

AJS Proposals Regarding Draft Revisions to
ABA Model Code of Judicial Conduct
Submitted to the ABA Joint Commission
to Evaluate the Model Code of Judicial Conduct

Cumulative

CANON 1

CONDUCT IN GENERAL: A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THE JUDGE'S ACTIVITIES ~~AND SHALL SO AS TO~~ UPHOLD THE INTEGRITY, INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY

1.01 Observing Standards of Judicial Conduct. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards ~~shall observe the high standards of conduct embodied in these Rules~~ so that the integrity, independence and impartiality of the judiciary, and the public's confidence therein, are promoted and preserved. A judge shall not at any time engage in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

Commentary:

[1] An independent judiciary is indispensable to justice in our society. High standards of judicial conduct promote the integrity and impartiality of the judiciary and foster public confidence in the administration of justice.

[2] Avoiding impropriety and its appearance is an overarching principle of judicial conduct embodied in this Canon itself. ~~Ordinarily, when a judge is disciplined for engaging in conduct that creates an appearance of impropriety, it will be in conjunction with charges that the judge violated some other specific rule under this or another canon.~~

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[5] The duty to act in a manner that promotes public confidence in the integrity of the judiciary does not imply that judges have an obligation to refrain from appropriate criticism. To the contrary, judges are in a unique position to identify and address problems affecting the courts, and should be encouraged to bring those matters to light in an appropriate method and temperate manner as a means to promote the effective administration of justice.

[6] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. The prohibition against acting with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms

that extend to conduct by judges that is harmful although not specifically mentioned in the Code. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech imposed by Rule 2.11 that are indispensable to the maintenance of the integrity, impartiality, and independence of the judiciary.

[7] Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this code or engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. ~~Impropriety occurs when the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality and competence. An appearance of impropriety occurs when the conduct could create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. See also Commentary under Section 3.04.~~

1.02 Complying with the Law. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity, independence, and impartiality of the judiciary.

Commentary:

[1] A judge's obligation to respect and comply with the law includes compliance with the law, court rules and the provisions of this Code.

CANON 2
JUDICIAL CONDUCT : A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL
OFFICE IMPARTIALLY AND DILIGENTLY

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B. Adjudication

2.02 The Duty to Decide. A judge shall hear and decide matters assigned to the judge except those in which the judge's impartiality might reasonably be questioned ~~disqualification is required or recusal is appropriate~~ under Canon 2.2

Commentary:

[1] To protect the rights of litigants and preserve public confidence in the integrity, independence and impartiality of the judiciary, there will be times when disqualification or recusal is required or appropriate. A judge must be mindful, however, that a fundamental obligation of the judicial office is to be available to decide the matters that come before the court or tribunal. A judge must not ~~use recusal or disqualification to avoid difficult or controversial issues~~ recuse or disqualify himself or herself to avoid cases that are complex, involve controversial issues or public figures, or are likely to give rise to public clamor and criticism and shall not engage in extra-judicial activities that will result in frequent disqualification.

2.03 Competence in the Law. A judge shall maintain professional competence in the law.

Commentary:

[1] In order to uphold the law, a judge must possess the legal knowledge, skills, and preparation necessary for the effective administration of justice.

[2] When applying and upholding the law in the course of judicial decision-making, a judge may on occasion make a mistake of fact or law. ~~An error of this kind does not violate this rule. Willful disregard of the law, however, is another matter and in appropriate circumstances may constitute misconduct by the judge.~~ This section, like Rule 1.02, is not intended to make every error of law or fact or abuse of discretion the basis for discipline, but misconduct may be proven by a pattern of legal error or a decision evidencing bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law, or any purpose other than the faithful discharge of judicial duty.

[3] Judicial competence may be diminished and compromised when a judge is impaired by drugs, alcohol or other mental or physical impairments.

2.04 Impartiality and Fairness. A Judge shall apply the law without regard to the judge's personal views and shall decide all cases with impartiality and fairness.

Commentary

[1] A judge must be objective and free of favoritism to ensure impartiality and fairness to all parties. While a judge's background and philosophy may influence the way in which the judge analyzes, interprets and applies the law, the judge's personal views, by themselves, should not be controlling. Thus, a judge must uphold the law without regard to whether the judge personally approves or disapproves of the law in question.

[2] A judge may make procedural accommodations to provide diligent pro se litigants the opportunity to have their cases fully heard, and such an exercise of judicial discretion does not raise a reasonable question about the judge's impartiality. Reasonable accommodations include liberally construing pleadings, explaining the basis for a ruling, refraining from using legal jargon, questioning witnesses for clarification, freely allowing amendment of pleadings, and explaining general matters such as the burden of proof and what types of evidence may and may not be presented.

2.05 Bias and Discrimination.

(a) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, marital status, parenthood, language, ethnicity, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so. This rule does not preclude legitimate references to those factors when relevant to an issue in a proceeding.

(b) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation marital status, parenthood, language, ethnicity, or socioeconomic status, against parties, witnesses, counsel or others. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(c) A judge shall not engage in sexual harassment and shall require the same standard of conduct of others subject to the judge's direction and control.

Commentary:

~~[1] A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as harassment and must require the same standard of conduct of others subject to the judge's direction and control.~~

[12] A judge must perform judicial duties impartially and fairly. A judge who manifests bias in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Even facial expression and body language can convey to parties or lawyers in the proceeding, jurors, the media and others an appearance of bias. A judge must avoid conduct that may be perceived as prejudicial or biased.

