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May 13, 2024

Via Email and U.S. Mail

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Judge Carmaine Sturino
Judge Michael Fritz
Judge Robyn Millenacker
Minnesota District Judges Association
25 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Re: Board Opinion Pursuant to Rule 2(a)(2)(i)

Dear Judge Sturino, Judge Fritz and Judge Millenacker:

On behalf of the Board on Judicial Standards ("Board"), I write in response to your letter requesting an opinion on the following questions:

1. Does the Minnesota Code of Judicial Conduct prohibit a judge from creating and managing their own social media campaign platform?
2. Does the Minnesota Code of Judicial Conduct prohibit a judge from soliciting financial contributions on their own social media campaign platform?

Board advisory opinions are authorized, subject to certain limitations, by Rule 2(a)(2), Rules of the Board on Judicial Standards. This opinion is limited to the facts as we understand them from your letter and will apply the relevant authorities to the facts that you presented.

SUMMARY OF OPINION

The Minnesota Code of Judicial Conduct ("Code") does not expressly prohibit a judge or judicial candidate from creating their own social media campaign platform, but the Code does place restrictions on how judicial candidates manage and use their own social media platforms.

Question 1: Does the Minnesota Code of Judicial Conduct prohibit a judge from creating and managing their own social media campaign platform?

Answer: The Code does not expressly prohibit a judge or judicial candidate from creating and managing their own social media campaign platform. Rule 4.2(B)(2) permits a candidate for judicial office, unless prohibited by law, to "speak on behalf of his or her candidacy through any medium" We conclude that "any medium" is a broad category, and that the Code allows a

judicial candidate to “speak” on behalf of their candidacy using a social media campaign platform personally created and managed by the candidate themselves.

Judicial candidates’ online campaign activities and communications on their own social media campaign platforms must still comply with the Code and other applicable law. Even if judicial candidates create and use their own social media campaign platforms for the primary purpose of communicating with the public about their campaign (“speaking on behalf of their candidacy”), it may be difficult in practice for candidates to avoid risks of other Code violations if they manage their online campaign platforms personally.

Question 2: Does the Minnesota Code of Judicial Conduct prohibit a judge from soliciting financial contributions on their own social media campaign platform?

Answer: Judges and judicial candidates are generally prohibited from personally soliciting campaign contributions, with limited exceptions. One of these exceptions allows judicial candidates to “make a general request for campaign contributions when speaking to an audience of 20 or more people.” Rule 4.2(B)(3)(a). We find this Rule also permits judicial candidates to make a similar general request for campaign contributions to an online audience using their own social media campaign platforms.

Importantly, however, the Code prohibits judicial candidates from personally accepting campaign contributions and having access to information about the identity of individual contributors and the amounts of their contributions. Thus, we conclude judicial candidates are prohibited from using their own, personally managed social media campaign platforms to receive or collect campaign contributions online.

We note that the Code suggests and allows an alternative model: judges and judicial candidates can authorize their campaign committees to create and manage their campaign social media platforms. Judicial candidates remain responsible to actively direct and oversee their campaign committees’ online activities to ensure compliance with the Code or other applicable law.

MAIN CODE PROVISIONS

The Board considered several provisions in the Code of Judicial Conduct in formulating its response to your request:

1. Rule 1.2 (Promoting Confidence in the Judiciary)
2. Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office)
3. Rule 2.1. (Giving Precedence to the Duties of Judicial Office)
4. Rule 2.2 (Impartiality and Fairness)
5. Rule 2.3 (Bias, Prejudice and Harassment)
6. Rule 2.4 (External Influences on Judicial Conduct)
7. Rule 2.11 (Disqualification)

8. Rule 3.1 (Extrajudicial Activities)
9. Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates)
10. Rule 4.2 (Political and Campaign Activities of Judicial Candidates)
11. Rule 4.4 (Campaign Committees)

OTHER AUTHORITIES

The Board also considered the following other authorities:

1. *Williams-Yulee v. Florida Bar*, 575 U.S. 433 (2015)
2. *Republican Party of Minn. v. White*, 536 U.S. 765 (2002)
3. *Wersal v. Sexton*, 674 F.3d 1010 (8th Cir. 2012)
4. *In the Matter of Senior Judge Edward W. Bearse* (File No. 15-17)
5. *In the Matter of Judge Matthew M. Quinn* (File No. 20-26)
6. ABA Formal Opinion 462 (2013).
7. Various judicial ethics advisory opinions from other states

