

**PRELIMINARY REPORT OF THE
ABA JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT**

INTRODUCTORY REPORT

JUNE 30, 2005

INTRODUCTION

In its “Preliminary Draft, ABA Model Code of Judicial Conduct” the American Bar Association Joint Commission to Evaluate the Model Code of Judicial Conduct (“Joint Commission” or “Commission”) proposes both format and substantive changes to the present Model Code. Created in July 2003 with a generous grant from the Joyce Foundation, the Joint Commission was appointed by and operates under the auspices of the ABA Standing Committees on Judicial Independence and Ethics and Professional Responsibility. The Commission circulates the Preliminary Draft at this time with a request that it be reviewed by all individuals and entities interested in judicial ethics and regulation, with a sincere hope that all those who have comments and suggestions regarding the provisions of the Preliminary Draft will submit them to the Commission *no later than September 15, 2005, to debrataylor@staff.abanet.org or by mail to Debra D. Taylor, American Bar Association, Center for Professional Responsibility, 321 North Clark Street, Chicago 60611.* After that time, and after a thorough review of all comments and suggestions it receives, the Commission intends to make such additional changes as may be appropriate and to submit a final Report with Recommendations to the House of Delegates for consideration at the ABA 2006 Midyear Meeting in New Orleans, Louisiana.

It has been sixteen years since the judicial ethics policies of the ABA were subjected to comprehensive review. Between 1987 and 1990 a Subcommittee of the Standing Committee on Ethics and Professional Responsibility conducted an extensive review process that led to adoption of the present ABA Model Code of Judicial Conduct in 1990. Since that time, several developments have occurred that suggested the need for a reconsideration of the Model Code. The increasing role of politics in judicial selection processes, the collective experience of judicial ethics commissions and judicial regulators in interpreting and applying the existing Code, and the development of new types of courts and court processes are among the factors that converged to present a convincing argument for an examination of the adequacy of the current Code.

The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct is chaired by Mark I. Harrison of Phoenix, Arizona. Mr. Harrison is a former member of the ABA Standing Committees on Ethics and Professional Responsibility and Professional Discipline. He has had a distinguished career in all aspects of lawyer and judicial regulation, including the representation of the Arizona Judicial Conduct Commission as well as judges in judicial discipline proceedings. The Commission membership is comprised of ten distinguished judges and lawyers whose breadth of experience in

various courts and areas of practice ensures a thorough and multi-dimensional review of the Judicial Code's provisions. It also includes a public member whose participation in a wide array of civic, business and charitable affairs brought to the review process a valuable public perspective; and eleven advisors having extensive experience in judicial ethics and discipline matters, many of whom served as formal liaisons from organizations interested in different aspects of judicial conduct. The Commission is supported in its evaluative work by two reporters and by counsel from the ABA Justice Center and the ABA Center for Professional Responsibility. A roster of the Commission members, advisors, reporters and counsel appears as an additional document (see Table of Contents).

THE EVALUATION PROCESS

Over the course of twenty-two months, the Commission met in person 12 times and convened via teleconference 17 times. At its in-person meetings, (widely advertised in advance) the Commission sponsored public hearings at which it heard comments from twenty-three individuals regarding their interests or the interests of entities they represented, on a broad range of judicial conduct issues. The Commission also received written comments from some of those who appeared in person and from a number of other interested persons. The Commission's developing work product, in the form of drafts of discrete portions of the Judicial Code, was posted periodically on a website maintained by the ABA, along with requests for responses and suggestions for further revisions. The Commission's work was also disseminated to representatives of sixteen entities whose work focuses on judicial conduct matters, and to over two-hundred fifty individuals who had expressed an interest in the process and asked that they be provided with electronic notification of all the Commission's recommendations. All told, twenty-five entities filed written comments with the Commission in relation to the existing Model Code; approximately three-hundred individuals filed comments with respect to the Commission's draft revisions to the Code.

