Survey of Commissioners

Campaign Financing Issues

1. *Is there a compelling reason to have special rules regarding campaign financing for judicial campaigns?*

2. *As a policy matter, should campaign finance rules that are applicable to judicial candidates and their committees also apply to individuals or groups making independent expenditures?*

3. *If rules cannot or do not apply to independent expenditures, is it unfair, counterproductive, or otherwise undesirable to restrict candidates?*

4. *Should judges, judicial candidates, and personal committees be limited on the amount of contributions they may accept from lawyers?*

5. *4a. If you answered #4 "yes", what should be the maximum amount?*

6. *Should a judge be prohibited from soliciting contributions from lawyers?*

7. *Should a judge be prohibited from accepting contributions from lawyers?*

8. *Should a judge's committee be prohibited from soliciting contributions from lawyers?*

9. *Should a judge's committee be prohibited from accepting contributions from lawyers ?*

10. *Should a judge be prohibited from soliciting contributions from lawyers with matters currently pending before the judge?*

11. *Should a judge be prohibited from accepting contributions from lawyers with matters currently pending before the judge?*

12. *Should a judge's committee be prohibited from accepting contributions from lawyers with matters currently pending before the judge's court?*

13. *Should a judge be prohibited from soliciting contributions from litigants currently appearing before the judge's court?*

14. *Should a judge be prohibited from accepting contributions from litigants currently appearing before the judge's court?*

15. *Should a judge's committee be prohibited from soliciting contributions from litigants currently appearing before the judge's court?*

16. *Should a judge's committee be prohibited from accepting contributions from litigants currently appearing before the judge's court?*

17. *Should a judge be prohibited from soliciting contributions from litigants likely to appear before the judge's court?*

18. *Should a judge be prohibited from accepting contributions from litigants likely to appear before the judge's court?*

19. *Should a judge's committee be prohibited from soliciting contributions from litigants likely to appear before the judge's court?*

20. *Should a judge's committee be prohibited from accepting contributions from litigants likely to appear before the judge's court?*

21. *Should a nonincumbent judicial candidate be prohibited from soliciting contributions from litigants likely to appear before the prevailing candidate's court?*

22. *Should judges be prohibited from serving on their own committees?*

23. *Should nonincumbent judicial candidates be prohibited from serving on their committees?*

24. *If service on one's own committee is not to be prohibited, should judicial candidates be exhorted to avoid involvement in their committee's fundraising efforts?*

25. *Should rules limit membership on personal campaign committees to avoid identification of judicial candidates with political partisans?*

26. *Should rules limit membership on personal campaign committees to avoid identification of judicial candidates with advocacy groups representing particular position on controversial political issues likely to come before the court?*

27. *Should rules restrict the choice of paid campaign consultants to avoid identification of judicial candidates with such advocacy groups?*

28. *Should rules restrict the choice of paid campaign consultants to avoid identification of judicial candidates with political partisans?*

29. *Should rules require disqualification or recusal on account of a judge's previous campaign fundraising conduct?*

30. *Should rules require disqualification or recusal on account of a judge's previous campaign conduct unrelated to fundraising?*

31. *Should rules encourage disqualification or recusal on account of a judge's previous campaign fundraising conduct?*

32. *Should rules encourage disqualification or recusal on account of a judge's previous campaign conduct unrelated to fundraising?*

33. *Should the code provide specific rules on when recusal is appropriate?*

34. *Should rules require disqualification or recusal when an attorney or litigant has contributed more than a specified dollar amount to the judge or the judge's opponent?*

35. *Should rules require disqualification or recusal when an attorney or litigant has served as a member of the judge's campaign committee or the committee of the judge's opponent?*

36. *Should rules prohibit campaign fundraising by an incumbent until active opposition develops?*

37. *Should fundraising be prohibited except for a specified period of time before an election?*

38. *Should fundraising be prohibited entirely after an election?*

39. *Should fundraising be restricted to a specified period of time after an election?*

40. *Should the rules address the proper uses of campaign funds?*

41. *Should the rules specifically address the proper uses of excess campaign funds?*

42. *Do you favor some form of public financing of judicial election campaigns? If so, on a separate response sheet or in a cover letter returning the survey response sheet, please indicate what kind of plan you favor.*

Campaign Content Issues

43. Should rules prohibit campaign rhetoric that "commits or appears to commit" a candidate for judicial office with respect to a particular case?