[23] Examples of manifestations of bias include but are not limited to epithets, slurs, demeaning nicknames, negative stereotyping, attempted humor based on stereotypes, threatening, intimidating or hostile acts, suggesting a connection between race or nationality and crime, ~~and~~ irrelevant references to personal characteristics and insensitive statements about crimes against women.

[3]“Sexual harassment” includes but is not limited to sexual advances, requests for sexual favors, comments about physical attributes, repeated and unwanted attempts at a romantic relationship, sexual gestures, offensive or suggestive remarks, sexually explicit questions, improper touching, lewd and vulgar language, suggestive or explicit pictures or images, and other verbal or physical conduct of a sexual nature that is unwelcome, regardless of gender.

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2.07 Demeanor and Decorum.

(a) A judge shall require order and decorum in proceedings before the judge.

(b) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers, court staff, other judges, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.

(c) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary:

[1] The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror’s ability to be fair and impartial in a subsequent case.

[3] Where not otherwise prohibited by law, judges may take the opportunity to debrief jurors on their jury experience, after their jury service is concluded. If a judge exercises caution and if not otherwise prohibited by law, a judge may meet with jurors after trial to answer questions about and discuss ways to improve the process but should not engage in any substantive discussion of the case. At such a meeting, a judge should not, for example, suggest or imply in any way to a jury that he or she agrees or disagrees with the verdict, reveal evidence that had been suppressed or the subject of a motion in limine, evaluate the performance of counsel or witnesses, discuss the rulings on objections made at trial, or review any proceedings that took place outside the presence of the jury.

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2.09 Ex Parte Communications.

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(1) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided: (i) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication, and (ii) the judge promptly gives notice to all other parties of the substance of the ex parte communication and allows an opportunity to respond.

~~(2) A judge may obtain information and opinions from a disinterested expert in a proceeding before the judge if, before the record is closed, the judge gives notice to the parties of the person consulted and the substance of the advice obtained, and affords the parties reasonable opportunity to respond.~~

~~(23)~~ A judge may consult with other judges with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities ~~or with other judges as long as the person consulted does not have a disqualifying interest in the proceeding or is not in a subordinate or appellate court that may hear the matter~~ and the judge does not abrogate the responsibility to personally decide the case and takes all reasonable steps to avoid receiving factual information that is not part of the record.

~~(34)~~ A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

~~(45)~~ A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(b) A judge shall not independently investigate facts in a case.

(c) A judge shall make reasonable efforts, including the provision of appropriate training and supervision, to ensure that Section 2.09 is not violated through law clerks or other personnel on the judge's staff.

(d) If a judge inadvertently receives an unauthorized ex parte communication, the judge shall disclose the communication on the record and give the parties a reasonable opportunity to respond.

Commentary:

[1] An “ex parte communication” is any communication about a case (including a communication not on the merits) without notice to or participation by all parties or lawyers for all parties between a judge (or by court staff on behalf of a judge) and any other person regardless whether that person is a participant in the proceeding.

[42] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[23] Whenever the presence of a party or notice to a party is required by Section 2.09, it is the party’s lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

[34] The proscription against communications concerning a proceeding includes communications with lawyers, law professors, and other persons who are not participants in the proceeding, except to the limited extent permitted by this rule.

[45] Although certain ex parte communications ~~is approved~~ are allowed by Section 2.09 to facilitate scheduling and other administrative purposes and to accommodate emergencies, in general, ~~however,~~ a judge must discourage ex parte communication and allow it only if all the criteria stated in Section 2.09 are clearly met. ~~A judge must disclose to all parties, in a manner that ensures notice, all ex parte communications described in Sections 2.09(a) and 2.09(b) regarding a proceeding pending or impending before the judge.~~

[56] An appropriate and often desirable method of obtaining the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

[67] A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are simultaneously apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

[78] If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

[89] The prohibition against a judge investigating the facts of a case independently or through a member of the judge’s staff extends to information available in all mediums including electronic access.

[9] Even when an ex parte request is authorized by law, a judge should scrupulously examine the facts and the principles of law upon which it is based, granting the request only when fully satisfied when the law permits it.

[10] The exception for ex parte communications “expressly authorized by law” includes communications specifically permitted by the special procedures adopted for problem-solving courts for judges sitting in those courts, but a judge should avoid communications

that in substance, extent, or type exceed what a defendant may reasonably be considered to have consented to when agreeing to participate in the specialized court.

[11] An ex parte communication with other judges and court personnel is not appropriate under Rule 2.09 if the judge knows the other judge or member of court staff has a disqualifying interest in the proceeding. Similarly, a judge should not consult with a member of a subordinate or appellate court that may hear the matter. The exception for consultation with court personnel is not intended to authorize ex parte consultation with court staff whose function is to provide evidence or act as an advocate in a proceeding.

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2.11 Judicial Statements on Pending and Future Cases.

(a) A judge shall not, while a proceeding is pending or impending in any court, make any public comment except in the course of official duties, to explain the procedures of the court for public information, or as part of a legal education program that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. ~~The A~~ judge shall require similar abstention from public comment on the part of staff, court officers, and others subject to the judge's direction and control. A judge shall not discuss the rationale for a decision outside the record unless the judge is repeating what was already made part of the public record.

(b) A judge shall not, with respect to 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 the office.