The Preliminary Draft is the result of vigorous and informed discussion and debate among the Commission members and advisors. The formulations contained in the Preliminary Draft were established by vote of the members of the Commission. Although there was majority support for each of the proposed rules contained in the Preliminary Draft, there was frequent disagreement, ranging from mild to strong, with the voting majority's formulation of particular proposed rules. All important areas of disagreement and all significant differences between the proposed Rules and the present Code are discussed, *infra*, in the section of this report titled "Principal Substantive Changes from the 1990 Code and Significant Controversies," with the expectation that this will stimulate further consideration and comment among all those who review this Preliminary Draft.

MATERIALS CONTAINED IN THIS REPORT

To assist the reader with his or her review of the Preliminary Draft, the Commission provides here the following materials.

- A “clean copy” of the Commission’s proposed ABA Model Code of Judicial Conduct, including a “Preamble,” a “Terminology” section, a note on “Scope,” the Rules and their accompanying Comment, and an “Application” Section. This document contains footnote notations indicating where various proposed Code provisions appear (if at all) in the 1990 Code.
- A redlined version of the Proposed Rules that compares the Preliminary Draft with the present Code, in traditional legislative format.
- For the benefit of those who have reviewed the Commission’s early drafts that were posted on the website between May 2004 and May 2005, and who wish to see the changes that the Commission has decided upon in response to comments received in the interim, a redlined version of the Proposed Rules that compares the Preliminary Draft with the provisions proposed earlier.

ORGANIZATIONAL CHANGES FROM THE 1990 CODE

The organization or format of the Preliminary Draft presents two notable differences from the 1990 Code. First, the material treated under each of the Canons has been reorganized to provide what the Commission considers a more logical and helpful arrangement of topics. Canon 1 in the Preliminary Draft combines most of the subject matter of present Canons 1, 2 and 3, addressing both the obligation of judges to uphold the integrity, impartiality, and independence of the judiciary and to avoid impropriety and its appearance. Canon 2 of the Draft addresses solely the judge’s professional duties *qua* judge, which constitute part of Canon 3 in the present Code. Draft Canon 3 contains brief, general provisions governing a judge’s personal conduct, most of which appear in the present Code’s Canon 2. Draft Canon 4 addresses, as does present Canon 4, a judge’s “extra-judicial activities,” primarily civic or community involvement, business activities, and the acceptance of gifts. Finally, Canon 5 addresses, as does present Canon 5, acceptable political conduct of judges and judicial candidates.

A second change in the Code’s format is the presentation of Canons, which state overarching principles of judicial conduct, followed by specific “Rules.” In the 1990 Code, each Canon was followed by “sections” that discursively established the parameters of permissible and prohibited conduct. A consensus was reached by the Commission in its first year of deliberations that a structure more like that of the ABA Model Rules of Professional Conduct (which address permitted and prohibited conduct for lawyers) would be a more straightforward and user-friendly form for a Judicial Code. This consensus developed from consideration of the Commission members’ own experience in using the present Code both for guidance and for judicial discipline proceedings, and from the experience and testimony of numerous other individuals providing comment to the Commission. Consistent with the organization of the Model Rules of Professional Conduct, the Rules in the Preliminary Draft are usually followed by Comment that provides aspirational guidance and assists the user in interpreting and

applying the Rules. The Comment neither adds to nor subtracts substantively from the force of the Rules themselves.