44. Should rules prohibit campaign rhetoric that "commits or appears to commit" a candidate for judicial office with respect to a particular controversy?

45. Should rules prohibit campaign rhetoric that "commits or appears to commit" a candidate for judicial office with respect to issues likely to come before the court to which the candidate seeks election or appointment?

46. Should campaign rhetoric respecting the adoption, modification, or repeal of court rules or administrative practices be subject to a different rule from other issues likely to come before the court?

47. Should rules governing judicial elections explicitly prohibit misrepresentation by candidates for judicial office?

48. If there is to be a rule prohibiting misrepresentation, should the prohibition be limited in scope [e. g., restricted to misrepresentations of the qualifications of the candidate and of his/her opponent]?

49. If there is to be a rule prohibiting misrepresentation, should the prohibition be broad [e. g., applicable to any misrepresentation of fact]?

50. If there is to be a broad prohibition of misrepresentation, should there be a materiality restriction?

51. If misrepresentation is to be prohibited, should the prohibition apply only to intentional misrepresentation?

52. If misrepresentation is to be prohibited, should the prohibition apply to intentional misrepresentations and to misrepresentations made with reckless disregard for truth or falsity?

53. If misrepresentation is to be prohibited, should the prohibitions apply even to negligent or innocent misrepresentations?

54. Should rules identify with some degree of specificity what areas of campaign speech are ethically permissible?

55. Should rules identify with some degree of specificity what areas of campaign speech are not ethically permissible?

56. Respecting campaign speech limitations, is it preferable to "paint with a broad brush" rather than attempting to draft rules addressing specific types of campaign rhetoric?

57. Should rules address campaign speech regarding decisions of a sitting judge?

58. Should rules address campaign speech regarding decisions of an appellate court?

59. Should the code contain a hortatory provision that ideally a candidate should restrict his or her comments on the record of an opponent to matters which are clearly relevant to the integrity, impartiality, judicial temperament, judicial philosophy, legal ability, or industry?

60. Should rules address candidate representations that, though true, are misleading?

61. Should rules address candidate representations that, though true and not misleading, are otherwise unfair?

62. Should rules address judicial campaign rhetoric focused on legislative or executive branch issues, i. e., issues constitutionally committed to branches of government other that the judiciary?

63. Should candidates be prohibited from announcing their views on disputed political issues?

64. Should rules address campaign rhetoric likely to confuse the public concerning the proper roles of judges and lawyers in the American adversary system of justice?

65. Should rules require that candidates disclaim misrepresentations or otherwise unfair assertions made through independent expenditures?

66. Should reasonable monitoring by candidates of representations through independent expenditures be required?

Other Political Activity

Political Organizations

67. Should judges be prohibited from membership[1] in a political party during a term of office?

68. Should judges be prohibited from membership in a political party when a candidate for judicial office?

69. Should judges be prohibited from holding office in a political party during a term of office?

70. Should judges be prohibited from holding office in a political party when a candidate for judicial office?

71. Should judges be prohibited from active participation[2] in the affairs of a political party during a term of office?

72. Should judges be prohibited from active participation in the affairs of a political party when a candidate for judicial office?

73. Should nonincumbent candidates be prohibited from membership in a political party when a candidate for judicial office?

74. Should nonincumbent candidates be prohibited from holding office in a political party when a candidate for judicial office?

75. Should nonincumbent candidates be prohibited from active participation in the affairs of a political party when a candidate for judicial office?

76. Should judges be prohibited from speaking publicly on behalf of or in support of a party or party candidates?

77. Should nonincumbent judicial candidates be prohibited from speaking publicly on behalf of or in support of a party or party candidates?

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[1] The supreme court has asked the Commission to address how the terms "membership" and "active participation" should be defined in terms of affiliation with political parties. If you have considered how these terms should be defined, please share your thoughts on such definitions on a separate survey response sheet or in a cover letter returning your responses.

[2] The supreme court has asked the Commission to address how the terms "membership" and "active participation" should be defined in terms of affiliation with political parties.

78. Should judges be prohibited from contributing to a party?

79. Should nonincumbent judicial candidates be prohibited from contributing to a party?

80. Should judges be prohibited from contributing to a partisan candidate?

81. Should non judge judicial candidates be prohibited from contributing to a partisan candidate?

82. If contributions to parties and/or partisan candidates are permitted, should the amount of contribution be regulated?