FACTS

In your February 23, 2024 letter, you note that the Judicial Elections Committee of the Minnesota District Judges Association (MDJA) has received multiple inquiries in recent years asking about the use of social media campaign platforms by judicial candidates. Since the Committee is prohibited from giving advice regarding judicial elections, you have requested an advisory opinion from the Board on Judicial Standards. You ask two related questions:

1. Does the Minnesota Code of Judicial Conduct prohibit a judge from creating and managing their own social media campaign platform?
2. Does the Minnesota Code of Judicial Conduct prohibit a judge from soliciting financial contributions on their own social media campaign platform?

OPINION

Background and Context. In 2013, the American Bar Association issued Formal Opinion 462 on “Judge’s Use of Electronic Social Media,” which addressed among other issues judges’ use of social media in judicial election campaigns. The ABA opined¹:

Websites and [electronic social media] promoting the candidacy of a judge or judicial candidate may be established and maintained by campaign committees to

¹ The ABA footnoted an advisory opinion from the Florida Supreme Court Judicial Ethics Advisory Commission finding that:

Websites and Facebook pages promoting the candidacy of a judge or judicial candidates should be established and maintained by these committees, and not by the judge or judicial candidate personally. Fla. Sup. Ct. Jud. Eth. Adv. Comm. Op. 2010-18 (July 23, 2010)(citing Fla. Sup. Ct. Jud. Eth. Adv. Comm. Op. 2008-11 (May 16, 2008).

obtain public statements of support for the judge's campaign so long as these sites are not started or maintained by the judge or judicial candidate personally. ABA Comm. on Ethics & Prof'l Responsibility, Formal Opinion 462 (2013).

We review this guidance from the ABA under the Minnesota Canons of Judicial Ethics and Rules of Judicial Conduct, and the Board's public discipline cases.

Judicial Conduct on Social Media. The Minnesota Code of Judicial Conduct does not specifically reference or define "social media," but the Board has previously applied the Code to judges' online conduct. The Board has publicly reprimanded judges whose Facebook activities violated the Code, reflecting the basic principle that online violations of the Code should be treated as equivalent to code violations in other contexts. *In re Bearse*, File No. 15-17 (Nov. 24, 2015); *In re Quinn*, File No. 20-26 (March 9, 2021). However, the Board has not restricted or reprimanded judges' use of social media in compliance with the Code:

The Board does not generally discourage the use of electronic social media, recognizing that it is becoming more common for judges to maintain family and social connections through electronic social media. While the Board recognizes that judges commonly face feeling isolated due to the nature of their work, especially during the COVID-19 pandemic, it is imperative that judges continue to abide by the Code. Judges may participate in electronic social media without violating the Code.

In re Quinn, at 4 (emphasis added).

Both the *Bearse* and *Quinn* cases involved judges' personal Facebook pages. Although *Quinn* involved Facebook posts and activities that violated Rule 4.1(a)(3) (prohibiting a judge from publicly endorsing or publicly opposing another candidate for public office), the Board has not considered any public disciplinary matters or requests for advisory opinions involving judicial candidates' campaign communications or activities on social media as part of their own election or re-election campaign.

Permitted and Prohibited Judicial Campaign Activities. An overview of permitted and prohibited campaign activities and the duties of judicial candidates conducting election campaigns is useful in analyzing the issues presented.

Duties of Judicial Candidates. Rule 4.2(A) enumerates the affirmative duties of judicial candidates running in public elections. For example, a judicial candidate shall "act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary," (Rule 4.2(A)(1)) and "comply with all applicable election, election campaign, and election campaign fundraising laws and regulations . . ." Rule 4.2(A)(2). Judicial candidates have a duty of honesty under the Code, and "*must be scrupulously fair and accurate in all statements made by them and by their campaign committees.*" Rule 4.1, Comment [7]. Judicial candidates are required to "review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee . . . before their dissemination," (Rule 4.2(A)(3)) and

“take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities . . . that the candidate is prohibited from doing . . .” (Rule 4.2(A)(4)). The Board finds that all of these duties apply equally to judicial candidates’ online campaign communications and activities.