PRINCIPAL SUBSTANTIVE CHANGES FROM THE 1990 CODE, AND SIGNIFICANT CONTROVERSIES

CANON 1

The Commission heard presentations and received numerous written communications on the question, identified by the Commission itself as an important one at the beginning of the project, of whether the “appearance of impropriety” concept contained in the present Code should be retained. A majority of commentators on the subject, citing to judicial discipline cases decided over a three-decade period, urged that the concept be retained. Others, notably lawyers who represent judges and judicial candidates in disciplinary proceedings, voiced concerns that the concept is not clearly definable and does not provide judges and judicial candidates with adequate notice about what conduct might constitute a disciplinable offense. Some of those commentators questioned whether that aspect of the provision might also make it subject to attack on constitutional grounds. The Commission was persuaded by the former group of commentators. Thus the Preliminary Draft places the admonishment that judges avoid not only impropriety but also its appearance in two places: in the text of Canon 1 and in Rule 1.03. The explicating Comment language relating to impropriety and its appearance are substantially as they appear in the present Code. *Comment on this proposal is eagerly sought.*

CANON 2

Rule 2.08, “Demeanor and Decorum,” contains a new Comment to accommodate recently developed formal or informal procedures the Commission has learned of whereby judges engage in a “debriefing” process with jurors after their jury service has been concluded. As drafted, the proposed Comment essentially provides examples of matters that must not be discussed in such a debriefing. *The Commission seeks input on what additional discussion or description of this practice might be appropriate.*

The Comment to Rule 2.09, “Ensuring the Right to be Heard,” discusses judges’ actions in encouraging parties and their lawyers to settle disputes where possible, cautioning that judges should not use coercion in doing so. Whether a judge who participates in facilitating settlement of a matter pending before him or her should be permitted to hear that matter if settlement efforts are unsuccessful has been the subject of conflicting testimony and comment to the Commission, but the Preliminary Draft does not propose to address this question specifically. *Further comment will be very useful to the Commission.*

Rule 2.10(B) in the draft, “Ex Parte Communications,” prohibits a judge from “independently investigat[ing] facts in a case.” The Comment to the Rule states that the prohibition extends to a judge’s use of electronic research methods, which include

Internet research. *The Commission is interested in hearing responses to this specific language.*

Several commentators informed the Commission that developing practices in recently-created “specialized courts,” such as drug courts, domestic abuse courts, and others, encourage or require judges to engage in communications with individuals and entities outside the court system itself that they fear may run afoul of traditional restrictions on ex parte communications. The Preliminary Draft does not specifically address this issue in Rule 2.10. *The Commission is hopeful that additional comments will be received on this issue from those who are familiar with developing practices.* (Reference to new types of courts has, however, been added to the “Application” Section of the Preliminary Draft.)

The Comment to Rule 2.12, “Disqualification,” states that a judge “should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, *even if the judge believes there is no real basis for disqualification.*” There was disagreement among the Commission as to whether such an application of the disqualification rule is necessary or desirable, and specifically whether such an interpretation may work a hardship on one or both of the lawyers in a proceeding. *Comment on the question will be very helpful.*

Rule 2.20 in the Preliminary Draft, “Immunity for Discharge of Duties,” purports to establish legal immunity for actions a judge takes in responding to judicial or lawyer misconduct or disability or impairment. *The Commission seeks comment on the appropriateness of including this concept in a series of rules governing a judge’s ethical obligations.*

CANON 3

Comment [5] to Rule 3.02, “Use of the Prestige of Judicial Office,” retains the concept presently in Commentary to Section 2B whereby letters of recommendation submitted by a judge on behalf of another person may be based on any “personal knowledge” the judge has. In an earlier draft of this provision, the Commission had proposed, based on considerable discussion and the comments of numerous witnesses, that only knowledge obtained by a judge *in his or her official capacity* ought to be used in letters of recommendation. This subject continues to provoke discussion.

In Rule 3.04, “Affiliation with Discriminatory Organizations,” the Preliminary Draft adds “ethnicity” and “sexual orientation” to the list of factors that must not be the basis for discrimination in the policies of clubs and other membership entities to which judges seek to belong. These bases of discrimination are presently contained in the 1990 Code’s prohibition against the manifestation of bias in the court, but do not appear with respect to organizational memberships held by a judge. Notwithstanding the addition of these two factors, the Comment provides instruction, taken directly from the present Code, that a judge may belong to “any organization dedicated to the preservation of religious, ethnic or legitimate cultural values of common interest to its members.” *The Commission seeks comment on this issue.*