Commentary:

[1] Section 2.11 restrictions on judicial speech are essential to the maintenance of the integrity, independence impartiality of the judiciary.

[2] This prohibition applies even to cases not currently pending before the commenting judge. A pending proceeding is one that has commenced and continues during any appellate process and until final disposition. An impending proceeding is one that is anticipated but not yet commenced. A proceeding is impending where there is reason to believe a case may be filed, for example, if a crime is being investigated but no charges have been brought, or if someone has been arrested but not yet charged, or if legislation has been passed that will probably be challenged in the courts.

[3] This Section does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where

the judge is a litigant in an official capacity, the judge must not comment publicly. ~~The conduct of lawyers relating to trial publicity is governed by [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each jurisdiction should substitute an appropriate reference to its rule.)~~

~~[4] This Section does not prohibit judges from making public statements in the course of their official duties or from explaining the procedures of the court to the public. Nor does it prohibit judges from responding directly, or through a third party, to allegations in the media or elsewhere concerning the judge's conduct in a matter, provided that any such response meets the requirements of 2.11(a) and (b).~~

[5] By refraining from public comment, judges reassure the public that cases are being tried, not in the press, but in the public forum devoted to that purpose. This prohibition does not preclude a judge from making a public comment reiterating without elaboration what is set forth in the public record in a case, including pleadings, documentary evidence, and the transcript of proceedings held in open court. Speaking to a journalist is a public comment even where it is agreed that the statements are "off the record." Even in legal education programs and materials, a judge should not discuss a pending case in which the judge is personally participating or has participated.

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2.12 Disqualification.

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C. Roles in a Proceeding. A judge shall disqualify himself or herself when the judge, the judge's spouse or domestic partner, a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is a party to the proceeding, or an officer, director, or trustee of a party; is acting as a lawyer in the proceeding; ~~or~~ is to the judge's knowledge likely to be a material witness in the proceeding; or presided as a judge before whom the proceeding was heard or tried in a lower court.

D. Economic and other Personal Interests. A judge shall disqualify himself or herself when the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding; or a person within the third degree of relationship to the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such a person, has a more than de minimis interest that could be substantially affected by the proceeding.

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- G. Prior Affiliations. A judge shall disqualify himself or herself where the judge
1. served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter;
 2. served as a material witness concerning the matter; ~~or~~
 3. served in governmental employment and in such capacity participated as lawyer, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy; or
 4. within the preceding three years, was associated in the private practice of law with any law firm or lawyer current representing any party in the controversy or represented any party to the controversy while the judge was an attorney engaged in the private practice of law.

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J. Unless the rule of necessity applies, a judge who is disqualified from a case shall take no further judicial action except whatever ministerial actions are necessary to remove the case from the judge's docket and shall not communicate about the case with the succeeding judge. Appellate court judges who are disqualified shall take steps to ensure that they do not receive the briefs, draft opinions, and other materials distributed to the other judges and shall not participate in or be present for any discussion of the case.

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C. Administration

2.13 Administrative Competence and Diligence. A judge shall discharge the judge's administrative responsibilities diligently, competently, and without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.

Commentary:

~~[1] The judge's obligation to perform adjudicative responsibilities diligently, competently and without bias or prejudice, applies equally to the judge's administrative responsibilities.~~

2.14 Supervision of Staff. A judge shall provide adequate supervision, review, and instruction to ensure that ~~require court~~ staff and ~~court~~ officials ~~and others subject to the judge's direction and control to exercise their responsibilities diligently, competently,~~ and ~~act~~ in a manner consistent with the high standards of conduct expressed in this code. A judge shall supervise court staff to ensure proper accounting of funds deposited in the court, timely preparation of court transcripts are timely prepared, and compliance with all record-keeping and other administrative requirements.

Commentary:

[1] The first contact that members of the public have with the judicial system is often with court staff. It is therefore especially important that judges take responsibility for ensuring that the conduct of personnel ~~subject to their direction and control~~ is consistent with the high standards of conduct embodied in this code. Although a judge necessarily delegates some of the court's responsibilities to staff, the judge retains the obligation to ensure that staff fulfill the responsibilities delegated. Adequate supervision under this Section includes taking steps to ensure that court staff exercise diligence in exercising administrative responsibilities and treat the public in a patient, dignified, courteous, and unbiased manner. When supervising staff, judge should also ensure compliance with rules governing personal use of court resources and use of the prestige of judicial office to advance private interests, and should prohibit involvement in a case in which impartiality might reasonably be questioned.

[2] The judge's duty to adequately supervise court staff extends to staff members the judge does not have the authority to hire or fire and may require the judge to monitor staff and report inadequate performance to the court official or other supervisor who does have direction and ability to discipline court staff.

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2.16 Administrative Appointments.

(a) A judge shall exercise the power of appointment impartially, ~~and~~ on the basis of merit and without favoritism based on family, social, political, or other relationships. A judge shall not engage in ~~avoid~~ nepotism, ~~favoritism and~~ or make unnecessary appointments. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(b) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer has contributed more than [\$] within the prior [] years to the judge's election campaign, or learns of such a contribution by means of a timely motion by a party or other person properly interested in the matter, unless (1) the position is substantially uncompensated; (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent and able to accept the position.

Commentary:

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation to only approve compensation that matches the fair value of services rendered prescribed by Section 2.16 (a).