Prohibited political and campaign activities – Judges and Judicial Candidates. Under Rule 4.1, except as “permitted by law” or by other rules of the Code, judges and judicial candidates shall not act as a leader or make speeches on behalf of a political organization (Rule 4.1(A)(1) and (2)); publicly endorse, or except for the judicial candidate’s opponent, publicly oppose another candidate for public office (Rule 4.1(A)(3)); solicit funds for a political organization or candidate for public office (Rule 4.1(A)(4)(a)); make a contribution to a candidate for public office (Rule 4.1(A)(4)(b)); personally solicit or accept campaign contributions² (Rule 4.1(A)(6)); “knowingly, or with reckless disregard for the truth, make any false or misleading statement” (Rule 4.1(A)(9)); “make any statement that would reasonably expected to affect the outcome or impair the fairness of a matter pending or impending in any court” (Rule 4.1(A)(10)); or “in connection with cases, controversies or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office” (Rule 4.1(A)(11)).

Rule 4.1(B) further requires that “[a] judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A), except as permitted by Rule 4.4.” Rule 4.4 governs the actions of campaign committees. However, Rule 4.1(B) requires judges and judicial candidates to “take reasonable measures to ensure that other persons” do not undertake prohibited political or campaign activities on their behalf. The “other persons” language is broader in scope than the specific reference to judicial campaign committees under Rule 4.4, extending to persons who might comment, post, or communicate or engage on a judicial campaign social media platform.

An important policy concern behind the Code’s restrictions on judicial candidates’ political and campaign activities is protecting the unique roles of judges in contrast to legislators and executive branch officials:

Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure.

Rule 4.1, Comment [1].

The preface to Canon 4 makes clear that “a judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or

² Except as authorized under Rules 4.2 and 4.4. See discussion of permitted campaign activities below.

impartiality of the judiciary.”³ Rule 4.1, Comment [3] observes: “Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.”

These policies are also reflected in the general duties of judges under Cannons 1 and 2, including Rule 1.2 (Promoting Confidence in the Judiciary), Rule 1.3 (Avoiding Abuse of the Prestige of Judicial Office), Rule 2.1 (Giving Precedence to the Duties of Judicial Office), Rule 2.2 (Impartiality and Fairness), Rule 2.3 (Bias, Prejudice, and Harassment), and Rule 2.4 (External Influences on Judicial Conduct). Rule 2.4 provides:

- (A) A judge shall not be swayed by public clamor or fear of criticism.
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

Judges and judicial candidates are prohibited from making speeches on behalf of political organizations and publicly endorsing or opposing candidate for public office, to prevent “abusing the prestige of judicial office to advance the interests of others” in violation of Rule 1.3. Rule 4.1., Comment [4]. “Judges must conduct their personal and extrajudicial activities to minimize the risks of conflicts that would result in frequent disqualification,” (Rule 2.1, Comment [1]; Rule. 3.1(B)) and are prohibited from making “any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.” Rule 4.1(10).

The Code also places strict limits on judges’ and judicial candidates’ campaign fundraising. Rule 4.1(A)(6) provides that judges and judicial candidates shall not “personally solicit or accept campaign contributions” other than as authorized under Rule 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections) and Rule 4.4 (Campaign Committees).⁴ Judicial candidates must also “take reasonable measures to ensure that the candidate will not obtain any information identifying those who contribute or refuse to contribute to the candidate’s campaign.” Rule 4.2(A)(5).

We find these restrictions and prohibitions apply equally to online political and campaign communications and activities.

Permitted Judicial Campaign Activities. While the Code places some significant limits on the political activities of judges and judicial candidates, the Code also recognizes exceptions and specifically permits certain political communications and activities in support of judicial election campaigns. Comments to the Code note policy concerns requiring that restrictions and prohibitions on judges’ and judicial candidates’ political and campaign activities should be

³ This reflects Minnesota’s compelling state interest in preserving public confidence in the integrity and independence of judges and the judiciary. *Williams-Yulee v. Florida Bar*, 575 U.S. 433 (2015).

⁴ See *Williams-Yulee v. Florida Bar*, 575 U.S. 433 (2015); *Wersal v. Sexton*, 674 F.3d 1010, 1031 (8th Cir. 2012).

