would not participate in or be introduced at the event (Opinion 06-147; *see also* 1990 CJC Ann. Rep. at 150-52). The restriction applies to national political conventions or out-of-state events sponsored by a political party organization at a national level (Opinion 99-156 [Vol. XVIII]; *cf.* Opinion 95-109 [Vol. XIII]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

8. Campaign-Related Disqualifications

The United States Supreme Court addressed legal disqualification of a judge based on expenditures of a campaign supporter in *Caperton v. A.T. Massey Coal Co.*, 556 US 868, 129 S Ct 2252 (2009) (holding that, for due process reasons, recently elected appellate judge should have disqualified himself from presiding over appeal involving corporation whose president and chief executive officer had spent over $3 million in support of the judge's campaign). The Court noted that these expenditures were made following the trial court's entry of a $50 million judgment against the corporation, at a time when it was likely that corporation would be seeking review in the court to which the judge was seeking election. The Court termed *Caperton* an "exceptional" and "extreme" case, which it expected to apply only in "rare instances" (*id.*, 129 S Ct at 2263, 2265, 2267). As of the date of writing, it appears that there are no published New York State court opinions applying *Caperton* to disqualify judges based on campaign contributions in New York (*cf. Glatzer v. Bear, Stearns & Co., Inc.*, 95 A.D.3d 707 [1st Dep't 2012] [noting the "stark contrast" with the facts in *Caperton* and finding no basis to conclude that actual bias or prejudice

existed]; *Anderson v. Belke*, 80 A.D.3d 483 [1st Dep't 2011] [citing *Caperton* for the proposition that "Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal; and this is no 'exceptional case.'"]).[12]

8.1 Endorsements

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

8.2 During the Campaign (Incumbent Judges Only)

Opponent. A judge may preside over a case when one of the attorneys representing a party is the judge's opponent in the upcoming election, unless the judge doubts his/her own impartiality (Opinion 11-76; Joint Opinion 00-78 and 00-80 [Vol. XIX] [opponent is chief assistant district attorney]; Opinions 92-82 [Vol. IX] [opponent is attorney]; 92-57 [Vol. IX] [opponent is district attorney]); *see also* Opinion 06-12 [opponent is district attorney and has threatened to file an ethics complaint against the judge]). However, the judge should recuse himself/herself when the judge's opponent in an upcoming election is a party in a proceeding before the judge (Opinion 91-110 [Vol. VIII]).

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

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

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

---

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

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

A judge also must disqualify himself/herself in any matter involving the law firm of the judge's campaign coordinator or campaign finance chair for the duration of the campaign, subject to remittal (Opinion 97-129 [Vol. XVI]). Disqualification, subject to remittal, is also required for partners or associates of individuals who were involved in planning an initial fund-raiser for the judge (Opinion 01-07). However, a judge need not disqualify himself/herself from a pending class action, where the judge's campaign treasurer is a member of "a large class" solely in an individual capacity rather than as treasurer of the campaign committee (Opinion 91-131 [Vol. VIII]).

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

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

Officer of a political party. A judge need not disqualify himself/herself in a proceeding in which an officer of a political party that designated the judge for judicial office is likely to be a material witness, where the official did not play any specific role in the judge's campaign (Opinion 02-108).

8.3 After the Campaign: The Two-Year Rule (Incumbent Judges and Successful Judicial Candidates)

Minimal participant. In general, a judge need not disclose or disqualify himself/herself in a matter in which an attorney who appears before the judge publicly supported the judge (Opinion 90-182 [Vol. VI]), or who minimally participated in the judge's campaign by gathering petition signatures (Opinion 90-196 [Vol. VI]) or distributing literature (Opinion 90-196 [Vol. VI]), unless the judge doubts his/her own impartiality (Opinion 07-26).

Similarly, neither disclosure or disqualification is required after the date of the election with respect to attorneys who were involved only in planning an initial fund-raiser for the judge, or who served only as the host of a single fund-raiser or on the committee that was hosting that fund-raiser, as long as they did not hold any office in the campaign or provide any continuing assistance beyond that one fund-raiser (Opinions 03-64; 01-07).

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

More than minimal participant, but not a leadership or continuing fund-raising role. Where an attorney's participation in a judge's election campaign was more than minimal, but not at the formal leadership level, the judge need not disqualify him/herself when the attorney appears in the judge's court if the judge can be impartial (Opinions 12-164; 09-245). However, for two years after the election, the judge must disclose the nature and extent of the attorney's involvement in the judge's campaign when that attorney appears before the judge (Opinions 12-164; 09-245).[13] If a party objects to the judge's continued involvement in the matter, disqualification is left to the judge's discretion (Opinions 12-164; 09-245). The disclosure is personal, involving only to the individual attorney who participated in the judge's campaign, and does not extend to his/her partners or associates (Opinion 12-164).

Leadership or continuing fund-raising role. If attorneys appearing before the judge held leadership positions in the campaign or maintained a continuing fund-raising role throughout the course of the campaign, then the recusal should extend for a two-year period following the election, subject to remittal (Opinions 07-26; 03-64; 97-129 [Vol. XVI] [campaign coordinator or campaign finance chair]; 89-107 [Vol. IV] [campaign manager]). This applies even if the judge's campaign was unsuccessful (Opinion 06-54).

With respect to other attorneys from the former campaign manager's firm, including an attorney listed as "of counsel" on firm letterhead, the judge must continue to disclose the relationship and should consider recusal if the parties' motions warrant it for a two-year period following the campaign (Opinion 06-54). After two years have elapsed, the judge must continue to disclose but may preside in such matters (Opinions 97-129 [Vol. XVI] [campaign coordinator or campaign finance chair]; 91-129 [Vol. VIII] [campaign treasurer]).

A judge may also need to disqualify himself/herself, under certain circumstances, when a "key member" of his/her campaign committee is called as an expert witness (Opinion 05-77 [advising disqualification in light of the totality and history of the relationship under the facts presented]).

---

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

Opponent. A judge need not disqualify himself/herself when a party in a proceeding or the attorney representing a party was the judge's opponent in a prior campaign (Opinions 91-146 [Vol. VIII] [former opponent as litigant]; 90-136 [Vol. VI] [former opponent as attorney]), unless the judge doubts his/her impartiality.

8.4 After the Campaign: Pledge or Promise

A judge must disqualify himself/herself in a proceeding if, while a candidate for judicial office, he/she made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or made a public statement not in his/her adjudicative capacity that commits the judge with respect to an issue in the proceeding or the parties or controversy in the proceeding (22 NYCRR 100.3[E][1][f]). (Making such a pledge or promise as a judicial candidate is also prohibited directly, as discussed *supra* in Sections 5.3 and 5.4.)