The Preliminary Draft also adds to the black-letter of Rule 3.04 a prohibition against a judge using the benefits or facilities of such an organization “to any significant extent.” The present Code treats the subject of a judge’s use of such organizations’ facilities only in Commentary, and interprets the provision as being violated either by a judge scheduling a meeting at a facility or regularly using the facility. *The Commission is interested in comments on the approach it has taken on this subject in the Preliminary Draft.*

Finally, with respect to Rule 3.04, Comment [4] interprets the black-letter to require that a judge immediately resign from an organization to which he or she belongs upon discovering that it engages in invidious discrimination. In the 1990 Code, the prohibition against membership in discriminatory organizations was being newly introduced, and Commentary provided that a judge be given one year to withdraw from membership, unless he or she was successful in influencing the organization to abandon its discriminatory policies. The Commission considers that both the policy and practice of prohibiting judges from belonging to discriminatory organizations are now well-established, so that a per se prohibition is appropriate. *The Commission welcomes comment about this proposed change.*

CANON 4

Rule 4.13, “Solicitation and Acceptance of Gifts.” Although the text of this Rule remains largely unchanged from its former presentation in Section 4D(5) of the 1990 Code, the Rule’s basic structure has been revised. The term “gift” is described both in this Rule and in the Terminology Section. The slightly revised description of gifts excludes several items that are not, in common parlance, thought of as gifts, including but not limited to: ordinary social hospitality; trivial tokens of appreciation; and loans, discounts, prizes, and scholarships that judges receive for reasons generally unrelated to their being judges.

Under Rule 4.13(A)(3) judges are permitted to accept invitations to “widely attended events,” a term that is separately defined in the Terminology Section. The Commission believes that judges should be encouraged to interact with the public they serve, and that they would not be in a position to attend many community events to which they are invited if they were on all occasions obligated to pay their way.

Rule 4.13(A)(7) remains substantially similar to the present Code, but includes several important changes. The new Rule would prohibit judges from accepting gifts in excess of specified dollar limits comparable to those established for gifts received by those serving in other branches of government; the present rule simply requires that gifts be reported. The provision enables judges to receive modest and innocuous gifts not excepted elsewhere in the Rules, but prohibits gifts of unlimited size. Finally, the Rule has been revised to limit the ban on gifts from persons who previously appeared before the judge to a period of five years, and likewise limiting its application to those who may come before the judge “later” to the foreseeable future.

Rule 4.13(B) is new, imposing a reporting requirement upon judges who receive gifts in excess of \$250.

Rule 4.14, “Reimbursement or Waiver of Charges for Travel-related Expenses” addresses only that portion of the present Code’s Section 4H(1) that relates to reimbursement, leaving treatment of compensation to a new Rule 4.15. It continues to allow judges to be reimbursed for travel associated with their attendance at programs or with other permissible extrajudicial activities. Several changes are proposed, however. First, Rule 4.14(A) would apply to waiver of charges as well as reimbursement of expenses. Second, permissible reimbursement is specifically limited to necessary travel and lodging. Third, the condition precedent to accepting reimbursement or waiver of charges - that it not create an appearance of impropriety - has been amended to identify specifically the potential that the acceptance of gifts has for creating the perception that judicial integrity, impartiality or independence may be compromised.

The Comment explicating this Rule is designed to provide judges with greater guidance when analyzing whether their reimbursement for attendance at a given event may be perceived as casting doubt on their integrity, impartiality or independence. The sources of funding for an event, the reasonableness of the expenses paid, and the identity of the sponsor are all among factors that judges are urged to consider when deciding whether to attend expense-paid seminars. The Comment also emphasizes the importance of transparency in judges’ acceptance of such reimbursements, focusing on the need for public access to information relevant to judicial participation in such events, including information about reimbursement and waiver of expenses.