[2] This rule applies to the appointment, hiring, or voting for the appointment or hiring of a member of the judge's staff, the staff of court of which the judge is a member, or an appointee in a judicial proceeding. The prohibition on nepotism applies to any relative within the degree of relationship established by statute or rule or, in the absence of a definition under state law, to an individual who is a relative within the third degree of relationship of either the judge or the judge's spouse or the spouse of such a person.

D. Reporting

2.17 Judicial Misconduct. A judge having knowledge or reliable information that another judge has committed a violation of this Code that raises a question as to the other judge's integrity, temperament, diligence, or fitness for office shall inform the appropriate authority. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code ~~should~~ shall take appropriate action.

Commentary:

[1] Appropriate action may include direct communication with the judge who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

2.18 Lawyer Misconduct. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. A judge who ~~receives~~ has knowledge or reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct [substitute correct title if the applicable rules of lawyer conduct have a different title] ~~should~~ shall take appropriate action.

Commentary:

[1] Appropriate action may include direct communication with the lawyer who has committed the violation, and reporting the violation to the appropriate authority or other agency or body.

2.19 Disability and Impairment. A judge who has reliable information having knowledge that the performance of a lawyer or another judge is impaired by drugs, alcohol, or other mental, emotional or physical condition shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

Commentary:

[1] Taking or initiating corrective action by way of referral to an assistance program can fulfill several laudable purposes. For example, a resulting intervention can be the first step toward a successful recovery program. That action alone may satisfy the mandates expressed in this section. Depending on the gravity of the conduct, however (i.e., the conduct in response to which action is necessary), a judge having knowledge of such conduct may be required to take action in addition to or in lieu of a referral to the relevant assistance program.

2.20 A judge, including a respondent judge, shall cooperate and be candid with the judicial conduct commission or attorney disciplinary board, shall not intentionally misrepresent a material fact or engage in willful concealment during disciplinary proceedings, and shall not retaliate directly or indirectly by words or conduct at any time against a complainant, courthouse employee, witness, or any person known or suspected to have assisted or cooperated with an investigation of the judge.

~~2.20 Immunity for Discharge of Duties . Acts of a judge, in responding to judicial misconduct, lawyer misconduct, or disability and impairment under Rules 2.17, 2.18, and 2.19 are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.~~

~~Commentary:~~

~~[1] To encourage judges to report or otherwise act on evidence of lawyer and judicial misconduct as required by these Rules, it important that judges be insulated from threats of civil action when they attempt to comply with their obligations under such rules.~~

CANON 3
PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL
AFFAIRS TO PRESERVE THE INTEGRITY, IMPARTIALITY AND
INDEPENDENCE OF THE JUDICIARY.

3.01 Using the Judicial Office for Private Purposes. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.

Commentary:

[1] Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities.

[2] It would be improper, for example, for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense or to use his or her judicial position to gain advantage in a civil suit involving a member of the judge's family. Similarly, a judge must not use judicial letterhead ~~to gain an advantage in~~ conducting his or her personal business.

[3] Special considerations arise when judges write or contribute to publications, whether related or unrelated to the law. A judge should not permit the publisher of such materials to exploit the judge's office by, for example, praising the judge's judicial accomplishments or, when the work is unrelated to the law, emphasizing the judge's position.

[4] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, and by responding to official inquiries concerning a person being considered for a judgeship.

[5] A judge may provide a reference or recommendation ~~for an individual~~ based upon the judge's personal knowledge for a person seeking employment, admission to an educational institute or the bar, or in similar situations. However, unless the recommendation is based upon information obtained through the judge's expertise or experience as a judge, the reference or recommendation should not be communicated on the judge's judicial letterhead.

[6] This rule does not apply to a judge's use of his or her name in endorsements of himself or herself, or of other judicial candidates as permitted in Canon 5.

[7] A judge must not testify voluntarily as a character witness because to do so ~~may~~ lends the prestige of the judicial office in support of the party for whom the judge testifies. See Rule 4.07.

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CANON 4
EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE'S
EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH
JUDICIAL OBLIGATIONS

4.01 Extra-judicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they:

- (a) do not interfere with the proper performance of judicial duties;
- (b) do not cast reasonable doubt on the judge's capacity to act with impartiality, integrity, and independence;
- (c) will not result in frequent disqualification of the judge;
- ~~(d)~~ do not demean the judicial office; and
- ~~(e)~~ comply with the requirements of this code.

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4.02 Use of court resources. A judge shall not use court staff, resources, stationery, equipment, or premises for personal, business, family, or political activities except for incidental or de minimis use for non-political activities or for matters concerning the law, the legal system, or the administration of justice.

~~4.032~~ Appearances Before Governmental Bodies. A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except

- (a) on matters concerning the law, the legal system, or the administration of justice;
- (b) on other matters that might reasonably merit the attention and comment of the judge because of knowledge or expertise acquired in the course of the judge's judicial duties; or
- (c) when acting pro se in a matter involving the judge or the judge's interests.