9. Additional Reminders for Sitting Judges

Comments on candidates. A sitting judge may respond to an inquiry from a political party's screening panel (Joint Opinion 12-84/12-95[B]-[G]) or a bar association screening panel (Opinions 08-160; 07-130) concerning a judicial candidate, or to an inquiry from a screening committee in connection with the reappointment of sitting judges (Opinion 00-124 [Vol. XIX]). The judge "should draw from his/her personal knowledge of the potential judicial candidate" and "should neither urge approval nor disapproval of a candidate" (Joint Opinion 12-84/12-95[B]-[G]; Opinion 08-160).

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

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

Political functions held after the window period. A judge who is no longer a candidate within his/her appropriate window period may not attend a political gathering, or any gathering sponsored by a political organization, even if the gathering is of a laudable, non-political nature or is held out-of-state ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27; *see also* Opinions 07-169; 06-147; 99-156 [Vol. XVIII]; 1990 CJC Ann. Rep. at 150-52 [disciplinary determination]). A judge who is not a candidate for judicial office, therefore, has an affirmative obligation to inquire regarding the sponsor's identity and purposes of an event in order to avoid inadvertently attending a prohibited political event ("Observations and Recommendations," 2001 CJC Ann. Rep. at 27).

Political contributions. A sitting judge may not make political contributions at any time, even to a presidential candidate or to a congressional candidate outside of New York State (Opinion 11-146; 22 NYCRR 100.5[A][1][h]). A part-time judge was disciplined where, among other things, the judge's law firm, apparently without the judge's knowledge, "made $925 in contributions to political candidates and organizations using firm checks issued from the firm business account" (2012 CJC Ann. Rep. at 113-129 ["The onus was on respondent to ensure that [his/her] law firm was in compliance with the ethical rules."]).

TABLE OF AUTHORITIES

Please Note: References are to sections of the Handbook, not to page numbers. This Table of Authorities has been prepared as a convenience to help the reader find locations in which certain rules and opinions are currently discussed in the Handbook.

United States Supreme Court Decisions

New York Court of Appeals Decisions

New York Statutes

Rules Governing Judicial Conduct (22 NYCRR part 100)

Rules of Professional Conduct (22 NYCRR part 1200)

Other Court Rules (22 NYCRR)

Bar Association Opinions†

Disciplinary Determinations†

"Observations and Recommendations"†

† References to ethics opinions of the New York State Bar Association and annual reports of the Commission on Judicial Conduct are included for informational purposes only. The Advisory Committee on Judicial Ethics was not involved in generating such opinions, and therefore does not necessarily endorse them.

SUBJECT MATTER INDEX

Please Note: References are to sections of the Handbook, not to page numbers.

Making the Ballot in Town, City, County, and Family Court

Moderator:

Hon. Peter Crummey

Panelists:

Hon. William A. Carter
Hon. Rachel L. Kretser
Hon. Susan M. Kushner
Hon. Debra J. Young

New York CLS Const Art VI, § 20 (a)

[Judges and justices; qualifications; eligibility for other office or service; restrictions]

§20. a. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the court of appeals, justice of the supreme court, or judge of the court of claims unless he or she has been admitted to practice law in this state at least ten years. No person, other than one who holds such office at the effective date of this article, may assume the office of judge of the county court, surrogate's court, family court, a court for the city of New York established pursuant to section fifteen of this article, district court or city court outside the city of New York unless he or she has been admitted to practice law in this state at least five years or such greater number of years as the legislature may determine.

b. A judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of a county court, judge of the surrogate's court, judge of the family court or judge of a court for the city of New York established pursuant to section fifteen of this article who is elected or appointed after the effective date of this article may not:

(1) hold any other public office or trust except an office in relation to the administration of the courts, member of a constitutional convention or member of the armed forces of the United States or of the state of New York in which latter event the legislature may enact such legislation as it deems. The Constitution of the State of New York 18 appropriate to provide for a temporary judge or justice to serve during the period of the absence of such judge or justice in the armed forces;

(2) be eligible to be a candidate for any public office other than judicial office or member of a constitutional convention, unless he or she resigns from judicial office; in the event a judge or justice does not so resign from judicial office within ten days after his or her acceptance of the nomination of such other office, his or her judicialoffice shall become vacant and the vacancy shall be filled in the manner provided in this article;

(3) hold any office or assume the duties or exercise the powers

of any office of any political organization or be a member of any governing or executive agency thereof;

(4) engage in the practice of law, act as an arbitrator, referee or compensated mediator in any action or proceeding or matter or engage in the conduct of any other profession or business which interferes with the performance of his or her judicial duties. Judges and justices of the courts specified in this subdivision shall also be subject to such rules of conduct asmay be promulgated by the chief administrator of the courts with the approval of the court of appeals.

c. Qualifications for and restrictions upon the judges of district, town, village or city courts outside the city of New York, other than such qualifications and restrictions specifically set forth in subdivision a of this section, shall be prescribed by the legislature, provided, however, that the legislature shall require a course of training and education to be completed by justices of town and village courts selected after the effective date of this article who have not been admitted to practice law in this state. Judges of such courts shall also be subject to such rules of conduct not inconsistent with laws as may be promulgated by the chief administrator of the courts with the approval of the court of appeals. (Amended by vote of the people November 8, 1977; November 6, 2001.)
[Vacancies; how filled]

Appointment Process for NYS Court of Claims

Moderator:

William T. Little, Esq.

Panelists:

Jessica M. Cherry, Esq.
Hon. Michael H. Melkonian
John A. Regan, Esq.

Nomination and Confirmation Statutes and Procedure for NYS Court of Claims Judges

Jessica M. Cherry, Esq.
Counsel to Senator John J. Bonacic
Chairman, New York State Senate Judiciary Committee

General Overview

- Judges of the Court of Claims are appointed by the Governor of New York and confirmed by the State Senate for a 9-year term.
- Court of Claims appointees are not reviewed by the Judicial Screening Committee
- Acting Court of Claims judges with terms expiring are submitted by the Governor and reviewed by the Senate for reappointment*
- Review and confirmation of Court of Claims judges can basically occur at any time.

The Court of Claims Act

1. Selection Process (N.Y. Ct. Cl. Act § 2(2)(a)).
   - Appointment by the Governor with the consent of the State Senate. There is no requirement of judicial commission recommendation

2. Eligibility Requirements (N.Y. Ct. Cl. Act § 2(7)).
   - Admission to practice as an attorney in New York, with at least ten years experience in practice.
   - There is no age limit.

3. Terms (N.Y. Ct. Cl. Act § 2(3)).
   - Nine years.

Authority and Vacancies

- **New York State Constitution, Article VI- The Judiciary**
  - **Authority**
    - The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide. (N.Y. Const. Art. 6 § 9.)
  - **Vacancy and Unexpired Terms**
    - When a vacancy shall occur, otherwise than by expiration of term, in the office of judge of the court of claims, it shall be filled for the unexpired term in the same manner as an original appointment. (N.Y. Const. Art. 6 § 21(b).)
  - **Removal**
    - Judges of the court of claims, the county court, the surrogate's court, the family court, the courts for the city of New York established pursuant to section fifteen of this article, the district court and such other courts as the legislature may determine may be removed by the senate, on the recommendation of the governor, if two-thirds of all the members elected to the senate concur therein. (N.Y. Const. Art. 6 § 21(b).)