83. Should judges be prohibited from attending party sponsored public meetings?

84. Should nonincumbent judicial candidates be prohibited from attending party sponsored public meetings?

85. Should judges be prohibited from attending partisan candidate fund raisers?

86. Should nonincumbent judicial candidates be prohibited from attending partisan candidate fund raisers?

87. Should judges be prohibited from purchasing tickets as a member of the public for a fundraising event for a party?

88. Should nonincumbent judicial candidates be prohibited from purchasing tickets as a member of the public for a fundraising event for a party?

89. Should judges be prohibited from attending partisan events even as guest of the judge's spouse or other person[3]?

90. Should nonincumbent judicial candidates be prohibited from attending partisan events even as guest of the judge's spouse or other person?

91. Should judges be prohibited from giving speeches at party sponsored public meetings?

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[3] Current SCR 60:05(4)(e) prohibits judges from accepting a gift, favor or loan from anyone except in rather narrowly circumscribed circumstances identified therein.

92. Should nonincumbent judicial candidates be prohibited from giving speeches at party sponsored public meetings?

93. Should judges be prohibited from giving speeches at partisan candidate fund raisers?

94. Should nonincumbent judicial candidates be prohibited from giving speeches at partisan candidate fund raisers?

95. Should there be different rules for election years and non-election years?

96. Should speech-making be permitted so long as all candidates are invited to address the gathering?

Civic and Charitable Organizations[4]

97. Should judges be prohibited from membership in interest groups during the term of judicial office?

98. Should judges be prohibited from membership in interest groups while a candidate for judicial office?

99. Should nonincumbent judicial candidates be prohibited from membership in interest groups while a candidate for judicial office?

100. Should judges be prohibited from holding office in an interest group during the term of judicial office?

101. Should judges be prohibited from holding office in an interest group while a candidate for judicial office?

102. Should nonincumbent judicial candidates be prohibited from holding office in an interest group while a candidate for judicial office?

103. Should judges be prohibited from holding a non-office leadership position[5] in an interest group during the term of office?

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[4] In its response to the Commission's Initial Report, the court asked that the Commission "address each of the seven issues addressed in this session [sic] but limit its inquiry to the specified conduct as it relates to "interest groups." The court "specifically requests that the Commission undertake to define what constitutes an "interest groups" and consider how judicial conduct in relation to them should be regulated." If you have considered how "interest group" should be defined, please share your thoughts on such definition on a separate survey response sheet or in a cover letter returning your responses.

104. Should judges be prohibited from holding a non-office leadership position in an interest group while a candidate?

105. Should nonincumbent judicial candidates be prohibited from hold a non-office leadership position in an interest group while a candidate?

106. Should judges be prohibited from active participation in the affairs of an interest group during the term of office?

107. Should judges be prohibited from active participation in the affairs of an interest group while a candidate?

108. Should nonincumbent judicial candidates be prohibited from active participation in the affairs of an interest group while a candidate?

109. Should judges be prohibited from speaking publicly on behalf of or in support of interest groups?

110. Should judges be prohibited from speaking publicly on behalf of or in support of the goals and activities of interest groups?

111. Should nonincumbent judicial candidates be prohibited from speaking publicly on behalf of or in support of interest groups?

112. Should nonincumbent judicial candidates be prohibited from speaking publicly on behalf of or in support of the goals or activities of interest groups?

113. Should judges be prohibited from contributing to interest groups?

114. Should nonincumbent judicial candidates be prohibited from contributing to interest groups while a candidate?

115. Should judges be prohibited from participating in fundraising activities of interest groups?

116. Should nonincumbent judicial candidates be prohibited from participating in fundraising activities of interest groups?

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[5] This term if of course hardly self-defining. Officerships would presumably include the traditional president, vice-president, secretary, treasurer, and such other positions as are defined as officer positions under organizational constitutions, article, by-laws, etc. Non-office leadership positions would seem to include committee leadership and the like, but could also include formal or informal positions such as "advisor" or "consultant."

117. Should judges be prohibited from giving speeches at fundraising activities of interest groups?

118. Should nonincumbent judicial candidates be prohibited from giving speeches at fundraising activities of interest groups?

119. Should judges be prohibited from attending fundraising activities of interest groups?

120. Should nonincumbent judicial candidate be prohibited from attending fundraising activities of interest groups?

121. Should judges be prohibited from purchasing tickets for fundraising events of interest groups, even as a member of the public?