Commentary:

[1] Judges possess special expertise on matters of law, the legal system and the administration of justice, and may properly share that expertise with governmental bodies. In addition, judges may acquire information on issues before them that are not law-related but upon which they may be well qualified to comment from their unique vantage point as jurists who have presided over such matters in court. ~~For example, a juvenile court judge may be uniquely situated to comment to a public body on the potential benefits of proposed improvements in the community, such as the creation of new athletic or other recreational opportunities that could lead to a decrease in delinquency among juveniles.~~ For example, a judge may comment on the need to create

more options for judges in sentencing in criminal cases, such as ordering treatment in cases involving substance abuse or mental illness or providing for services for children and juveniles involved the system although a judge should not promote any particular option or program to avoid lending the prestige of office to advance private interest and should avoid involvement in debates within the service-provider community and among executive agencies and between the legislative and the executive branches. Judges must be mindful, however, that their appearance before governmental bodies remains subject to other provisions of this Code, such as Rule 2.11, governing public comment on pending and impending matters, and Rule 4.01(b), prohibiting judges from engaging in extra-judicial activities that cast reasonable doubt on the judge's impartiality, integrity and independence.

[2] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies on matters that are likely to have special effect upon them as private citizens, for example, proposals that will affect their real property or proposals having to do with the availability of local health services. The judge must exercise care, however, not to refer to his or her judicial position or otherwise lend the prestige of judicial office to advance general causes with respect to which the judge possesses no special judicial competence.

[3] See Rules 2.10 and 3.01 and Commentary regarding the obligation to avoid improper influence.

4.043 Appointments to Governmental Bodies. A judge shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

Commentary:

[1] A judge must assess the appropriateness of accepting extra-judicial assignments in light of the demands on judicial resources created by crowded dockets and should not accept governmental appointments that are likely to interfere with the effective operation of the courts. Judges must also avoid appointments that are likely to embroil the court in controversial issues or impair the impartiality, integrity and independence of the judiciary.

[2] Rule 4.01 and 4.03 read in conjunction require a judge to gather sufficient information to determine whether the work of a particular government commission concerns the improvement of the law, the legal system, or administration of justice and whether the judge's participation on the commission would cast reasonable doubt on a judge's capacity to act with impartiality, integrity, and independence. To come within the

exception for improvement of the law, the legal system, or the administration of justice, the government commission must have a direct connection with how the court system meets its statutory and constitutional responsibilities, in other words, how the courts go about their business, and the commission should relate to matters a judge, by virtue of judicial experience, is uniquely qualified to address. Commissions designed to improve the operation of another branch of government, for example, law enforcement or prison reform, do not fall within the exception. Moreover, membership by a judge on a commission may create the appearance that the judge could not impartially if the commission does not have a diverse membership that represents more than one point of view or the commission advocates the rights of specific types of participants in the justice system. Even if a judge may not be a member of a commission, a judge may educate and assist the commission by offering the judge's expertise on the law, the legal system, or administration of justice.

4.054 Civic or Charitable Activities. A judge may participate in civic or charitable activities that do not reflect adversely upon a judge's impartiality, integrity and independence or interfere with the performance of judicial duties subject to the following limitations and the other requirements of this Code.

(a) With respect to any activities in which a judge participates on behalf of a civic or charitable organization:

(1) A judge shall not

- i. use or permit the use of the prestige of judicial office for fund-raising or membership solicitation
 - ii. personally solicit funds and in-kind donations for the organization ~~iii-v;~~ personally solicit attorneys to participate in specific pro bono programs or to accept particular cases;
 - ~~iv-iii;~~ personally participate in membership solicitation if the solicitation is primarily a fundraising mechanism, or if it might reasonably be perceived as coercive;
 - vi. be a speaker, guest of honor, or other featured participant at an organization's fund-raising event, except as allowed by Section 4.04(a)(2)(iii).

(2) Notwithstanding paragraph (1) above, a judge may:

- i. personally solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority and from relatives or close personal friends whose appearance or interest in a case would in any event require the judge's disqualification under Section 3E;
- ii. assist the organization in planning fund-raising and participate in the management and investment of the organization's funds;
- iii. appear at, participate in, and permit the judge's title to be used in connection with an event of an organization devoted to the improvement of law, the legal system, or the administration of justice, even though the event may serve as a fundraising purpose.

iv. make recommendations to public and private fund-granting organizations on programs and activities concerning the law, the legal system or the administration of justice;

v. encourage attorneys to participate generally in pro bono efforts, including referring to a list of pro bono programs;

vi. donate to an organization's fund-raising activity; and

vii. participate in de minimis fund-raising activities.

b. A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental entity devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, unless it is likely that the organization or governmental entity:

(1) Will be engaged in proceedings that would ordinarily come before the judge, or

(2) Will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

Commentary:

[1] A judge should be permitted to participate in civic, fraternal or charitable activities for the benefit of the community of which the judge is a part, provided that such participation does not take inappropriate advantage of the judge's judicial position, or otherwise interfere with the performance of the judge's judicial duties.

[2] Solicitation of funds for an organization involves the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. For that reason, a judge is not permitted to solicit funds in person, in writing or by telephone, unless the person being solicited is another judge over whom the judge exercises no appellate or supervisory control or is a family member or close personal friend. Similarly, a judge is not permitted to personally solicit membership in an organization if the solicitation is primarily a fundraising mechanism. A judge may, however, participate in fundraising activities by performing tasks other than soliciting or accepting donations at fundraising events, without the attendant risk of coercion that makes personal solicitation of funds problematic.

[3] To prevent the prestige of the judge's office from being used in fund-raising, a judge must inform all organizations in which the judge is involved of the limitations on the judge's participation in fund-raising and the use of the judge name, require those organizations to comply with Canon 4C(3)(b), and review and approve the content of materials used in fund-raising that include the judge's name.

