

**Contact Information (For survey administrator use only)**

[REDACTED]

[REDACTED]

[REDACTED]

**About the Campaign (For Public Use: to be posted online along with survey responses)**

- a. Candidate Name: Michelle Zehnder Fischer
- b. County: Nicollet
- c. Campaign website: <https://www.reelectzehnderfischer.com/>
- d. Campaign email address: michellezehnderfischer@gmail.com
- e. Campaign phone number: 507-317-1707
- f. Please provide a link to a headshot of the candidate. (Or email a jpeg or other image to Aliya Khan, akhan@aclu-mn.org.)
- g. (Optional) Please provide a link to a video clip (no longer than 60 seconds) of the candidate answering this question from Rock the Vote: “How would you be a champion for young people, particularly those of color?” [Questions? Contact XX.]

**Ending Mass Incarceration**

- 1. Do you agree that prosecutors’ practices have contributed significantly to mass incarceration?

Please select:

- Yes
- No

Please elaborate:

The United States as a whole has a high rate of incarceration as compared to other countries. There may be some states in which prosecutor practices have contributed to high incarceration rates, but that is not the case in Minnesota. Minnesota has one of the lowest state incarceration rates. Minnesota prosecutors have played an important and significant role in programs and initiatives that promote treatment and reduce incarceration. County Attorneys support treatment courts like the court in Nicollet County. Treatment courts offer individuals the opportunity to receive intensive treatment to address their addiction and mental health while avoiding jail and prison sentences. Without County Attorney support, these programs would not be successful.

I serve on the Board of Directors of the Minnesota County Attorney's Association (MCAA). I supported MCAA's efforts to lead reform of Minnesota's drug laws to reduce prison sentences for nonviolent drug offenders and direct more funds to treatment programs. The result of this reform has been a reduction in incarceration and an increase in funding for treatment programs.

It is a prosecutor's job to hold those accountable who break the law. The legislature establishes criminal acts, the severity of the offense, and the penalties associated with each offense. Prosecutors do not create the crimes. Prosecutors also do not impose the sentence for the offense as that is controlled by the Minnesota Sentencing Guidelines. The District Court Judge is ultimately responsible for the sentence imposed.

2. Will you commit to implementing practices aimed at reducing the jail and prison populations by a specific percentage by the end of your upcoming four-year term?  
Please select:

Yes  
 No

Please elaborate:

I commit to continuously evaluate the factors considered when formulating my office's sentencing recommendations to the Court. However, it is arbitrary to commit to a specific percentage reduction. Each criminal act, offender, and the impact on the community and victim must be evaluated according to its own merits. Prison sentences are also dictated by the Minnesota Sentencing Guidelines. It should be these factors that dictate our sentencing recommendations to the Court, not the need to achieve a specific percentage reduction. It must also be remembered that the sentence imposed is ultimately up to the Court and it is not controlled by the prosecutor because we only make sentencing recommendations to the Court. Our recommendations are not binding on the Court.

One factor that will reduce jail time is the need to address mental illness in the system. We are facing record numbers of individuals in the court system who are suffering from mental illness. These individuals are seen in the criminal justice, child protection, civil commitment, and welfare systems. It is vital that services and resources be available to treat those suffering from mental illness. Absent these services, we see these individuals cycling through the system without improvement. Nicollet County Human Services recently proposed implementing a service professional to work with individuals in the jail to establish treatment resources and medication availability upon their release from jail. I fully support this initiative with the hope that this resource will end the individual's cycling through the system. I will also continue to support the Nicollet County Treatment Court in its efforts to use treatment as an alternative to jail or prison for offenders with chemical problems that can best be addressed in that setting.

If "Yes," please identify your goal and what specific combination of reforms you anticipate will help realize this goal.

3. Will you commit to decreasing prosecutions of drug offenders and instead promote the use of diversion and/or treatment programs?