Age Limitations

- **Judiciary Law § 23**
  - No person shall hold the office of judge, justice or surrogate of any court, whether of record or not of record, except a justice of the peace of a town or police justice of a village, longer than until and including the last day of December next after he shall be seventy years of age
  - **Exception**: A judge or justice in office or elected or appointed to office at the effective date of this section, as to whom no provision limiting his right to hold office to the close of the year following his attaining the age of seventy years was applicable prior to the effective date of this section, may continue in office during the term for which he was elected or appointed

- **New York State Constitution Law § 25 (b)**
  - Each judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court, judge of the family court, judge of a court for the city of New York established pursuant to section fifteen of this article and judge of the district court shall retire on the last day of December in the year in which he or she reaches the age of seventy.
  - Each such former judge of the court of appeals and justice of the supreme court may thereafter perform the duties of a justice of the supreme court, with power to hear and determine actions and proceedings, provided, however, that it shall be certificated in the manner provided by law that the services of such judge or justice are necessary to expedite the business of the court and that he or she is mentally and physically able and competent to perform the full duties of such office.
  - Any such certification shall be valid for a term of two years and may be extended as provided by law for additional terms of two years. A retired judge or justice shall serve no longer than until the last day of December in the year in which he or she reaches the age of seventy-six.
  - A retired judge or justice shall be subject to assignment by the appellate division of the supreme court of the judicial department of his or her residence. Any retired justice of the supreme court who had been designated to and served as a justice of any appellate division immediately preceding his or her reaching the age of seventy shall be eligible for designation by the governor as a temporary or additional justice of the appellate division. A retired judge or justice shall not be counted in determining the number of justices in a judicial district for purposes of subdivision d of section six of this article.

Age Limitations Continued

- **Age Legislation Proposals**
  - There have been various legislative proposals and an exploratory commission seeking to extend the age of mandatory retirement for judges. The most recent constitutional amendment to extend the retirement of Court of Appeals and Supreme Court Judges did not pass as a referendum in 2013.

  - **<u>Recent age legislation affecting the Court of Claims:</u>**
    - **S. 4934 by Bonacic (2013)**- This measure would amend section 25(b) of Article VI of the State Constitution to increase the mandatory retirement age for all judges and justices of the Unified Court System (except for justices of the Town and Village courts and judges of the Court of Appeals) from 70 to 74.

06/2013

Print Form

APPOINTMENTS QUESTIONNAIRE
CONFIDENTIAL

This Appointment Questionnaire is designed to gather detailed information from potential judicial appointees. Please complete this questionnaire using additional sheets as necessary. Every question must be answered. If a question is inapplicable, write N/A in the answer space provided. Please submit an original and fifteen (15) copies of the Appointment Questionnaire, fifteen (15) copies of your resume, and fifteen (15) copies of legal writing sample(s) or decisions. The materials do not need to be bound. If you decide to bind them, please do not bind the original. Please return the completed material to:

James Finke
Executive Chamber
State Capitol
Executive Chamber, Room 239
Albany, New York 12224

FULL NAME _____

HOME ADDRESS _____

SOCIAL SECURITY NUMBER _____

HOME TELEPHONE NUMBER _____

BUSINESS TELEPHONE NUMBER _____

FAX NUMBER _____

PAGER OR CELLULAR PHONE NUMBER _____

EMAIL ADDRESS _____

POSITION OR AREA OF SPECIALIZATION FOR WHICH YOU WISH TO APPLY:

_____

I. BIOGRAPHICAL INFORMATION

A. Date of Birth _____

B. Place of Birth _____

C. Mother's Name _____

1. Place of Birth _____
2. Current Address _____
3. Occupation _____

D. Father's Name _____

1. Place of Birth _____
2. Current Address _____
3. Occupation _____

E. Have you changed your name other than through marriage?

○ YES ○ NO

F. Have you used a name other than the one given above?

○ YES ○ NO

If yes, please set forth the name (s) and explain why:

_____

_____

G. Are you a U.S. citizen?

○ YES ○ NO

H. If you are not a U.S. citizen, do you have a permanent resident alien status?

○ YES ○ NO

II. MARITAL STATUS

A. ○ SINGLE ○ LEGALLY SEPARATED
○ MARRIED ○ DIVORCED

B. If you are currently married, provide the following:

1. Spouse's Name _____

a. Date of Birth _____
b. Place of Birth _____
c. Current Address _____
d. Occupation _____
e. Employer Name and Address _____

_____

2. Date of Current Marriage _____

3. State and County from which marriage certificate was issued

_____

C. If you are formerly married, provide the following for each marriage:

1. Spouse's Name _____

a. Date of Birth _____

b. Place of Birth _____

c. Current Address _____

d. Occupation _____

2. Spouse's Name _____

a. Date of Birth _____

b. Place of Birth _____

c. Current Address _____

d. Occupation _____

D. If any prior marriage(s) ended in divorce, annulment or separation, provide the following:

1. Court or Agency where Filed _____

2. Civil Index Number _____

3. Date Filed _____

4. Grounds for Divorce, Annulment, or Separation

_____

E. Child Support and/or Maintenance Obligations

1. Do you have any child support and/or maintenance obligations?

○ YES ○ NO ○ N/A

2. Are you current in all of your child support and/or maintenance obligations?

○ YES ○ NO ○ N/A

3. Are there any legal proceedings in any court pending against you for non-payment of child support and/or maintenance obligations?

○ YES ○ NO ○ N/A

4. Are there any judgments against you in any court for non-payment of child support and/or maintenance obligations?

○ YES ○ NO ○ N/A

F. Have you ever had an order of protection entered against you in a Family Court proceeding?

○ YES ○ NO ○ N/A

If yes, please explain.

_____

_____

G. Identify your children and provide their respective dates of birth, current address, current occupation and current employer.

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

Name _____

Date of Birth _____

Address _____

Occupation/Employer _____

H. Please identify any other children whom you are legally responsible for or whom you deduct as dependents on your federal tax return.

_____

_____

_____

_____

I. Please identify any other person whom you are legally responsible for or whom you deduct as dependents on your federal tax return.

_____

_____

III. RESIDENCES

A. List each address and dates of occupancy at which you have lived for the last five years.

_____

_____

_____

_____

_____

1. Please list the persons living in your household (name, age, relationship)

_____

_____

_____

_____

_____

B. If you own your current residence, please provide the following:

1. Mortgage Holder _____
2. Address of Mortgage Holder _____
3. Amount of Mortgage _____
4. Monthly Payment _____

C. If you rent your current residence, please provide the following:

1. Monthly Rental _____

2. Name of Landlord _____

IV. EMPLOYMENT

A. Name of Present Employer _____

Address _____

Date Employment Commenced _____

Position or Title _____

Annual Salary or Wage _____

Typical Bonus _____

B. If you are self-employed or the owner of a business, please provide the name of your business(es) along with the taxpayer identification number(s).