“narrowly tailored.”⁵ Rule 4.1, Comment [1]. The Code specifically authorizes judicial candidates to “engage in some political and campaign activities.” Rule 4.2, Comment [1]. “The narrowly drafted restrictions upon political and campaign activities provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.” Rule 4.1, Comment [11].

For example, Rule 4.2(B) authorizes judicial candidates to establish a campaign committee (Rule 4.2(B)(1)); “speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, Web sites, or other campaign literature” (Rule 4.2(B)(2)); make a general request for campaign contributions when speaking to an audience of 20 or more people (Rule 4.2(B)(3)(a)); and “sign letters, for distribution by the candidate’s campaign committee, soliciting campaign contributions, if the letters direct contributions to be sent to the address of the candidate’s campaign committee and not that of the candidate.” (Rule 4.2(B)(3)(b)).

Comments to Rule 4.2 observe that “[p]aragraph (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited in Rule 4.1” (Rule 4.2, Comment [1]) but also emphasize that:

Despite paragraph (B), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges or commitments related to future adjudicative duties. See Rule 4.1, paragraphs (A)(4), (A)(9), and (A)(11).

Rule 4.2, Comment [2].

As already noted, the Code affirms a broad permission for a judge or judicial candidate to “speak on behalf of his or her candidacy through any medium” Rule 4.2(B)(2). However, judicial candidates are prohibited from “knowingly, or with reckless disregard for the truth” making “any false or misleading statement,” Rule 4.1(A)(9), or making “any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court.” Rule 4.1(A)(10). Judicial candidates “may make a factually accurate public response” to “false, misleading, or unfair allegations made by opposing candidates, third parties, or the media.” Rule 4.2, Comment [8]. A judicial candidate “is permitted to respond directly to false, misleading or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.” Rule 4.2, Comment [9].

The Code places relatively strict limits on judges or judicial candidates making pledges, promises or commitments to gain support during their election campaigns. Some permitted pledges include “campaign promises relating to judicial organization, administration and management,

⁵ See *Republican Party of Minn. v. White*, 536 U.S. 765, 775 (2002).

such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring” or pledges to take action “outside the courtroom” such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.” Rule 4.1, Comment [14]. Comments to Rule 4.1 also emphasize:

Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political or other issues, which are not prohibited.⁶

Rule 4.1, Comment [13]

However, when making statements expressing their personal views, judges “should acknowledge the overarching judicial obligation to apply and uphold the law.” Rule 4.1, Comment [13]. And “in connection with cases, controversies, or issues that are likely to come before the court,” a judge or judicial candidate shall not “make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.” Rule 4.1(A)(11).

To the extent that these permitted campaign communications and activities can be carried out on social media platforms, online communications by judges and judicial candidates in election contexts must still comply with other Code provisions governing political communications and extra-judicial activities of judges.

Analysis: Question 1

Does the Minnesota Code of Judicial Conduct prohibit a judge from creating and managing their own social media campaign platform?

The Code does not expressly prohibit judges or judicial candidates from creating and managing their own social media campaign platforms, but the Code does restrict or prohibit some uses of those platforms by judicial candidates in their election campaigns.

The Board has applied the Code to judges’ online conduct, and publicly reprimanded judges whose Facebook activities violated the Code. (*In re Bearse*, *In re Quinn*) We interpret these disciplinary cases to reflect basic principles that judges’ online communications and activities are subject to the Code, and that online violations of the Code should be considered and treated as equivalent to Code violations in other contexts. The Board has not restricted or discouraged judges or judicial candidates from using social media, finding that “[j]udges may participate in social media without violating the Code” *In re Quinn*, at 4.

⁶See *Republican Party of Minn. v. White*, 536 U.S. 765,788 (2002).

The Code does not specifically reference or define “social media” or “social media campaign platform,” and the Board has not previously considered or developed definitions of those terms. We will not attempt to here, because Rule 4.2(B)(2) provides:

- (B) A candidate for judicial office may, unless prohibited by law . . .
- (2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, Web sites, or other campaign literature

(emphasis added).

We find that a social media campaign platform, however defined, would fall within the very broad category of “any medium” under Rule 4.2(B)(2), and at minimum would be analogous to a “Web site” or a form of “other campaign literature” described under that Rule.