Please select:

Yes

No

Please elaborate:

Prior to answering, it is important to recognize that this question improperly combines concepts. A prosecution is necessarily involved prior to a diversion or a treatment program. A diversion or treatment court is the resolution or disposition of a prosecution. Therefore, prosecutions are not decreased, but the use of treatment programs could be increased.

I commit to the continued efforts to place individuals who qualify in treatment court. Treatment Court is an appropriate disposition for those individuals who are chemically dependent and whose participation in treatment court will not pose a risk to public safety. To justify inclusion in a treatment court program, it is necessary for all system players, including defense attorneys, to support treatment programs. There are occasions when my office suggests treatment court participation and the offer is rejected by the offender. Absent support from defense attorneys, offenders may not opt to participate in the more onerous treatment program regimen verses completing traditional probation. It is the onerous aspects of treatment courts—weekly court attendance, random home checks, employment/education, counseling, and intensive treatment—that make these programs successful.

Not all drug offenders are appropriate for treatment court and therefore it is important that the eligibility screening continue. It is also important in the process to distinguish between the addict, who is engaging in crimes to support a drug habit, and those offenders who commit crimes for profit, such as large-scale sales of drugs, or who commit crimes against persons. The latter two categories of offenders are not appropriate for treatment courts.

### **Standing Up to Police Misconduct**

4. Will you swiftly, thoroughly, and transparently investigate officer-involved shootings and claims of police brutality, and make your findings publicly available?

Please select:

- Yes  
 No

Please elaborate:

Nicollet County will review and investigate officer-involved shootings and claims of police brutality in a thorough manner. The Minnesota Bureau of Criminal Investigation often investigates these cases. A thorough investigation takes time and the investigation cannot be rushed at the risk of compromising investigation integrity. It is understandable that the public wants an investigation to be transparent. However, the integrity of the investigation must be preserved. To the extent transparency can exist during the investigation process, transparency will occur but it is not always possible. Minnesota statutes also dictate what can be released during the investigation. These statutes cannot be ignored. The release of any findings flowing from such investigations is governed by outcome of the investigation and Minnesota law. If charges are brought against an individual as a result of the investigation, the findings cannot be released, other than as stated in the charging document, until trial or resolution of the case. If charges are not filed, those findings are public information.

5. Because prosecutors need to work closely with law enforcement personnel, officer-involved shootings and claims of police brutality necessarily create conflicts of interest for prosecutors. Will your office recuse itself and call for an independent investigation by the Attorney General of Minnesota in such cases?

Please select:

- Yes  
 No

A prosecutor is ethically obligated to review all investigative reports in an unbiased and neutral manner to make a charging decision. Prosecutors routinely identify conflicts of interest and refer out cases that present a conflict. The size of the county involved also impacts whether a conflict of interest exists in any officer-involved shooting or claim of police brutality. The interaction and relationships that exist between a patrol officer and a prosecutor's office in a smaller county are far different from a metropolitan county. If a prosecutor's office works routinely with the officer(s) involved in the incident, then a conflict of interest exists and it would be necessary for the case to be referred to another prosecutor's office to handle. It is the ongoing professional relationship that creates the conflict of interest, not the title of the positions. The case can be referred to either another county attorney's office or the Minnesota Attorney General's Office.

## **Combatting Racial Disparities**

6. Will you commit to implementing internal ongoing anti-bias training and examining bias in charging, hiring decisions, bail recommendations, diversionary-program placements, and plea bargains.

Please select:

- Yes  
 No

Please elaborate:

I will commit to implementing ongoing training regarding implicit bias in prosecution. The frequency of training and type of training is limited by the size of my office and the resources available to pay for this training. As a Board member of MCAA, I support its efforts to offer implicit bias training for all prosecutors. The MCAA training allows smaller offices like Nicollet County to participate in more frequent training opportunities. Cultural awareness plays a large role in reducing bias. To that end, my office worked with the City of St. Peter and the City of North Mankato to offer cultural literacy training for all three municipalities in 2017.