_____

_____

C. Are you now or have you been at any time within the last four (4) years an independent consultant/contractor? If yes, list your clients over the past four (4) years, including periods of consultancy or contract.

_____

_____

_____

_____

_____

D. Please provide the following information with respect to your employers over the last twenty (20) years:

1. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

2. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

3. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

4. Name _____

Address _____

Dates Employed _____ to _____

Final Position or Title _____

Final Annual Salary _____

Typical Bonus _____

E. Involuntary Terminations

1. Have you ever been fired from any job for any reason?

◯ YES ◯ NO

If yes, please explain.

_____

_____

2. Have you ever resigned from any job after being informed that your employment would be terminated?

◯ YES ◯ NO

If yes, please explain.

_____

_____

3. Have you ever had an employment discrimination charge brought against you that has been substantiated by a court of law, administrative agency, arbitrator's decision, or grievance committee finding?

◯ YES ◯ NO

If yes, specify when, by whom and what was the outcome?

_____

_____

V. LEGAL EXPERIENCE

A. Bar Admissions

1. List all bars and courts in which you are admitted or have ever been admitted to practice, other than on a pro hac vice basis, and dates of admission.

2. Have you ever resigned from a position as, or for other reasons ceased to be, a member of the bar of any state or court in any jurisdiction? If yes, describe the circumstances.

3. Have you complied with all registration requirements for lawyers in any jurisdiction in which you are licensed to practice law? If not, describe the circumstances.

4. For your most recent New York State biennial registration period, did you satisfy the mandatory continuing legal education requirement? If not, describe the circumstances.

B. Prior Legal Experience

1. General

a. List all areas of law in which you have concentrated or have had substantial experience for any sustained period of time and the periods during which you have done so.

_____

_____

_____

_____

_____

b. Prior to admission to any Bar, did you work as a paralegal, clerk, etc.? If yes, give the dates, names and addresses of the entity and people you worked for.

_____

_____

_____

_____

_____

2. Litigation

a. List on a separate piece of paper, with dates, the ten most recent cases in which you have participated during the past five years. State the names, present address and telephone numbers of the attorneys in each such case.

b. List on a separate piece of paper, with dates, any noteworthy cases in which you have participated. A case could be noteworthy because of its legal significance, or press attention. Include citations to relevant decisions or publicity.

c. What percentage of your litigation in the last five years was:

(i) Civil? _____

(ii) Criminal? _____

d. State the approximate number of personal appearances you have made in any court during the last five years.

Number: _____

(i) What percentage of such appearances was in:

(i) Supreme Court? _____

(ii) County Court? _____

(iii) Family Court? _____

(iv) District Court? _____

(v) Federal Court? _____

(vi) Other Courts (indicate the type(s) of courts)? _____

e. State the number of trials you have participated in during the past five years, indicating whether you were sole, associate, or chief counsel.

Number: _____

_____

_____

_____

(i) What percentage of your trials in the last five years was:

Jury? _____

Non-jury? _____

f. State the number of appeals you have participated in during the past five years, giving the names of the appellate courts and a general description of subject matter.

Number: _____

_____

_____

_____

(i) List on a separate piece of paper, citations to opinions in the ten most recent appeals in which you have participated during the past five years. Please provide copies of any such written opinions that were not reported.

3. Non-Litigation Representation

a. List on a separate piece of paper, with dates, the ten most recent significant non-litigation legal representations you have participated in during the past five years. State the names, present address and telephone numbers of the attorneys you recall were involved in each such representation.

4. Disciplinary Actions, Malpractice, and other Misconduct

a. Have you ever been disciplined by, or do you have any charges currently pending before any disciplinary committee, commission, or government agency arising out of your official or professional responsibilities? If yes, describe the circumstances.

_____

_____

_____

b. Have you, or any firm or organization that you have ever been a member of, ever been found to have committed legal malpractice, ever settled a case alleging the commission of acts constituting legal malpractice, or is any such legal malpractice claim currently pending? If yes, and if it related to a case or matter on which you worked, describe the finding, settlement or claim and state whether your conduct was the subject of the finding, settlement or claim.

c. Have you, your firm, your employer or any of your clients ever been cited for contempt or otherwise had a sanction imposed upon you or them as a result of your conduct in any judicial or administrative proceeding? If yes, describe the circumstances.

d. Have you ever been sued by a client? If yes, describe the circumstances.

C. Judicial Experience

1. Prior Judicial Experience
   a. List all judicial positions that you have held and all dates that you held such positions.

b. Have you ever resigned from a position as, or for other reasons ceased to be, a member of the bench of any court in any jurisdiction? If yes, describe the circumstances.

c. List all elective or non-elective judicial positions for which you have applied or sought election. Specify the position, the applicable jurisdiction, the relevant dates, and whether you received the position.

d. Have your qualifications for any judicial position previously been reviewed by any committee, Bar Association or other group, including this Committee? If yes, state the position for which you were reviewed, the name and address of the group, the dates you appeared before the group, and the rating, if any, which you were given.

e. Have you ever withdrawn a request that you be reviewed as a candidate for any judicial office by any group? If yes, describe the circumstances.

f. List on a separate piece of paper, with dates, any noteworthy cases over which you have presided. A case could be noteworthy because of its legal significance or press attention. Include citations to relevant decisions and/or publicity.

2. Current Judicial Office Holders (Including Judicial Hearing Officers and Referees)

a. For the most recent New York State biennial registration period, did you satisfy the requirement of attendance at training and education courses? If not, describe the circumstances.

_____

_____

_____

_____

b. State the approximate number of cases you hear per year.

Number: _____

(i) What percentage of these cases is:

(i) Civil? _____

(ii) Criminal? _____

(ii) List on a separate piece of paper, with dates, the ten most recent cases over which you have presided. State the names, present addresses and telephone numbers of the attorneys in each such case. If your ten most recent cases are exclusively civil or criminal in nature, add to the list your three most recent cases from the other side of the docket, regardless of date.

c. State the approximate number of trials over which you preside per year.

Number: _____

(i) What percentage of these trials was:

(i) Civil? _____

(ii) Criminal? _____

(ii) percentage of these trials was:

(i) Jury? _____

(ii) Non-jury? _____

d. State the approximate number of miscellaneous hearings or in-court proceedings over which you preside per year.

Number: _____

(i) What percentage of these hearings/proceedings was:

(i) Civil? _____

(ii) Criminal? _____

e. State the approximate number of motions and applications determined by you per year.

Number: _____

(i) What percentage of these hearings/proceedings was:

(i) Civil? _____

(ii) Criminal? _____

f. State the approximate number of appeals taken in cases over which you presided. State the percentage of these appeals that were affirmed, the percentage that were reversed, and the percentage that were modified.