[4] Solicitation of membership poses potential problems similar to those associated with the solicitation of funds. For that reason, a judge must not personally solicit

membership or endorse or encourage membership efforts for civic or charitable organizations if the solicitation could reasonably be perceived as coercive. For example, a judge must not solicit memberships from other judges over whom the judge exercises supervisory or appellate authority or from persons or those affiliated with persons who are likely ever to appear before the court on which the judge serves.

[5] “De minimis” fund-raising refers to insignificant, incidental, or behind-the-scenes activities that do not use the judge’s name or title and where the judge’s role is no more active not visible than that of other participants.

[6] A judge should not require a defendant to contribute to a charity as part of a sentence even if no specific charity is identified and even if the defendant has agreed to the requirement as part of a plea bargain.

[7] To prevent the prestige of office judge’s office from being used in fund-raising, a judge should not serve as an honorary member of a committee where the sole purpose is to allow honorary committee members’ names to be used on an invitation to solicit attendance at a fund-raising event and should not allow his or her title to be used in an image campaign for a charitable organization.

[48] Notwithstanding the foregoing limitations, no comparable risk of coercion arises when a judge who is an officer of such an organization sends a general membership solicitation mailing over the judge’s signature. In addition, lawyer and judicial organizations with diverse memberships, whose members are balanced in representing all parties in litigation often include judges in their leadership. Judges may be involved in member recruitment for such organizations even though the dues or fees associated with membership may be used, in part, as fundraising to support the objectives of those organizations.

[5] Judges are an integral part of the legal community and may participate as judges in the activities of organizations within the legal community without inappropriately lending the prestige of office to those activities, even when they serve as a fundraising purpose. Therefore, a judge may, for example, accept an invitation to speak at or be recognized or honored at an event hosted by a legal organization, law school, or other entity devoted to improving the law, the legal system or the administration of justice, even if such an event raises funds for the benefit of the sponsoring organization. However, even for law-related organizations, a judge must consider whether the membership and purpose of the organization or the nature of the event would conflict with the judge’s obligation to refrain from activities that reflect adversely upon a judge’s impartiality, integrity, and independence. For example, it may be inappropriate for a judge to speak at a fund-raising event for a bar association comprised of lawyers that primarily represent a particular class of clients or an organization that has taken a public stand on issues to be litigated in a case before the court on which the judge sits or to accept an award that honors the judge for decisions the judge has made in a particular case or cases.

* * *

4.067 Testifying as a Character Witness. A judge shall not testify as a character witness, except when properly summoned.

Commentary:

[1] When a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. In addition, a judge who testifies voluntarily as a character witness lends the prestige of judicial office to advance the interests of another. See Rule 3.01. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

[2] This prohibition applies to all adjudicative proceedings including disciplinary matters and includes communication of character information through any method to a sentencing judge or a probation, parole, or corrections officer although a judge may provide to such persons other information for the record in response to a formal request.

4.13 Solicitation and Acceptance of Gifts.

(a) A judge shall not solicit or accept and shall urge members of the judge's family residing in the judge's household not to solicit or accept a gift from anyone or a loan (other than one from a financial institution) except that a judge may accept, unless otherwise provided by law:

1. a gift incident to a public testimonial;
2. books, magazines, journals, audio-visual materials, and other resource materials supplied by publishers or organizations on a complimentary basis for official use;
3. an invitation to the judge and the judge's spouse or guest to attend without charge ~~a widely attended event or~~ a bar-related function or any activity devoted to the improvement of the law, the legal system or the administration of justice;
4. a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a judge residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
5. ordinary social hospitality;

6. a gift from a relative or friend, for a special occasion, such as a wedding anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;
7. a gift or loan from a relative or close personal friend whose appearance or interest in a case would in any event require disqualification under Rule 2.12; or
8. reduced membership dues for a bar association or other organization devoted to the improvement of the law, the legal system, or the administration of justice (excluding any organization whose members comprise or frequently represent the same side in litigation.)
9. any other individual gift, valued at [\$50] or less, or series of gifts from the same source whose value in the aggregate does not exceed [\$150], or loan (other than from a financial institution) only if the donor or lender is not:
 - a. a lawyer, party, or third person who has come before the judge, or a person or entity whose interests have come before the judge, within the preceding five years, or
 - b. a lawyer, party, or third person who is likely to come before the judge, or a person or entity whose interests are likely to come before the judge, in the foreseeable future.

(b) For any gift, other than from a member of the judge's family, or loan, other than from a member of the judge's family or financial institution, that alone or in the aggregate with other gifts or loans received from the same source in the same calendar year exceeds \$250.00 in value the judge must publicly report in the same manner as the judge reports compensation, reimbursement or waiver of charges pursuant to Rule 4.16.

Commentary:

[1] A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Rules 4.01 and 2.09.

[2] Because a gift to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

[3] A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.

[4] Rule 4.13 prohibits judges from accepting gifts or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge. Rule 4.13(a)(5) prohibits a judge from accepting gifts or loans, even of a nominal value, from people who are or will be substantively involved in a matter before the judge. The rule requires a judge to consider whether a donor, or the donor's interest, might come before the judge in the foreseeable future. _

[5] Rule 4.13 does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5. Rule 4.13 likewise does not apply to the reimbursement for or waiver of charges for travel-related expenses, which is governed by 4.14. See the Terminology section. for the definition of gift and its exclusions.