Given the broad permission the Code grants judicial candidates to speak on behalf of their candidacy through “any medium” under Rule 4.2(B)(2), we conclude judges and judicial candidates are not prohibited from creating and managing their own social media platforms, so long as they do not violate the Code or other applicable laws that place restrictions on their campaign communications and activities.

We turn now to considering ways that the Code limits judicial candidates in creating, managing and using their own social media campaign platforms (reserving discussion of judicial candidates’ use of social media for campaign fundraising until the analysis of question 2 below).

Even if judges and judicial candidates use their own social media campaign sites primarily or exclusively as a platform for “speaking on behalf” of their candidacy under Rule 4.2(B)(2), the Code still restricts or prohibits certain campaign communications. For example, “a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations against him or her during a campaign” (Rule 4.1, Comment [9], but the response must be “factually accurate” (Rule 4.1, Comment [8]), and not likely to “affect the outcome or impair the fairness of a matter pending or impending in any court.” Rule 4.1(A)(10). Judicial candidates may make campaign promises or pledges “relating to judicial organization, administration and court management” (Rule 4.1, Comment [14]) but not promises or commitments that are inconsistent with “impartial performance of the adjudicative duties of judicial office.” Rule 4.1.(A)(11).

Comments to Rule 4.1 observe that judicial candidates’ campaign pledges, promises, or commitments:

must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Rule 4.1, Comment [13].

But in expressing their personal views on their campaign social media platforms, judges and judicial candidates are still subject to prohibitions in Rule 4.1: judges and judicial candidates shall not publicly endorse or publicly oppose another candidate for public office (Rule 4.1 (A)(3)); “knowingly, or with reckless disregard for the truth, make any false or misleading statement” (Rule 4.1(A)(9)); or “make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court” (Rule 4.1(A)(10)).

Judges and judicial candidates who use their own campaign social media sites as personal communication platforms must be vigilant in complying with the Code and other applicable campaign and election law. And we note that judges and judicial candidates who create and manage their own social media campaign platforms may face other risks of violating the Code. Creating a campaign social media platform poses a wide range of complex issues for judges and judicial candidates. As social media platforms continue to innovate and evolve, so do the design features and management tools available. Judicial candidates’ informed choices of a campaign social media platform, its design, intended uses, and management strategies could minimize the risks of Code violations – but some risks may not be avoidable.

We assume that a social media platform created for campaign purposes will be public, at minimum intended to reach an open audience of potential voters in a judicial district. Some social media platforms may not provide settings or tools to manage who has access to a campaign site – and even if they do, a judge or judicial candidate who personally manages access to their own campaign platform will learn the identity of their supporters in ways that could jeopardize public confidence in their independence and impartiality (Rule 4.1, Comment [3]), create an appearance they are subject to political influence or pressure (Rule 4.1, Comment [1]), or lead to more frequent disqualifications (Rule 2.11).

Similar risks apply to judges or judicial candidates who create campaign social media platforms that allow direct engagement between the candidate and members of the public who visit or post on the platform. Judicial candidates who use their social media campaign platforms for direct, interactive discussion with potential voters make these conversations public in a way that could pose risks of violating the Code’s limitations on campaign speech and create an appearance that the candidate is not independent, impartial, or free from political pressures and influence as discussed above.

Finally, another significant but unpredictable risk of social media campaign platforms is lack of control over what visitors or public users might do with platform’s content elsewhere online. A social media campaign platform personally created, designed, and managed by a judicial candidate themselves without “reasonable measures to ensure that other persons do not undertake” prohibited activities on the candidate’s behalf using the platform or its content could violate Rule 4.1(B).

Analysis: Question 2

Does the Minnesota Code of Judicial Conduct prohibit a judge from soliciting financial contributions on their own social media campaign platform?

The Code places strict limits on judges' and judicial candidates' campaign fundraising. Rule 4.1(A)(6) provides that judges and judicial candidates shall not "personally solicit or accept campaign contributions" other than as authorized under Rule 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections) and Rule 4.4 (Campaign Committees). Comments to Rule 4.4 emphasize that judicial candidates are prohibited from personally soliciting or personally accepting campaign contributions, except for the limited circumstances specified in Rule 4.2(B)(3).

Rule 4.2(B)(3)(a) allows judicial candidates to make a "general request for campaign contributions when speaking to an audience of 20 or more people." A general request for campaign contributions by a judge or judicial candidate on their own personally managed and controlled campaign social media platform appears to be analogous – a general solicitation of contributions on a campaign social media platform designed and intended to reach a public audience of potential voters is arguably functionally equivalent to a judicial candidate making the same general face to face request to an audience of 20 or more people.