Number: _____

Percentage affirmed: _____ Percentage reversed: _____ Percentage Modified: _____

a. What percentage of these appeals was:

(i) Civil? _____

(ii) Criminal? _____

b. For criminal appeals, what percentage was:

(i) Taken after plea? _____

(ii) Taken after judgment? _____

c. For civil cases, what percentage was:

(i) Taken after judgment in a jury case? _____

(ii) Taken after judgment in a non-jury case? _____

d. List on a separate piece of paper all your decisions which have been reversed upon appeal, giving citations for every written opinion at every level, including your opinion. Please provide copies of any of your written opinions that were not reported.

g. State the approximate number of interlocutory civil appeals taken in cases over which you presided. State the percentage of these appeals that were affirmed and the percentage that were reversed, and the percentage that were modified.

Number: _____

Percentage affirmed: _____ Percentage reversed: _____ Percentage Modified: _____

h. List on a separate piece of paper citations to all published opinions that you have written in the last three years. If the opinions are not published at this time, please provide copies of at least five recent unpublished opinions. If the names and addresses of all counsel in each case are not shown in the opinion, please supply those names and addresses if they are available to you.

3. Current and Former Appellate Judges

a. List on a separate piece of paper citations for all your opinions (including dissenting or concurring opinions) that you authored as an Appellate Judge. If the opinions are not published at this time, please provide copies of all such unpublished opinions.

b. List on a separate piece of paper citations to any decision reversing or modifying any of the opinions listed above. If the decisions are not published at this time, please provide copies of all such unpublished decisions.

D. Teaching and Lecturing Experience

1. Have you engaged in teaching law? If yes, state when, where, and the subjects taught.

_____

_____

_____

_____

2. Have you lectured or participated as a panelist at any schools or seminars conducted by any bar association or other organization of the legal profession? If so, specify dates and details.

_____

_____

_____

_____

E. Judicial Capacity

1. Do you know of any factors that would adversely affect your ability to serve competently as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume that could not be overcome by a reasonable accommodation? If yes, describe the circumstances.

_____

_____

_____

VI. GOVERNMENT SERVICE

A. Identify any experience in or association with any local, state or federal governmental entity (including advisory, consultative, honorary or other part-time service or positions). Specify the dates of such service.

B. Identify all elective public offices which you have sought and/or held. Specify the dates of such service.

C. Are you currently receiving or are you currently entitled to receive any pension benefit from any governmental entity?

(Y) (N)

D. Are you currently receiving or are you currently entitled to receive any disability benefits?

(Y) (N)

E. If your answer to question C or D of this section is yes, please identify the governmental entity and specify when you began to receive or were entitled to receive such benefits.

F. If you are receiving or are entitled to receive benefits from any governmental entity, please identify your retirement system and registration number.

G. Are you or any member of your household now receiving or applying for public assistance?

(Y) (N)

H. Have you ever been removed from public employment or asked to resign for disciplinary reasons?

(Y) (N)

If yes, set forth the circumstances.

VII. EDUCATIONAL BACKGROUND

A. High School

1. Name and address of last high school attended

_____

2. Dates attended _____ to _____

3. Did you graduate? ◯ YES ◯ NO

4. Please identify any other high schools that you attended

_____

5. If you have an equivalency diploma, please specify when it was obtained

_____

B. College

1. Name and address of last undergraduate college attended

_____

2. Dates attended _____ to _____

3. Did you graduate? ◯ YES ◯ NO

   a. Type of Degree _____

   b. Major Field _____

   c. Approximate Rank in Class _____

4. List any scholarships, fellowships, honorary degrees or any other awards that you received.

_____

_____

_____

5. Please identify any other colleges that you attended. Specify the dates of attendance and any degrees obtained.

_____

_____

_____

_____

C. Graduate or Professional School

1. Name and address of school (if more than one, use a separate sheet to answer this question)

_____

2. Dates attended _____ to _____

3. Did you graduate? ○ YES ○ NO

a. Type of Degree _____

b. Major Field _____

c. Approximate Rank in Class _____

4. List any scholarships, fellowships, honorary degrees or any other awards that you received.

_____

_____

D. Were you ever expelled, suspended, placed on probation, or subject to any other disciplinary action while attending any of the colleges, professional schools or other institutions that you listed in sections "B" and "C" above?

○ YES ○ NO

If yes, please explain the circumstances.

_____

_____

VIII. PROFESSIONAL CERTIFICATIONS

A. Please identify all professional licenses and certifications that you hold or have ever held. Specify the dates and the conferring authorities.

_____

_____

B. Has any professional license or certification ever been suspended or revoked?

○ YES ○ NO

If yes, please explain the circumstances.

_____

_____

C. Have you ever been the subject of any proceeding, inquiry or investigation by any professional association, including any bar association, of which you are a member?

◯ YES ◯ NO

If yes, please explain the circumstances.

_____

_____

D. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, bar association, disciplinary committee, or other professional group? If so, please give the particulars.

◯ YES ◯ NO

_____

_____

IX. MILITARY SERVICE

A. Have you ever served in the military?

◯ YES ◯ NO

B. If yes, please list highest rank, branch of service, dates of service and type of discharge.

_____

_____

C. Are you a member of the Reserves or National Guard?

◯ YES ◯ NO

If yes, when does your obligation end?

_____

X. ORGANIZATIONAL AFFILIATIONS

A. Identify any professional/business organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

_____

_____

_____

_____

B. Identify all memberships and offices held in and services rendered to all political parties or election committees during the past ten (10) years. If you received compensation, please provide the particulars.

C. Identify any civic, educational or charitable organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

D. List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, that you hold with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with or had matters other than ministerial matters before any state or local agency, list the name of any such agency. If you received compensation, please provide the particulars.

E. List any office, trusteeship, directorship, partnership, or position of any nature, whether compensated or not, held by your spouse with any firm, corporation, association, partnership, or other organization other than the State of New York. Include compensated honorary positions; do NOT list membership or uncompensated honorary positions. If the listed entity was licensed by any state or local agency, was regulated by any state regulatory agency or local agency, or, as a regular and significant part of the business or activity of said entity, did business with, or had matters other than ministerial matters before any state or local agency, list the name of any such agency. If your spouse received compensation, please provide the particulars.

F. Identify any fraternal organizations of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

G. Identify any recreational/leisure organizations (e.g., country club, yacht club, tennis club) of which you are a member. Specify the name and address of the organization, the dates of your membership and any title that you hold in the organization.

H. To your knowledge, are you or have you ever been a member of any organization that restricted admission on the basis of race, color, religion, age, sexual orientation, national origin, disability, or marital status?

○ YES ○ NO

If yes, please describe.

I. Have you ever been associated with any person, group or business venture that could be used to impugn or attack your character and qualifications for the position to which you seek to be appointed?

◯ YES ◯ NO

If yes, please describe.

_____

_____

_____

XI. PUBLISHED WORKS, SPEECHES AND AWARDS

A. Published Works

Identify the titles, publishers and dates of books, articles, reports or other opinion statements which you have written (even under another name) that have been published. Please submit a copy of any book, article, report or other published opinion statement.