7. Will you decline to file charges against an individual where evidence indicates racial profiling or other racial bias in stopping, searching, or arresting the individual, or investigating the crime?

Please select:

- Yes  
 No

Please elaborate:

Racial profiling and acts of bias have no place in any portion of our criminal justice system—from the investigation to the sentencing. A case should be dismissed in the event that explicit bias was involved in the case.

## **Ending Poverty Penalties and Money Bail**

8. Minnesota's Constitution prohibits excessive bail but does not require individuals to post money bail at all. Thus, prosecutors have the discretion to refrain from asking courts to require money bail. Would you commit to starting a system that ends in release without cash bail in most circumstances?

Please select:

- Yes  
 No

Please elaborate:

The purpose of bail in Minnesota is to ensure the individual's appearance at future court appearances and to ensure public safety. The Court should have available to it a number of methods to achieve these two purposes. One of those methods is cash bail, but it is not the only method available to the Court and should not be used exclusively or in all cases. It is also not appropriate for the initial release in misdemeanor driving cases. When chemical dependency is involved, we often support treatment facility entry and chemical use monitoring as a release condition in lieu of incarceration. Cash bail is appropriate in violent person crimes.

MCAA is currently a partner in the Statewide Pretrial Release Initiative Implementation with judges, public defenders, court administration, probation, and other partners. For pretrial release programs to be successful, there must be financial resources dedicated to pretrial monitoring of individuals to ensure public safety. Ultimately, it is up to the Court to set the conditions of release and up to the Court to decide to require monetary bail and the amount of bail in any particular case.

### **Ensuring Accessibility, Transparency, and Accountability**

9. Will you commit to developing and implementing a plan to personally, regularly, and meaningfully engage and communicate with all constituencies in your county in the first 100 days of your term (especially communities of color, immigrant communities, community-based organizations, and criminal-justice-reform advocates) and to involve them in determining the priorities of your office?

Please select:

Yes

No

Please elaborate:

I have always been willing to meet with and engage all constituents to listen to their concerns and hear their thoughts about ways to improve the criminal justice system. I have never declined to have these meetings and I have met with any group that has asked to meet. My approach to many issues encountered in the justice system is to invite many voices to participate in a conversation about the issues.

I lead a Stakeholders for Education Success group that meets to address barriers to students staying in school. This is a multi-disciplinary group of educators, human service professionals, probation officers, mental health professionals, medical professionals, and advocates who meet to try to find solutions and implement practices to keep kids in school.

Under my leadership, Nicollet County now has a full-time victim witness coordinator. With this new position, we initiated a stakeholders group to talk about issues that impact

victim participation in the criminal justice system. This stakeholders group also consists of multiple disciplines who work with victims.

It is through collaboration that the outcome of the judicial system can be improved for everyone involved.

10. Will you commit to post on your office's website all policies, protocols, and MOUs dealing with prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture, immigration considerations, and indigent determinations?

Please select:

Yes

No

Please elaborate:

I commit to posting, to the extent that we are able to post, policies on the county website and to the extent my office has policies on each topic. It is important to note that the Court imposes fines and fees and makes indigent determinations. Therefore, a prosecutor would not have these policies.

11. Will you commit to collect and post on your office's website quarterly statistical information disaggregated by race and gender on felony-charging decisions, convictions, declinations to charge, and diversion-program placements?

Please select:

Yes

No

Please elaborate:

The examination of race and gender statistical information is important. At the present time, my office does not have the infrastructure needed to gather and analyze this information. Information will need to be gathered on the implementation of this infrastructure and its cost. To the extent this process can be implemented, I will consider reporting this information if it can be reported in a statistically meaningful manner.

## Protecting Immigrant Communities

12. Will you commit to adopt a written policy and a training program that encourages prosecutors to (1) consider the unintended immigration-related consequences of prosecutorial decisions at all stages of a case and to (2) use their discretion to reach immigration-safe dispositions for noncitizens whenever it is possible and appropriate?