Whether or not a general request for campaign contributions made on a social media campaign platform personally created and managed by a judicial candidate is permitted under Rule 4.2.(B)(3)(a) will depend on the particular facts and circumstances. And even if a general online solicitation is permitted, we conclude that the Code prohibits any other fundraising activity by a judge or judicial candidate using their own personally managed social media campaign platform.

Although Rule 4.2(B) permits judicial candidates to solicit campaign contributions under limited circumstances, Rule 4.1(A)(10) prohibits candidates from personally accepting contributions. In contrast, Rule 4.4(B) specifically permits and establishes parameters for campaign committees to conduct fundraising on behalf of judges and judicial candidates. Judicial candidates "shall direct" their campaign committees "to solicit and accept only campaign contributions in an amount allowed by law" (Rule 4.4(B)(1)); "to comply with all applicable statutory requirements for reporting, disclosure, and divestiture of campaign contributions" (Rule 4.4(B)(2)); and "not to disclose to the candidate the identity of campaign contributors nor to disclose to the candidate the identity of those who were solicited for contribution and refused" (Rule 4.4(B)(3)). Judicial candidates "may be advised of aggregate contribution information in a manner that does not reveal the source(s) of the contributions. Rule 4.4(B)(3).

Comments to Rule 4.4 also advise:

Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should

instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office.

Rule 4.4, Comment [3], citing Rule 2.11(Disqualification).

A judicial candidate managing their own campaign social media platform would not be able to use their platform to personally accept and collect campaign contributions without learning the identity of contributors and the amounts of their individual contributions, in violation of Rule 4.1(A)(10) and Rule 4.4(B). We conclude that even though a judicial candidate is permitted to use their own personally created and managed social media campaign platform to make a “general request for campaign contributions” under Rule 4.2(B)(3)(a), a judicial candidate is prohibited from using their own social media campaign platform to accept and collect contributions under Rule 4.1(A)(10) and Rule 4.4(B).

We observe that the Code allows an alternative model where judicial campaign committees create and manage social media campaign platforms (subject to the direction and oversight of the judicial candidate).

Under Rule 4.4, judicial candidates “may establish a campaign committee to manage and conduct a campaign for the candidate” Rule 4.4(A). Comments to Rule 4.4 reaffirm the authorized powers of campaign committees “to solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns” Rule 4.4. Comment [2].

[Rule 4.4] recognizes that judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept contributions.

Rule 4.4. Comment [1].

Rule 4.4 contemplates and allows campaign committees to undertake some fundraising activities judges and judicial candidates are prohibited from doing themselves. This campaign committee structure promotes the same policies as other Code restrictions on judicial candidates’ political and campaign activities: maintaining the independence, integrity, and impartiality of the judiciary, keeping judges free from the actuality or appearance of political influence and political pressure; and assisting judges in avoiding conflicts of interest or questions concerning impartiality that would require disqualification under Rule 2.11.

A social media campaign platform created and managed by a judicial candidate’s campaign committee could serve as both a campaign fundraising site and as a platform for the candidate’s communications to the public and potential voters. However, the Code makes clear that judicial candidates remain responsible for conducting their campaigns in compliance with the Code and other applicable law, and requires judicial candidates to be actively involved in directing and overseeing their campaign committee’s activities, whether online or in person. Rule 4.4(A).

CONCLUSION

The Code permits judges and judicial candidates to “speak on behalf of [their] candidacy through any medium,” including through social media. Though the Code does not prohibit judicial candidates from creating and managing their own social media campaign platforms, other Code restrictions on judicial candidates’ campaign communications and activities still apply. Minnesota has a compelling interest in preserving the integrity and independence of judges and the judiciary. The Code prohibits judges and judicial candidates from using their own social media campaign platforms to receive or collect campaign contributions, or to get access to information about the identity of individuals who contribute and the amounts of their contributions. The Code authorizes campaign committees to create and manage social media campaign platforms under the direction and oversight of judicial candidates, including using the platforms to solicit and collect campaign contributions.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara Boeshans", written in a cursive style.

Sara Boeshans
Executive Secretary