_____

_____

_____

_____

_____

_____

B. Speeches

Identify the title of any speech that addresses a topic related to the position for which you are applying and that you have delivered during the last four (4) years. Please include the date of delivery and the audience. If the speech has been reduced to writing or transcribed, please submit a copy.

_____

_____

_____

C. Honors and Awards

Identify all honors and awards that you have received in the past ten (10) years. Please include the date you received the award and the conferring organization.

_____

_____

_____

_____

_____

XII. REFERENCES

A. Please identify three (3) individuals who know you well in your business and/or professional life over the last five (5) or more years.

1. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

2. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

3. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

B. Please identify three (3) individuals who know you well in your personal life and who are not related to you.

1. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

2. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

3. Name _____

   Residence Address _____

   Home Telephone _____

   Employer or Business Name _____

   Business Address _____

   Business Telephone _____

   Years Known _____

XIII. CONFLICT OF INTEREST INQUIRIES

A. Are you or any of your immediate family members (i.e., spouse/domestic partner and children or parents and siblings, as applicable to your circumstances.) related to any State of New York official or employee?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

B. Are you or any of your immediate family members related to any United States government official or employee?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

C. Are you or any of your immediate family members related to any official or employee of a municipal subdivision of the State of New York?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

D. During the past five (5) years, have you or any other immediate family members received any compensation or been involved in any financial transactions with the State of New York, any of its agencies, public authorities, public corporations or public educational institutions (i.e., SUNY, CUNY)?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

E. During the past five (5) years, have you or any immediate family members received any compensation or been involved in any financial transactions with the United States government, any of its agencies, public authorities or public corporations?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

F. During the past five (5) years, have you or other immediate family members received any compensation or been involved in any financial transactions with any local government or municipal subdivision of the State of New York, any of their agencies, public authorities or public corporations?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

G. During the past five (5) years, have you or other immediate family members received any compensation or been involved in any financial transactions with any State of New York official in his/her personal capacity?

◯ YES ◯ NO

If yes, please provide details.

_____

_____

_____

H. Please describe any business relationship, dealing or financial transaction which you have had during the past five (5) years, whether for yourself, or on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or may result in a potential conflict of interest in the position for which you seek appointment. If none, please so state.

_____

_____

_____

I. Describe any business relationship, dealing or financial transaction which any immediate family member has had during the past five (5) years, whether for himself/herself, or on behalf of a client, or acting as an agent, which you believe may constitute an appearance of impropriety or may result in a potential conflict of interest in the position for which you seek appointment. If none, please so state.

J. Does any member of your immediate family hold an employment position that is related in any way to the position that you seek? If so, please identify the employer, the position and the length of time it has been held.

K. Describe briefly any lobbying activity that you have engaged in during the past ten (10) years for the purpose of influencing any legislative or administrative action within the State of New York.

NOTE: "Lobbying activity" includes any activity performed as an individual or agent of another individual or of any organization that involves direct communication with an official in the executive branch, the legislative branch, or any public authority, agency or educational institution of New York State government.

L. Have you registered as a lobbyist with the Temporary Commission on Lobbying?

○ YES ○ NO

If yes, please explain.

M. Describe briefly any lobbying activity that any member of your immediate family has engaged in during the past ten (10) years for the purpose of influencing any legislative or administrative action within the State of New York.

N. Please describe any other matter in which you have been involved which may be incompatible or in conflict with the discharge of the duties of the position that you seek, or any matter which may impair or tend to impair your independence of judgment or action in the performance of your duties. If there is none, please so state.

O. Outside Employment

1. Do you have any commitments or agreements to pursue outside employment, with or without compensation, while you may be employed by the State of New York?

○ YES ○ NO ○ N/A

If yes, please explain.

2. Do you intend to sever all connections with your present employer or business firm, association or organization if you are appointed to the position you seek?

○ YES ○ NO ○ N/A

If no, please explain.

XIV. FINANCIAL MATTERS

A. Liens or Judgments

1. Are there any liens or judgments against you or any business in which you are an owner, officer, director or partner?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

2. Has a collection proceeding ever been instituted against you by any federal, state, or local taxing authority; or any other government entity?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

B. Tax Liabilities

1. Are you or any business in which you are an owner, officer, director or partner in arrears with regard to any tax obligations to federal, state and local authorities?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

2. Are there any tax liens currently assessed or pending against you, any business in which you are an owner, officer, director or partner, or any real property in which you have a beneficial or legal interest?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

3. Have your city, state or federal income tax returns been the subject of any audit, investigation, warrant or inquiry resulting in the assessment of a penalty?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

4. Within the last five (5) years, have you employed any domestic or household help?

○ YES ○ NO

a. If you employed domestic or household help, did you file the appropriate reports with the taxing authorities and pay withholding taxes?

○ YES ○ NO ○ N/A

If no, please explain.

_____

_____

_____

b. If you employed domestic or household help, have you verified that any domestic or household help that you employed are U.S. citizens or documented aliens?

○ YES ○ NO ○ N/A

If no, please explain.

_____

_____

_____

C. Student Loans

1. Are you, your spouse or any of your unemancipated children in arrears on the repayment of any student loan(s)?

( ) YES ( ) NO

If yes, please provide the name of the lender, the amount that is currently overdue and the length of time of the delinquency.

_____

_____

_____

2. Have you, your spouse or any of your unemancipated children ever defaulted on a student loan?

( ) YES ( ) NO

If yes, please provide the name of the lender, the amount of the default and the disposition of the loan.

_____

_____

_____

D. Bankruptcies

1. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever filed a petition for bankruptcy under the U.S. Bankruptcy Code?

( ) YES ( ) NO

If yes, please explain.

_____

_____

_____

2. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever been adjudicated a bankrupt under the U.S. Bankruptcy Code?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

3. Have you, your spouse or any corporation, firm, partnership or other business enterprise or non-profit organization or other institution in which you or your spouse have served as an owner, officer, director, trustee or partner ever been the subject of a receivership proceeding?

○ YES ○ NO

If yes, please explain

_____

_____

_____

_____

_____

_____

E. Gifts:

1. List each source of gifts EXCLUDING campaign contributions, in EXCESS of $1,000, received during the past five years by you or your spouse or unemancipated child, EXCLUDING your gifts from a relative. INCLUDE the name and address of the donor. The term "gift" does not include reimbursements. Indicate the value and nature of each such gift.

☐ NONE

Self Spouse Or Child	Name Of Donor	Address	Nature Of Gift	Category Of Value Of Gift*

*VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

F. Agreements

1. Describe the terms of, and the parties to, any contract, promise, or other agreement betweeen you and any person, firm, or corporation with respect to the employment of you after leaving office or position.

☐ NONE

2. Describe the parties to and the terms of any agreement providing for continuation of benefits to you in EXCESS of $1,000 from a prior employer OTHER THAN the State. (This includes interests in or contributions to a pension fund, profit-sharing plan, or life or health insurance, buy-out agreements; severance payments; etc.)