122. Should nonincumbent judicial candidates be prohibited from purchasing tickets for fundraising events of interest groups, even as a member of the public?

123. Should attendance at an interest group fundraising event be permitted if a judge attends as the guest of the judge's spouse[6]*?*

124. Should attendance at an interest group fundraising event be permitted if a nonincumbent judicial candidate attends as the guest of the candidate's spouse or other person?

Holding Nonpartisan Office

125. Should municipal judges be permitted to hold other nonpartisan offices while serving as part-time municipal judges?

CAMPAIGN ACTIVITIES

Endorsements

126. Should judges be prohibited from soliciting endorsements from other judges?

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[6] In the Initial Report, the Commission phrased the issue in terms of attending as the guest "of one's spouse *or other person*" (italics added). Attending a fundraising event as the guest of a nonspouse other person may be prohibited as accepting a "thing of value".

127. Should judges be prohibited from accepting endorsements from other judges?

128. Should judges be required publicly to disavow endorsements from other judges?

129. Should nonincumbent judicial candidates be prohibited from soliciting endorsements from judges?

130. Should nonincumbent judicial candidates be prohibited from accepting endorsements from judges?

131. Should nonincumbent judicial candidates be required publicly to disavow endorsements from judges?

132. Should judges be prohibited from soliciting endorsements from partisan public office holders?

133. Should judges be prohibited from accepting endorsements from partisan public office holders?

134. Should judges be required publicly to disavow endorsements from partisan public office holders?

135. Should nonincumbent judicial candidates be prohibited from soliciting endorsements from partisan public office holders?

136. Should nonincumbent judicial candidates be prohibited from accepting endorsements from partisan public office holders?

137. Should nonincumbent judicial candidates be required publicly to disavow endorsements from partisan public office holders?

138. Should judges be prohibited from soliciting endorsements from nonpartisan public office holders?

139. Should judges be prohibited from accepting endorsements from nonpartisan public office holders?

140. Should judges be required publicly to disavow endorsements from nonpartisan public office holders?

141. Should nonincumbent judicial candidates be prohibited from soliciting endorsements from nonpartisan public office holders?

142. Should nonincumbent judicial candidates be prohibited from accepting endorsements from nonpartisan public office holders?

143. Should nonincumbent judicial candidates by required publicly to disavow endorsements from nonpartisan public office holders?

144. Should judges be prohibited from soliciting endorsements from all lawyers?

145. Should judges be prohibited from accepting endorsements from all lawyers?

146. Should judges be required publicly to disavow endorsements from any lawyer?

147. Should nonincumbent judicial candidates be prohibited from soliciting endorsements from all lawyers?

148. Should nonincumbent judicial candidates be prohibited from accepting endorsements from all lawyers?

149. Should nonincumbent judicial candidates be required publicly to disavow endorsements from any lawyer?

150. Should judges be prohibited from soliciting endorsements from lawyers who regularly[7] appear before the judge's court?

151. Should judges be prohibited from accepting endorsements from lawyers who regularly appear before the judge's court?

152. Should judges be required publicly to disavow endorsements from lawyers who regularly appear before the judge's court?

153. Should nonincumbent candidates be prohibited from soliciting endorsements from lawyers who regularly appear before the court to which the candidate seeks election?

154. Should nonincumbent candidates be prohibited from accepting endorsements from lawyers who regularly appear before the court to which the candidate seeks election?

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[7] What "regularly" means is, of course, hardly self-defining, but at least for crude preliminary survey purposes, this survey question may have some utility.

155. Should judges be permitted to seek endorsements from lawyers except lawyers who have a matter pending before the court at the time of the solicitation?

156. Should judges be permitted to accept endorsements from lawyers except lawyers who have a matter pending before the court at the time of the offered endorsement?

157. Should judges be required publicly to disavow endorsements from lawyers who have a matter pending before the court at the time of the endorsement?

158. Should nonincumbent judicial candidates be permitted to seek endorsements from lawyers except lawyers who have a matter pending before the court to which the candidate seeks election?

159. Should nonincumbent judicial candidates be permitted to accept endorsements from lawyers except lawyers who have a matter pending before the court to which the candidate seeks election?

160. Should nonincumbent judicial candidates be required publicly to disavow endorsements from lawyers who have a matter pending before the court to which the candidate seeks election?