Rule 4.16, “Reporting of Compensation, Reimbursement and Waiver of Charges,” is similar to the provision in the present Code, with one important difference: the Rule requires quarterly, rather than annual reporting, and requires that reports be published on court web pages where feasible. *The Commission welcomes comment about these proposed changes.*

CANON 5

Throughout its deliberations, the Joint Commission has sought to find a balance that accommodates the political realities of judicial selection while ensuring that the concepts of judicial integrity, independence, and impartiality are not undermined by the inappropriate participation of judges and judicial candidates in political activity. The Commission has added extensive comment to the Rules it proposes in the Preliminary Draft, confident that it will enhance compliance and enforcement of the Rules.

The structure of Canon 5 has been significantly modified. Although it begins with a Rule that addresses generally the prohibitions against political activity that apply to all judges and judicial candidates, as does the present Canon, it then provides additional Rules that separately treat each of the various types of judicial selection processes. The most noticeable feature of this reorganization is the clearer distinction that is drawn among partisan elections, non-partisan elections, retention elections and appointments to judicial

office; each involves a different level of restrictions on political activity. *The Commission is especially interested in receiving comments on whether the particular limitations proposed for each type of judicial candidate are the appropriate ones.*

A fundamental part of these restrictions on political activity is the concept of “political organizations.” This draft, in its “Terminology” section, retains the concept in the present Code that a political organization is a political party or other group, the primary purpose of which is the election or appointment of a candidate for judicial office, but this draft adds language to make it clear that candidates’ campaign committees are not political organizations for the purposes of Canon 5.

Rule 5.01, “Restrictions on Political Activities of Judges and Candidates for Judicial Office,” allows judges and judicial candidates at all times to purchase tickets for political functions. Although the provision restricts judges to purchasing tickets for their personal use, and requires that the cost of the tickets not exceed the reasonable value of the goods and services received, it nonetheless constitutes a considerable expansion from the present Code, which generally limits judges’ purchases of tickets to periods in which they are candidates in partisan elections. *The Commission seeks comment on this less restrictive approach to the issue.*

The Comments to Rule 5.01 have been revised to address the right of a judicial candidate to respond publicly to personal attacks or attacks on a candidate’s record during the course of a campaign. That subject is addressed by black-letter language in the current Code. The Commission believes that the discussion of the issue is primarily informative, and that the topic ought not be made the subject of disciplinary charges, *but it is interested in receiving comments on its proposal.*

In Rule 5.03, “Permitted Political Activities of Candidates for Judicial Office in Non-partisan Public Elections,” the Commission proposes Comment that interprets the Rule as prohibiting a candidate in a non-partisan election from completing and submitting questionnaires when the judge knows, or has reason to know, that the purpose of the questionnaire is for a political organization to decide whom to endorse in a non-partisan election. *The Commission is especially interested in receiving response to the question of whether this application of Rule 5.03 is an appropriate one.*

The Commission encourages all those who are interested in its work to review the Preliminary Report containing the Commission’s current draft of the entire Code carefully and to provide comments and suggestions to the Commission as soon as possible, but in no event later than September 15, 2005. *Specific language changes that give effect to commentators’ concerns will be extremely helpful to the Commission*

We hope that the work already completed by the Commission will be supplemented with suggestions from every quarter, so that our final recommendations for revision to the Code, when presented to the ABA House of Delegates in February 2006, will represent a consensus that will have been reached among the judiciary, the legal profession, and the public.

1 **PREAMBLE**

2
3 The judiciary is the cornerstone of the American legal system and a highly visible symbol
4 of our commitment to justice and to government under the rule of law. The rule of law
5 depends on an independent judiciary composed of men and women of integrity who
6 perform their duties competently and impartially.

7
8 In order to sustain the rule of law judges must possess the qualities of integrity,
9 impartiality, independence and competence. They must also promote public confidence in
10 the judiciary. That confidence is eroded if judges engage in improper or unethical
11 conduct. Accordingly, judges, individually and collectively, must respect and honor the
12 judicial office as a public trust, and maintain the dignity of the office at all times. They
13 must respect as well all other persons who serve and participate in the judicial system,
14 including other judges, court employees, public officials, jurors, litigants, and lawyers.