[6] Acceptance of an invitation to a law-related function is governed by Rule 4.13(a)(1); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Rule 4.13(a)(5).

[7] Regardless of whether Rule 4.13 directly prohibits receipt of a particular gift by a judge or a member of the judge's family residing in the judge's household, other Rules may prohibit the gift. For example. Rule 4.01(b) would apply if the gift would cast reasonable doubt on the judge's capacity to act with impartiality, integrity and independence.

[8] For purposes of this canon, gifts are considered to be from the same source if the donors are members or employees or the same law firm, corporation, or government entity.

Rule 4.14 Reimbursement or Waiver of Charges for Travel-Related Expenses of the Judge or the Judge's Spouse or Guest.

(a) Unless otherwise provided by law, a judge may receive reimbursement or accept a waiver of charges from sources other than the judge's employing entity for the expenses of necessary travel, food and lodging associated with the judge's participation in extra-judicial activities permitted by this Code, if such receipt or acceptance does not cast reasonable doubt on the judge's capacity to act with impartiality, integrity, or independence.

Expense reimbursement and waiver of charges shall be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the

occasion, by the judge's spouse or guest. Any reimbursement or waiver of charges which alone or in the aggregate with other costs reimbursed from the same source in the same calendar year exceeds \$100 shall be publicly disclosed and the information relating to such reimbursement and/or waiver of charges shall be reported as required by section 4.16 and made accessible to the general public at least quarterly.

Commentary

[1] Judicial education in law-related and academic disciplines is in keeping with a judge's duty to remain competent in the law and is consistent with the provisions of Canon 4. Attendance at educational seminars where the expenses are underwritten by individuals or entities other than the judge or the judicial system, or a government entity should be evaluated by the judge to determine whether attendance is consistent with the judge's obligations under the Canons, particularly the duty to preserve impartiality and independence, and the appearance of impartiality and independence.

[2] A variety of factors may affect the propriety of attendance at such seminars, including the educational nature of the seminar, the sources of funding, the identity of the seminar sponsor, and the reasonableness of the expenses paid or reimbursed; the number of participants; whether a broad range of judicial and non-judicial participants are invited; whether the program is designed specifically for judges; the length of the program; the expense of attending and who will pay the expenses; whether the expenses covered are greater than those traditionally furnished at similar events sponsored by the judiciary, bar associations, or similar groups; the amount of the program devoted to educational activities compared to the amount of time allowed for recreational activities; whether competing viewpoints are presented; whether the sponsor and/or source of funding are generally associated with particular interests likely to appear in the judge's court; and whether the topics covered in the program are related to likely subjects of litigation in the judge's court. The judge should consider whether the sponsor or the funding source of the seminar is currently appearing, or likely to appear, before the judge in a matter. In addition, the judge should determine whether attendance may create a conflict of interest, may result in disqualification or recusal in matters coming before the judge, may give rise to a judge's independence being questioned, or may interfere with the judge's performance of his or her judicial duties. A judge's decision whether to attend should be based on an assessment of all of the circumstances and the judge should undertake a reasonable inquiry to obtain the information necessary to make an informed judgment.

[3] Consistent with Rules 4.13(b) and 4.16, a judge should take reasonable steps to ensure that information concerning his or her participation in seminars and other events, well as reasonable information regarding the nature and circumstances of such events are available to the public. A judge should therefore promptly and publicly disclose participation in extra-judicial events at which the judge's expenses are paid by sources other than the judge's employing governmental entity.

Terminology

“Gift” means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, bequest, or anything of monetary value, but does not include:

~~(a) Ordinary social hospitality extended for a non-business purpose by an individual, not a corporation, limited to the provision of modest items, such as food and refreshments, that is so common among people in the judge’s community;~~

(a) items with little intrinsic value intended solely for presentation, such as plaques, certificates, trophies and greeting cards;

(b) loans from banks and other financial institutions on the same terms available to persons who are not judges ~~on terms that are available based on factors other than judicial status;~~

(c) opportunities and benefits, including favorable rates and commercial discounts, that are available to persons who are not judges ~~based on factors other than judicial status;~~

(d) rewards and prizes given to competitors in contests or events, including random drawings, that are open to the public and that are available to persons who are not judges ~~based on factors other than judicial status;~~ or

(e) scholarships and fellowships awarded on the same terms and based on the same criteria applied to non-judge applicants;

(f) reimbursement or waiver of charges for travel-related expenses governed by Rule 4.14;

(g) compensation for extra-judicial activities that is governed by Rule 4.14.

“Ordinary social hospitality” is that type of social event or other gift that is so common among people in the judge’s community that no reasonable person would believe that the donor was intending to or would obtain any advantage. Relevant considerations include the cost of the event or gift, whether the benefits conferred are greater in value than that traditionally furnished at similar events sponsored by bar associations or similar groups, whether the benefits are greater in value than that which the judge customarily provides the judge’s own guests, whether the benefits conferred are usually exchanged only between friends or relatives, whether there is a history or expectation of reciprocal social hospitality between the judge and the donor, whether the event is a traditional occasion for social hospitality, and whether the benefits received must be reported to any governmental entity.

~~“Widely attended event” means a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception or similar event at which more than 25 persons are expected to attend.~~

CANON 5

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN REFRAIN FROM POLITICAL ACTIVITY THAT IS INCONSISTENT WITH THE IMPARTIALITY, INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

Rule 5.01. Restrictions on Political Activity of Judges who are Not Candidates.