161. Should judges be prohibited from soliciting endorsements from interest groups?

162. Should judges be prohibited from accepting endorsements from interest groups?

163. Should judges be required publicly to disavow endorsements from interest groups?

164. Should nonincumbent judicial candidates be prohibited from soliciting endorsements from interest groups?

165. Should nonincumbent judicial candidates be prohibited from accepting endorsements from interest groups?

166. Should nonincumbent judicial candidates be required publicly to disavow endorsements from interest groups?

167. Should a judge be prohibited from soliciting endorsements personally as opposed to through a committee?

168. Should a nonincumbent judicial candidate be prohibited from soliciting endorsements personally as opposed to through a committee?

169. Should a judge be prohibited from endorsing a candidate for judicial office?

170. Should a nonincumbent judicial candidate be prohibited from endorsing another candidate for judicial office?

171. Should a judge be prohibited from making speeches on behalf of or in support of another candidate for judicial office?

172. Should a nonincumbent judicial candidate be prohibited from making speeches on behalf of or in support of another candidate for judicial office?

173. Should a judge be prohibited from endorsing a candidate for a non-partisan, non-judicial office?

174. Should a nonincumbent judicial candidate be prohibited from endorsing a candidate for a non-partisan, non-judicial office?

175. Should a judge be prohibited from making speeches on behalf of or in support of a candidate for a non-partisan, non-judicial office?

176. Should a nonincumbent judicial candidate be prohibited from making speeches on behalf of or in support of a candidate for a non-partisan, non-judicial ?

177. Should a judge be prohibited from endorsing a candidate for a partisan office?

178. Should a nonincumbent judicial candidate be prohibited from endorsing a candidate for a partisan office?

179. Should a judge be prohibited from making speeches on behalf of or in support of a candidate for a partisan office?

180. Should a nonincumbent judicial candidate be prohibited from making speeches on behalf of or in support of a candidate for a partisan?

181. Does the concept of endorsement need to be defined?

182. Should there be any restriction on a judge's signing of nomination papers for another judicial candidate?

183. Should there be any restriction on a nonincumbent candidate's signing of nomination papers for another judicial candidate?

184. Should there be any restriction on a judge's signing of nomination papers for a non-partisan, non-judicial candidate?

185. Should there be any restriction on a nonincumbent candidate's signing of nomination papers for a non-partisan, non-judicial candidate?

186. Should there be any restriction on a judge's signing of nomination papers for a partisan candidate?

187. Should there be any restriction on a nonincumbent judicial candidate's signing of nomination papers for a partisan candidate?

188. Should a judge be prohibited from making contributions to other judicial candidates?

189. Should a nonincumbent judicial candidate be prohibited from making contributions to other judicial candidates?

190. Should a judge be prohibited from making contributions to a non-partisan, non-judicial candidate?

191. Should a nonincumbent judicial candidate be prohibited from making contributions to a non-partisan, non-judicial candidate?

192. Should a judge be prohibited from making contributions to partisan candidates?

193. Should a nonincumbent judicial candidate be prohibited from making contributions to partisan candidates?

194. Should applicants for appointment to a judicial vacancy be bound by any ethical regulations or prohibitions?

195. Should a judge be permitted to endorse an applicant for judicial appointment?

196. Should a judge be permitted to write a letter of support on behalf of an applicant for judicial appointment?

197. [Among the issues identified in the Commission's Initial Report is what, if any prohibitions should be placed on a judge and a judicial candidate whose spouse or family member is seeking or hold a partisan or non-partisan elected office. As formulated in the Initial Report, this item does not lend itself to "yes/no" survey treatment, but will require attention during the Commission's subsequent deliberations.]

COMMON ISSUES

198. Should rules governing judicial election be restricted to rules having the force of law or should they include hortatory or aspirational statements, e. g., voluntary guidelines for contributions and expenditures, rules of civility for judicial campaigns and restatement of standards akin to those found in the former SCR 60.01 (Characteristics of an ideal judge)?

199. Should rules governing judicial elections apply with equal vigor to all candidates, i.e., those who are incumbent judges, those who are lawyers, and those (in municipal elections} who are neither judges nor lawyers?

200. Should the rules apply equally to successful and unsuccessful candidates?

201. Should rules governing candidate in judicial elections apply with equal vigor, insofar as they may be applicable, to candidates for appointment to judicial office?