15
16 Because of their roles as public symbols of justice and the rule of law, judges must not
17 only avoid impropriety in their professional and personal lives, but avoid the appearance
18 of impropriety as well. They should expect to be the subject of public scrutiny, and
19 should freely and willingly accept restrictions on their conduct that might be viewed as
20 burdensome by ordinary citizens.

21
22 The black letter Rules of the ABA Model Code of Judicial Conduct provide a body of
23 clear, succinct, and enforceable rules to regulate the conduct of individual judges. They
24 establish minimum standards of conduct with which all judges and - where applicable -
25 judicial candidates must comply. The Model Code also articulates aspirational goals and
26 ideals, encouraging judges and candidates to establish and maintain standards of judicial
27 and personal conduct that exceed the minimum standards set forth in the Rules. Taken
28 together, the Code accomplishes the two objectives of any code of conduct. In providing
29 judges with guidance in the face of potential ethical problems, it serves a prophylactic
30 purpose. In establishing rules that can be effectively enforced by those who regulate the
31 judiciary, it serves a purpose of protecting the public.

32
33 The Model Code consists of five Canons, which collectively state the five overarching
34 core principles of judicial conduct that are indispensable to sustaining the rule of law and
35 to enhancing public confidence in the judiciary and the justice system. As further
36 described in the Scope section, the Rules organized under each Canon implement these
37 core principles.

38
39 Canon 1 provides that “A Judge Shall Avoid Impropriety and the Appearance of
40 Impropriety in All the Judge’s Activities, So as to Uphold the Integrity, Impartiality, and
41 Independence of the Judiciary.” Judges apply the law, and, like lawyers, are often

1 referred to as “servants of the law.” In the public mind, however, judges embody the law
2 itself, and through their daily work demonstrate the majesty of the law as it is employed
3 to resolve conflicts and maintain a just society. The public must be able to trust every
4 judge and the judicial system itself. It is imperative that judges obey the law and other
5 rules applicable to them, while exhibiting sound character and moral rectitude in their
6 professional work and in their personal lives.

7
8 Canon 2 provides that “A Judge Shall Perform the Duties of Judicial Office Impartially
9 and Diligently.” This concept is fundamental to the discharge of a judge’s duty to act at
10 all times as a just adjudicator. Judges are public servants obligated to decide matters both
11 mundane and controversial without fear or favor. In instances where a judge’s
12 impartiality might reasonably be questioned, however, the Canon works to protect the
13 public interest by requiring disqualification of the judge.

14
15 Judges are obligated to work diligently on matters presented to them, maintain decorum
16 and respect in the courtroom and in ancillary proceedings, provide every litigant with the
17 right to be heard according to established procedures, and avoid *ex parte*
18 communications. When these goals are achieved, the public’s regard for the judicial
19 system is deservedly high.

20
21 Canon 3 instructs that “A Judge Shall Conduct the Judge’s Personal Affairs to Preserve
22 the Integrity, Impartiality, and Independence of the Judiciary.” Although this Canon
23 regulates the conduct of judges when they are not engaged in the core adjudicative
24 activities of their office, it nonetheless operates to ensure that judges will be held in
25 proper regard when they are on the bench or otherwise acting in their official roles. If
26 judges allow personal entanglements to affect their adjudicative activity, or if they lend
27 the prestige of judicial office to others for private gain, they diminish respect for the
28 judiciary. Similarly, a judge’s membership in discriminatory clubs or organizations
29 undermines public confidence in the fairness of the judicial process.