Please select:

- Yes  
 No

Please elaborate:

Prosecutors should not consider the immigration status of an offender during the charging process, but we can consider the collateral consequences in case resolution when those consequences are known to us. The collateral consequence consideration may include the impact on the individual's immigration status in appropriate cases. We do not outright reject case resolutions that may reduce the risk of immigration consequences when it is appropriate. This may include agreeing to a stayed sentence of 364 days versus 365 days where the 1 day may result in adverse immigration consequences. Where the individual has a family, the deportation could result in family separation and the loss of financial support if the individual is deported. The 1 day lost in the stayed sentence would substantially impact the individual, the family and the community versus the benefit received from 1 additional day of a sentence. The extent collateral consequences are considered is always governed by the severity of the offense and the risk posed by the offender to public safety.

13. To protect immigrant victims of crime, will you commit to adopt and promote a written U-Visa policy that includes a rebuttable presumption of helpfulness and requires that U-Visa certifications be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded?

Please select:

- Yes  
 No

Please elaborate:

The Nicollet County Attorney's Office responds promptly to U-Visa applications when they are submitted to my office and we support the applications when appropriate. My office will fully cooperate with the completion of U-Visas in order to offer necessary protections to victims and witnesses. In doing so, however, we will answer all questions honestly.

14. Will you commit to refrain from using any of the resources of your office to enforce federal immigration laws, leaving such enforcement to federal officials?

Please select:

Yes

No

Please elaborate:

The Nicollet County Attorney's Office lacks jurisdiction to enforce federal law. We act only in accordance with our jurisdiction.

### **Advancing Youth Justice**

15. Will you reduce the number of children in adult court by (1) committing to reduce the number of minors prosecuted as adults and (2) expanding the use of informal diversion and pre-filing diversion in juvenile cases?

Please select:

Yes

No

Please elaborate:

This question is unclear as the preface of the question appears to combine two separate concepts—adult certification and juvenile diversion. Minnesota law is clear and limited as to when a child can be prosecuted as an adult. Historically, Nicollet County has sought extended jurisdiction juvenile designation (EJJ) and adult certification in few cases. The younger the juvenile, the less likely either EJJ or certification will be sought. It is reserved for those cases where the offense would result in a presumptive commitment to prison if the offense were committed by an adult or when it appears the juvenile cannot receive sufficient rehabilitation prior to the juvenile court losing jurisdiction over the juvenile. Adult certification or EJJ designation is usually applied in criminal sexual conduct cases where the public safety risk is high and the length of treatment extends past the Court's jurisdiction over the offender. Adult certification is also warranted in violent crimes.

Juvenile diversion and stays of adjudication are appropriate for low level juvenile offenses and those cases where the juvenile can be rehabilitated during the stay of adjudication.

16. Recognizing that children and youth are categorically less culpable than adults, that they have less impulse control, and that they have a profound capacity for

transformation, will you decline to seek life in prison without the possibility of parole for any person who was under 25 at the time of an offense your office is prosecuting?

Please select:

Yes

No

Please elaborate:

This question erroneously presumes that the three initial clauses of the question are true for all individuals. This question further presumes that a child (under the age of 18) and a young adult (18 to 24) are similarly situated. They are in fact not similarly situated and the law treats them differently. The Minnesota Legislature has established that offenders age 18 and older appear in adult court and that certain juveniles who commit violent offenses be referred to adult court. I am aware of research regarding brain development and its impact on decision-making. However, adults make decisions and they are responsible for those decisions.

The Minnesota Legislature has also established the penalty of life without parole for certain crimes of violence. The United States Supreme Court has determined that a “mandatory” sentence of life without parole is unconstitutional. MCAA had proposed for several years that the law be amended to provide that a juvenile, sentenced to life in prison, be eligible for possible release after 25 years. I support this legislative change.