Judges who are not currently candidates for judicial office may participate in the political process as a voter and engage in political activity on behalf of measures to improve the law, the legal system, or the administration of justice but shall not engage in any other political activity including but not limited to:

- (a) acting as a leader or holding an office in a POLITICAL ORGANIZATION;
- (~~b~~e) publicly endorseing or opposeing a CANDIDATE for public office;
- (~~c~~e) soliciting funds for, paying an assessment to, makeing a contribution to, or purchaseing tickets for dinners or other events sponsored by, a POLITICAL ORGANIZATION or a CANDIDATE for public office.
- (d) attending meetings or other events sponsored by a POLITICAL ORGANIZATION or a CANDIDATE for public office;
- (~~e~~b) publicly speaking in support of or in opposition to against a POLITICAL ORGANIZATION;

Comments:

Rule 5.02 Restrictions on Political Activity of Candidates for Judicial Office.

Except as otherwise provided in Rules 5.03-5.06, a candidate for judicial office, including an incumbent judge and a candidate for appointive judicial office, should maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall not, directly or indirectly:

- (a) act as a leader or hold an office in a POLITICAL ORGANIZATION;
- (~~b~~f) publicly endorse or oppose a CANDIDATE for public office;
- (~~c~~g) solicit funds for, pay an assessment to, make a contribution to, or purchase tickets for dinners or other events sponsored by, a POLITICAL ORGANIZATION or a CANDIDATE for public office;
- (~~d~~b) KNOWINGLY or with reckless disregard for the truth make any FALSE OR MISLEADING statement regarding any CANDIDATE for judicial office;
- (~~e~~e) in the course of advancing his or her candidacy, make any comment that might reasonably be expected to affect the outcome or impair the fairness of a proceeding while it is pending or impending in any court;
- (~~f~~d) with respect to 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 the office;

- (ge) in the course of advancing his or her candidacy, manifest bias or prejudice, based upon a person's race, gender religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status;
- (h) personally solicit or accept campaign contributions;
- (i) use or permit the use of campaign contributions for the private benefit of the CANDIDATE or others; and
- (j) authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing.

Comments:

Rule 5.03. Permitted Political Activity of Candidates for Judicial Office in Partisan Public Elections.

Notwithstanding the restrictions set forth in Rule 5.02, a candidate for judicial office in a partisan public election may:

- (a) establish a campaign committee pursuant to the provisions of Rule 5.06;
- (b) speak to gatherings on his or her own behalf;
- (c) attend meetings or other events sponsored by a political organization;
- (d) publicly identify himself or herself as a member or candidate of a political organization;
- (e) purchase tickets necessary for the candidate and a guest to attend ~~for~~ events sponsored by a political organization;
- (f) appear in media advertisements and distribute campaign literature supporting his or her candidacy;
- (g) publicly endorse or publicly oppose other candidates for the same court ~~judicial-office~~ in a public election in which the candidate is running.

Comments:

5.04. Prohibited and Permitted Political Activity of Candidates for Judicial Office in Non-Partisan Public Elections and Retention Elections.

- (a) In addition to the restrictions set forth in Rule 5.02, a candidate for judicial office in a non-partisan public election or a retention election shall not, directly or indirectly:
 - (1) publicly speak in support of or against in opposition to a political organization;
 - (2) attend meetings or other events sponsored by a political organization or a candidate for public office.
- (b) Notwithstanding the restrictions set forth in Rules 5.02 and 5.04(a), a candidate for judicial office in non-partisan public elections and retention elections may:

- (1) establish a campaign committee pursuant to the provisions of Rule 5.06;
- (2) speak to gatherings on his or her own behalf;
- (3) publicly endorse or publicly oppose other candidates for the same ~~court~~ ~~judicial office~~ in a public election in which the candidate is running;
- (4) appear in media advertisements and distribute campaign literature supporting his or her candidacy.

Comments:

Rule 5.065. Campaign Committees.

(a) Candidates for judicial office subject to public elections may establish campaign committees to conduct campaigns for the candidate, subject to the regulations contained in this Rule. The candidate is responsible for insuring that the committee complies with these regulations, and with other applicable law.

(b) Campaign committees may solicit and accept reasonable campaign contributions, not to exceed, in the aggregate, [\$ ___] from any individual, or [\$ ___] from any entity or organization. Such committees may also manage the campaign, including the expenditure of funds.

(c) A campaign committee shall not solicit or accept contributions for a candidate's current campaign more than [one year] prior to a scheduled election, nor more than [90] days after the last election in which the candidate participated.

(d) In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, campaign committees established by a candidate for judicial office shall file with [name of appropriate regulatory authority] a report stating the name, address, occupation and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding [\$ ___]. The report must be filed within [___] days following an election, or within such other period as is required by law.

(e) The campaign committee for a judicial candidate shall comply with laws regarding divesting unused campaign funds or, even in the absence of a statutory requirement, shall divest any unused campaign funds by pro rate refund to campaign contributors not later than six months after any judicial election in which a judge or judicial candidate participated as a contestant.

Comments:

Rule 5.056. Activity of Candidates for Appointive Judicial Office.

Notwithstanding the restrictions set forth in Rule 5.02, a candidate for appointment to judicial office shall not engage in any political activity to secure the appointment but may:

- (a) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency;

(b) seek support or endorsement for the appointment from any individual or organization.

Comments:

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