30
31 Canon 4 states that “A Judge Shall Conduct the Judge’s Extra-Judicial Activities to
32 Minimize the Risk of Conflict with Judicial Obligations.” In its concern for activity by
33 judges that lies outside of their core adjudicative function, this Canon is similar in some
34 respects to Canon 3. Canon 4, however, focuses on outside involvements that could taint
35 a judge’s integrity, impartiality, or independence. Although judicial participation in
36 charitable and educational activities is desirable and meritorious, as is pro bono public
37 service on a governmental board or agency, too close an identification with non-judicial
38 interests may give rise to concerns that a judge is lending the prestige of judicial office to
39 others, or that the judge may bring a bias related to such service into judicial proceedings.
40 These and similar extra-judicial activities are therefore closely regulated.

41
42 The Rules under Canon 4 impose significant restrictions on the acceptance of gifts by

1 judges and require judges to file meaningful and timely reports regarding those gifts.

2
3 Canon 5 admonishes that “A Judge or Candidate for Judicial Office Shall Refrain From
4 Political Activity that is Inconsistent with the Integrity, Impartiality, and Independence of
5 the Judiciary.” This necessarily complex Canon addresses the tension created by two
6 long-standing features of our system. The first of these is the traditional constitutional
7 principle of separation of powers, which operates to allow judges to maintain a healthy
8 distance from the politics of legislative and executive branch activities. In those arenas
9 decision-making may be based, for example, on appeals to expediency, which would be
10 inappropriate in the judicial arena.

11
12 The second feature is the practical reality that judges in a majority of American
13 jurisdictions are subject to public election. Although judicial elections differ greatly from
14 elections for other types of office, it is impossible for candidates in a judicial election to
15 avoid all political activity. Canon 5 attempts to remove as much political influence as
16 possible from the judicial election process and from the judiciary itself by imposing
17 certain narrowly tailored restrictions on the political activity - including campaign
18 activity - of sitting judges and all candidates for judicial office. Its Rules operate to
19 guarantee to judges and candidates the constitutional rights of free speech and expressive
20 association, but in so doing, draw a bright line between statements of personal views on
21 disputed legal and political issues on the one hand, and specific pledges or promises to
22 reach a particular result in pending or impending cases on the other.

23
24 When read together, these Rules and aspirational goals codify the traditional and
25 respected ethics precepts that guide and govern our nation’s judges, giving effect to the
26 rule of law. The precepts of the Code will be put to the test in ordinary and extraordinary
27 circumstances; in all instances, they constitute the framework by which not only judges,
28 but other participants in the judicial system and the public at large can evaluate judicial
29 conduct.

SCOPE

The ABA Model Code of Judicial Conduct consists of five Canons, numbered Rules under each Canon, and Comments that accompany and explicate each Rule. This Scope Section and a Terminology Section provide additional guidance in interpreting and applying the Code. At the end of the Code, an Application Section identifies those persons who must comply with the Rules, including full-time judges and others who hold judicial office on other than a full-time basis.

As noted in the Preamble, the Canons state overarching principles of judicial ethics. Compliance with the Rules inevitably results in adherence to these principles, ensuring the respect for our judiciary that sustains our system of democratic government under the rule of law. Although the Canons are cast in mandatory terms, it is the Rules that establish independently enforceable standards of conduct.

Where the Rules use the terms “shall” or “shall not,” they establish mandatory obligations and constitute minimum standards to which judges and candidates for judicial office will be held. Where a Rule uses permissive terms, such as “may,” the matter being addressed is committed to the personal and professional discretion of the judge or candidate in question; judges and candidates whose action or inaction falls within the boundaries of such discretion are not subject to disciplinary action. Enforcement of these standards through appropriate disciplinary processes is effected by the development and application of rules and procedures external to the ethical standards themselves.

The Comments accompanying the Rules provide guidance with respect to the purpose, meaning, and proper application of the Rule. They contain explanatory material and, in some places, provide examples of permitted or prohibited conduct; they neither add to nor subtract from the binding obligations set forth in the Rules. In no instance does a Comment supersede a Rule. When a Comment uses the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies instead that the Rule in question, properly applied, is obligatory as to the point in issue.