☐ NONE

G. Other Income, Assets and Liabilities:

1. List below the nature and amount of any income in EXCESS of $1,000 from EACH SOURCE for you and your spouse for the most recent taxable year. Nature of income includes, but is not limited to, all income from compensated employment, whether public or private, directorships and other fiduciary positions, contractual arrangements, teaching income, partnerships, honorariums, lecture fees, consultant fees, bank and bond interest, dividends, income derived from a trust, real estate rents, and recognized gains from the sale or exchange of real or other property. Income from a business or profession and real estate rents shall be reported with the source identified by the building address in case of real estate rents and otherwise by the name of the entity and not by the name of the individual customers, clients or tenants, with the aggregate net income before taxes for each building address or entity. The receipt of maintenance received in connection with a matrimonial action, alimony and child support payments shall not be listed.

☐ NONE

Self/Spouse	Source	Nature	Category of Amount*

*VALUE/AMOUNT CATEGORIES A - UNDER $5,000 B - $5,000 TO UNDER $20,000 C - $20,000 TO UNDER $60,000 D - $60,000 to under $100,000 E - $100,000 TO UNDER $250,000 F - $250,000 or over

2. List the sources of any deferred income (not retirement income) in EXCESS of $1,000 from each source to be paid to you following the close of this calendar year, other than deferred compensation reported above. Deferred income derived from the practice of a profession shall be listed in the aggregate and shall identify as the source, the name of the firm, corporation, partnership or association through which the income was derived, but shall not identify individual clients.

☐ NONE

Self/Spouse	Source	Nature	Category of Amount*

*VALUE/AMOUNT CATEGORIES A - UNDER $5,000 B - $5,000 TO UNDER $20,000 C - $20,000 TO UNDER $60,000 D - $60,000 to under $100,000 E - $100,000 TO UNDER $250,000 F - $250,000 or over

3. List below the type and market value of securities held by you or your spouse from each issuing entity in EXCESS of $1,000 at the close of the most recent taxable year, including the name of the issuing entity exclusive of securities held by the reporting individual issued by a professional corporation. Whenever an interest in securities exists through a beneficial interest in a trust, the securities held in such trust shall be listed ONLY IF you have knowledge thereof except where you or your spouse has transferred assets to such trust for his or her benefit in which event such securities shall be listed unless they are not ascertainable by you because the trustee is under an obligation or has been instructed in writing not to disclose the contents of the trust to you. Securities of which you or your spouse are the owner of record but in which you or your spouse has no beneficial interest shall not be listed. Indicate percentage of ownership ONLY if you or your spouse holds more than five percent (5%) of the stock of a corporation in which the stock is publicly traded or more than ten percent (10%) of the stock of a corporation in which the stock is NOT publicly traded. Also list securities owned for investment purposes by a corporation more than fifty percent (50%) of the stock of which is owned or controlled by you or your spouse. For the purpose of this item, the term "securities" shall mean mutual funds, bonds, mortgages, notes, obligations, warrants and stocks of any class, investment interests of any class, investment interests in limited or general partnership and certificates of deposits (CDs) and such other evidences of indebtedness and certificates of interest as are usually referred to as securities. The market value for such securities shall be reported only if reasonably ascertainable and shall not be reported if the security is an interest in a general partnership that was listed in Item G(A) or if the security is corporate stock, NOT publicly traded, in a trade or business of you or your spouse.

☐ NONE

Self/Spouse	Issuing Entity	Type of Security	Percentage of Corporate Stock Owned or Controlled*	Category of Market Value**

* If more than 5% of publicly traded stock, or more than 10% of stock not publicly traded, is held.
** Category of Market Value as of the close of the most recent taxable year.

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

4. List below the location size, general nature, acquisition date, market value and percentage of ownership of any real property in which any vested or contingent interest in EXCESS of $1,000 is held by you or your spouse. Also list real property owned for investment purposes by a corporation more than fifty percent (50)% of the stock of which is owned or controlled by you or your spouse. Do NOT list any real Property which is the primary or secondary personal residence of you or your spouse, except where there is a co-owner who is other than a relative.

☐ NONE

Self/Spouse/ Corporation	Location	Size	General Nature	Acquisition Date	Percentage of Ownership	Category of Market Value*

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

5. List below all notes and accounts receivable, other than from goods or services sold, held by you at the close of the most recent taxable year and other debts owed to you at the close of the most recent taxable year in EXCESS of $1,000 including the name of the debtor, type of obligation, date due and the nature of the collateral securing payment of each, if any, excluding securities.

☐ NONE

Name of Debtor	Type of Obligation, Date Due, and Nature of Collateral, if any	Category of Amount*

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

6. List below all liabilities of you and your spouse, in EXCESS of $5,000 as of the date of filing of this application, other than liabilities to a relative. Do NOT list liabilities incurred by, or guarantees made by, you or your spouse or by any proprietorship, partnership or corporation in which you or your spouse has an interest, when incurred Or made in the ordinary course of the trade, business or professional practice of you or your spouse. Include the name of the creditor and any collateral pledged by you or your spouse to secure payment of any such liability. You shall not list any obligation to pay maintenance in connection with a matrimonial action, alimony or child support payments. Any loan issued in the ordinary course of business by a financial institution to finance educational costs, the cost of home purchase or improvements for a primary or secondary residence, or purchase of a personally owned motor vehicle, household furniture or appliances shall be excluded. If any such reportable liability has been guaranteed by any third person, list the liability and name the guarantor.

☐ NONE

Name of Creditor Or Guarantor	Type of Liability and Collateral, if any	Category of Amount*

VALUE/AMOUNT CATEGORIES
A - UNDER $5,000
B - $5,000 TO UNDER $20,000
C - $20,000 TO UNDER $60,000
D - $60,000 to under $100,000
E - $100,000 TO UNDER $250,000
F - $250,000 or over

XV. GENERAL MATTERS

A. Criminal Convictions

Have you ever been convicted of or entered a plea of guilty or nolo contendere or forfeited collateral for any felony, misdemeanor or violation other than for minor traffic violations?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

B. Investigatory Actions

Have you ever been the subject of any inquiry or investigation by a federal, state or local agency (other than for routine background investigations for employment purposes)?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

C. Contempt

Have you ever been cited for contempt of any court, legislative, civil or criminal investigative body or grand jury?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

D. Driver's License

1. Please list driver's license number and issuing state.

_____

2. Has your driver's license ever been suspended or revoked?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

E. Parking Tickets

Do you have any outstanding parking tickets from any jurisdiction in New York which have remained unpaid for more than thirty (30) days?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

F. Civil Litigation

1. Have you or any business in which you are an owner, officer, director or partner ever been a plaintiff or a defendant in a civil lawsuit?

◯ YES ◯ NO

If yes, please specify the nature of the action, its title and index number or civil action number, and the disposition or status of the case.

_____

_____

2. For current past judicial office holders or other public officers, have you ever been named as a defendant in a lawsuit in your official capacity?

