Michigan Campaign Finance Network
Questionnaire for 2008 Michigan Supreme Court Candidates

Question 1. Disclosure of Election Campaign Spending
From 2000 through 2006, candidates for the Michigan Supreme Court raised and spent $10.4 million for their election campaigns, all of which was disclosed in campaign finance reports on file with the Bureau of Elections. During the same period, undisclosed interest groups and individuals spent $10.5 million for television advertisements that sought to define the character and qualifications for office of Supreme Court candidates, but made no mention of voting for or against those candidates. Those "issue" advertisements carried disclaimers of the major political parties and the Michigan Chamber of Commerce, but the entities named on the disclaimers did not disclose the financing for the advertisements in their campaign finance reports.

Do you believe the sources that pay for "issue" advertisements related to the qualifications of a judicial candidate should be disclosed in the public record in a timely way, so voters can evaluate those messages in light of their sponsors? Do you see implications for recusal in the spending for candidate-focused "issue" advertisements? Please explain your position.

Response of Judge Diane Marie Hathaway:
Yes, I believe that there should be disclosure of all election campaign spending. According to Canon 2 of the Michigan Code of Judicial Conduct, a Judge should avoid impropriety, or even the appearance of impropriety. Campaign finance laws seek to make government more honest and accountable to ordinary people so that rulings are not based on money-interests. Therefore, a judge should considering disqualifying herself in any instance where a party has made a substantial campaign contribution.

Response of Chief Justice Clifford W. Taylor:
These are policy matters, which the people, through their legislature or referendum, must decide. As a Supreme Court Justice, and judicial candidate, I cannot answer this question because if such a statute was enacted, the chances are very good that it would soon be before the court. The Michigan Code of Judicial Conduct precludes judges from opining on issues that may come before the court. Doing so could require me to disqualify myself in such a matter, or could even result in referral to the Judicial Tenure Commission.

Question 2. Recusal
In publishing its revised Model Code of Judicial Conduct in 2007, the American Bar Association recognized that increasingly expensive judicial election campaigns create a particular challenge to maintaining the appearance and the reality of an independent and impartial judiciary. The ABA recommended that states that elect judges and justices in contested elections should establish some threshold contribution amount, above which a recipient judge or justice should recuse him or herself from judging a case involving the source of such a contribution. Thirty-three states have established committees to plan for implementation of the ABA Model Code of Judicial Conduct but Michigan is not one of them. In fact, a memo from the Center for Judicial Ethics at the American Judicature Society describes the justices of the Michigan Supreme Court

as “the only judges in the country who do not have rules that establish grounds for disqualification.”

Are you satisfied with lack of recusal standards for the Michigan Supreme Court? Please explain your position.

Response of Judge Diane Marie Hathaway:
I am not satisfied with the lack of recusal standards for the Michigan Supreme Court. Currently, there are not set standards of when a Justice should and should not disqualify him or herself from hearing a case—even in instances where there is the appearance of impropriety. Currently Justices hear cases when there is a conflict of interests. I personally recuse myself when there is even the *mere appearance* of impropriety. There should be more concrete standards outlining when a Justice should disqualify him or herself.

Response of Chief Justice Clifford W. Taylor:
Your premise is incorrect.

You state that, “*The ABA recommended that states that elect judges and justices in contested elections should establish some threshold contribution amount, above which a recipient judge or justice should recuse him or herself from judging a case involving the source of such a contribution.*” This is, of course, a policy decision that is made by the Legislature. In Michigan, the legislature has, in fact, established a contribution limit for judicial elections. Presumably, when they determined this amount, they felt that this was the level at which a judge could accept a contribution, and not have to recuse himself or herself. Similarly, the Legislature set contribution limits for many other elective offices in the State of Michigan. Those with larger constituencies, e.g., the Governor, Attorney General, or even a Supreme Court Justice have larger limits; while those with smaller constituencies, such as the Senate and the House, have increasingly smaller contribution limits.

I would also object to your statement that Michigan lacks disqualification or recusal standards. In fact, we follow the system that has been used by all Michigan Justices since statehood, which is virtually the same one used by the U.S. Supreme Court. Michigan Court Rules define the situations or relationships that require disqualification. For situations falling outside the Rules, a very rare circumstance, the individual Justice looks to his conscience to decide. Appeals of such decisions go to the US Supreme Court, which has never found this process wanting.

Question 3. Voluntary Public Financing of Election Campaigns
The American Bar Association has adopted a position in support of voluntary public financing for state supreme court campaigns in states where justices are selected in contested elections. The Representative Assembly of the State Bar of Michigan has adopted a position in support of public financing for Michigan Supreme Court campaigns. The underlying philosophy behind this position is that it gives candidates’ campaigns an alternative to soliciting contributions from entities that may subsequently appeal a case to the Supreme Court, thereby creating a potential conflict of interest.

Do you support public financing for Supreme Court election campaigns? Please explain your position.

Response of Judge Diane Marie Hathaway:
Public funding helps to ensure that judicial candidates are elected based on issues as opposed to her campaign fundraising. Such laws also allow candidates to spend more time listening to voters and responding to their concerns. For these reasons, I agree with public financing so long as it is on a voluntary basis. I do not think tax payers should be forced to contribute to a fund such as this, but it certainly seems to be a more viable alternative to the present system.

Response of Chief Justice Clifford W. Taylor:
These are policy matters, which the people, through their legislature or referendum, must decide. As a Supreme Court Justice, and judicial candidate, I cannot answer this question because if such a statute was enacted, the chances are very good that it would soon be before the court. The Michigan Code of Judicial Conduct precludes judges from opining on issues that may come before the court. Doing so could require me to disqualify myself in such a matter, or could even result in referral to the Judicial Tenure Commission.

Note: Robert W. Roddis, the third candidate on the 2008 general election ballot for Justice of the Michigan Supreme Court, did not respond to the MCFN candidate questionnaire.