



# Macomb County Circuit Court

**Circuit Judges:**

JAMES M. BIERNAT, JR., *Chief Judge*  
MATTHEW S. SWITALSKI, *Chief Judge Pro Tem*  
MARY A. CHRZANOWSKI  
MARK S. SWITALSKI  
EDWARD A. SERVITTO, JR.  
RICHARD L. CARETTI  
DIANE M. DRUZINSKI  
TRACEY A. YOKICH  
KATHRYN A. VIVIANO  
JENNIFER M. FAUNCE  
JAMES M. MACERONI  
JOSEPH TOIA  
KATHRYN A. GEORGE\*

*\*Probate Judge assigned to Family Division*

**Clerk of the Court**  
CARMELLA SABAUGH

**Court Administrator**  
JENNIFER PHILLIPS

June 17, 2016

Office of Administrative Counsel  
P.O. Box 30052  
Lansing, MI 48909

Re: Administrative File No. 2014-03

Dear Administrative Counsel:

On behalf of the 16<sup>th</sup> Judicial Circuit and Macomb County Probate Courts, I respectfully submit the following comments regarding ADM File No. 2014-03:

We are in agreement that an anti-nepotism policy is important for all courts to have in place to avoid the appearance of impropriety and conflicts of interest in the judicial system. We agree with the language and intent of ADM File No. 2014-03.

Upon review, we are concerned with the "alternative additional provision" contained in section 1(c), which prohibits "[a] relative of a judge or justice employed within the same court." This could prohibit employment of the most qualified candidate for a position solely based on an individual elected or appointed to a judicial position even though there is no direct subordinate/superior relationship and no actual conflict of interest.

Additionally, this could prohibit promotional opportunities for existing employees. The proposed Anti-Nepotism Order expressly provides in section 8, Grandfather Clause, that after the effective date, "no person may be transferred, promoted, or enter into a nepotism relationship in violation of this policy." Again, if section 1(c) is included, even though no direct subordinate/superior relationship and no conflict of interest exists, the employee would be frozen at their current position.

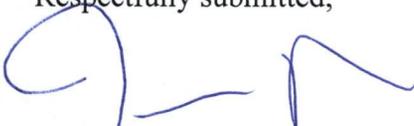
Further, this provision could adversely affect court employees whose relative is subsequently elected/appointed to judicial office. This employee could be precluded from advancement due to a subsequent election. Even more concerning would be an employee hired after the effective date of this proposed order and whose relative is subsequently elected or appointed, where the outcome would appear to be termination of the pre-existing employee. Terminating an existing employee due to circumstances outside of their control, where no direct subordinate/superior relationship, and no conflict exists does not accomplish the intent of an anti-nepotism policy.

To avoid any conflict or appearance of impropriety, safeguards should be implemented to ensure the most qualified candidate receives a position. For example, in our Court, as part of our Human Resources Policies, we have adopted a Recruitment and Selection Policy, which includes the Macomb County Human Resources and Labor Relations Department in screening and selecting candidates based on minimum qualifications and screening criteria. This removes the judges and court staff from the initial screening and selection of the applicant pool.

Although a policy regarding anti-nepotism is imperative in the judicial system, the policy should be limited to avoid the appearance of impropriety and conflicts of interest. Again, we agree with the necessity of an anti-nepotism policy and the need to avoid circumstances in which the appearance or possibility of favoritism or conflicts of interest exist. However, we believe more tailored language is necessary to avoid unfair and discriminatory results.

Thank you for your consideration.

Respectfully submitted,



James M. Biernat, Jr. – Chief Judge  
16<sup>th</sup> Judicial Circuit, Macomb Probate  
and 42<sup>nd</sup> District Courts

JMB/el