◯ YES ◯ NO

If yes, please specify the nature of the action, its title and index number or civil action number, and the disposition or status of the case.

_____

_____

3. Is any person or entity currently threatening to sue you or any business in which you are an owner, officer, director or partner?

○ YES ○ NO

If yes, please specify the name and address of the claimant and explain any pertinent details.

_____

_____

_____

4. Are you or have you ever been a party in interest in any administrative agency proceeding or lawsuit that is related in any way to the position that you seek?

○ YES ○ NO

If yes, please explain and provide the title of any litigation, its index number or civil action number and the disposition or status of the case.

_____

_____

5. Has any business in which you, your spouse, an immediate family member or business associate are or were an owner, officer, director or partner been a party to any administrative agency proceeding or lawsuit that is related in any way to the position that you seek?

○ YES ○ NO

If yes, please explain and provide the title of any litigation, its index number or civil action number and the disposition or status of the case.

_____

_____

G. Compliance with Health and Safety Statutes

1. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been cited for health or environmental violations by federal, state, or local authorities?

○ YES ○ NO

If yes, please explain.

_____

_____

_____

2. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been condemned or closed by federal, state or local authorities?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

3. Do you, your spouse or immediate family member own or have any interest in any real property which during the time of such ownership has been identified as containing hazardous materials?

◯ YES ◯ NO

If yes, please explain.

_____

_____

_____

H. Are you registered to vote?

◯ YES ◯ NO

I. Have you voted consistently over the past ten (10) years or since you graduated from high school?

◯ YES ◯ NO

J. Are you willing to relocate within the State of New York if you receive an appointment?

◯ YES ◯ NO ◯ N/A

XVI. FUTURE INTENTIONS

A. Do you expect to serve the full term for which you may be appointed?

◯ YES ◯ NO

If no, please explain.

_____

_____

_____

B. As far as can be foreseen, do you intend to resume employment, affiliation or practice with your previous employer, business firm, association or organization after completing government service?

◯ YES ◯ NO ◯ N/A

If yes, please explain.

_____

_____

C. Has anyone offered to employ you after you leave government service?

◯ YES ◯ NO ◯ N/A

If yes, please explain.

_____

_____

XVII. ADDITIONAL INFORMATION AND DISCLOSURES

A. Is there any information not otherwise elicited by this questionnaire which would affect, favorably or unfavorably, your eligibility for the judiciary? If so, please set it forth.

_____

_____

_____

B. Appointees as well as candidates for appointment may be subject to scrutiny by the public and the media. Accordingly, please set forth any additional disclosures that you believe should be considered with your application.

_____

_____

_____

AUTHORIZATION AND RELEASE OF PERSONAL INFORMATION AND CERTIFICATION

I understand that if I accept an offer of employment, any false statement on this questionnaire may result in dismissal. I further understand that this questionnaire is not an offer of employment, nor does it obligate the Cuomo administration in any way.

The Cuomo administration and its individual members and advisors and the State of New York are authorized to make any investigation of my background that they deem appropriate. They are hereby authorized to investigate any criminal activity, court records, and/or credit reports through any law enforcement, investigative or credit agencies or bureaus of their choice.

I hereby release from liability the Cuomo administration and its individual members and advisors, the State of New York and all persons supplying information in connection with this appointments questionnaire, and I further release such persons and agencies from any obligation to provide me with notification of such disclosure.

I certify that I have reviewed the information in this questionnaire and that to the best of my knowledge the information I have supplied is complete, true and accurate.

Do you consent to a copy of this questionnaire being reviewed by the Judiciary Committee of the New York State Senate if you are nominated for the position you seek?

○ YES ○ NO ○ N/A

Dated: _____ _____

Signature

PLEASE KEEP A COPY OF THIS FORM FOR YOUR RECORDS

CONSENT, AUTHORIZATION AND RELEASE

I, _____ hereby authorize any investigative or professional standards or disciplinary committee, firm, company, governmental agency, law enforcement agency, court, association, institute, board or any public or private authority to provide information, copies or inspection of any and all records, documents or other data relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

The undersigned further authorizes the Commission on Judicial Conduct or any attorney disciplinary, review or sanctioning body or committee to provide information, copies or inspection of any and all records, documents, data and or complaints, including but not limited to formal and/or informal inquiries, petitions or letters of grievance, including investigations or inquiries which may be pending or closed and those which have been dismissed or otherwise deemed erased as a matter of law, relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

The undersigned further authorizes any bar association, group, committee or organization which has interviewed and/or rated me as a candidate for any office, including a judicial office, to provide information relating to or copies or inspection of any and all records and documents relating to me in its possession to: the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees.

I hereby release, discharge, exonerate and hold harmless the Governor of the State of New York, his agents and employees and the New York State Senate Committee on Finance, its agents and employees and any person or entity furnishing information from any and all liability of every nature and kind arising out of the furnishing, inspection, receipt and disposition of such documents, records, and other information and understand that by my execution of this waiver that all information provided to said persons or bodies shall be kept strictly confidential but shall not abrogate or otherwise suspend the right or ability of the herein named persons or bodies from sharing any and all information with the appropriate law enforcement or disciplinary committee, body or entity.

A signed facsimile copy of this Consent and Authorization shall be adequate authority to provide either access to or copies of all of the heretofore described records, documents and information.

_____ _____

Signature Date

STATE OF NEW YORK }

COUNTY OF _____

On the _____ day of _____, 20____, before me came _____, to me personally known and who acknowledged to me that he/she has voluntarily executed the above Consent, Authorization and Release.

_____

Notary Public

FOR OFFICIAL USE ONLY

- ☐ IT-201 (long form)
- ☐ IT-200 (short form)
- ☐ IT-100 (fast form)

TO: State of New York
Department of Taxation and Finance
W. A. Harriman Campus
Albany, New York 12227

I, _____, authorize the Department of Taxation and Finance to examine any of my personal income tax returns for any year, including any schedules and attachments to those returns, for the purpose of ascertaining the correctness of those returns, schedules and attachments. I also authorize the Tax Department to inspect any correspondence, including protests, I may have had with the Department concerning those returns, schedules or attachments. If the Department of Taxation and Finance determines that any return, schedule, or attachment is incorrect in any detail, or information in any correspondence or protest might affect my personal income tax liability for past or future years, I authorize the Department of Taxation and Finance to disclose those returns, schedules, attachments and correspondence as well as any information learned during an investigation of personal income tax liability, to the Counsel to the Governor or his designee and to discuss its findings with said Counsel or such designee. I will commence no claim against the State of New York, the Department of Taxation and Finance and its officers if they make this disclosure according to this release.

My social security number is _____

_____
(Signature)

REMARKS

_____

_____

_____

_____

ACKNOWLEDGEMENT

STATE OF NEW YORK)
) SS.:
COUNTY OF _____

On this _____ day of _____ 20____ before me personally came _____, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he/she acknowledged to me that he/she executed the same as his/her free act and deed.

_____
NOTARY PUBLIC

Print Form