The Comments also identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the minimum standards of conduct established by the Rules, holding themselves to the highest ethical standards, seeking to achieve those aspirational goals, and thereby enhancing the dignity of the judicial office.

The Rules set forth under each Canon are rules of reason. They should be interpreted in light of the overarching purposes of the Model Code, with due regard for all relevant circumstances. They are to be applied consistently with constitutional requirements, statutes, rules of court, and decisional law. They must also be construed so as not to impinge on the essential independence of judges in making judicial decisions, or on their

1 right to freedom of speech and association.

2 Although the text of each Rule is binding and enforceable, it is not contemplated that
3 every transgression will result in disciplinary action. Whether disciplinary action is
4 appropriate, and the degree of discipline to be imposed, should be determined through a
5 reasonable and reasoned application of the text and should depend on such factors as the
6 gravity of the transgression, whether there is a pattern of improper activity, and the effect
7 of the misconduct on the judiciary and the public.

8
9 The Code is not designed or intended as a basis for establishing civil liability or
10 instituting criminal prosecution. Neither is it intended to serve as the basis for litigants to
11 seek collateral remedies against each other or to obtain tactical advantages in proceedings
12 before a court. Each of these uses subverts the true purposes of this Code.
13

TERMINOLOGY

Terms below are noted with an asterisk (*) in the Rules where they appear. In addition, the Sections where terms appear are referenced after the explanation of each term.

“Aggregate” in relation to contributions for a candidate denotes not only contributions in cash or in kind made directly to a candidate’s committee or treasurer, but also, except in retention elections, all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. See Rules 2.12(E) and 5.06(B) and (D).

“Appropriate authority” denotes the authority having responsibility for initiation of disciplinary process with respect to the violation to be reported. See Rules 2.17 and 2.18.

“Candidate for judicial office” describes a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. See Preamble and Rules 5.01 through 5.07.

“De minimis,” in the context of a judge’s interests, denotes an insignificant interest that could not raise a reasonable question as to the judge’s impartiality. See Rules 2.12(D)(1) and (2).

“Economic interest” denotes ownership of more than a de minimis legal or equitable interest, but does not extend to a judge’s holdings or interests in mutual or common investment funds, deposits a judge maintains in financial institutions, mutual savings associations or credit unions, or government securities owned by a judge, unless a proceeding pending or impending before the judge could substantially affect the value of such holdings or interests, or the judge is involved in the management of such entities’ holdings. The fact that securities might be held by an educational, charitable, fraternal or civic organization in whose service the judge or the judge’s spouse, parent or child may serve as a director, officer, advisor or other participant does not thereby give the judge an economic interest in such an organization for the purposes of this Code. See Rules 2.12A(2), (3) and (6).

“Fiduciary” includes such relationships as executor, administrator, trustee, or guardian. See Rules 2.12(D)(1) and (H).

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

- 1 (A) ordinary social hospitality common among people in the judge’s community,
2 extended for a non-business purpose by an individual, not a corporation, and
3 limited to the provision of modest items, such as food and refreshments.
4 (B) items having little intrinsic value that are intended solely for presentation, such as
5 plaques, certificates, trophies and greeting cards;
6 (C) bank and other financial institution loans that are made available on the same
7 terms and based on the same criteria applied to applicants who are not judges;
8 (D) opportunities and benefits, including favorable rates and commercial discounts,
9 made available on the same terms and based on the same criteria applied to
10 applicants who are not judges;
11 (E) rewards and prizes that are given to competitors in random drawings, contests or
12 other events that are open to the public, awarded on the same terms and based on
13 the same criteria applied to other competitors;
14 (F) scholarships and fellowships awarded on the same terms and based on the same
15 criteria applied to applicants who are not judges;
16 (G) reimbursement or waiver of charges for travel-related expenses governed by Rule
17 4.14; or
18 (H) compensation for extra-judicial activities that is governed by Rule 4.14. See Rule
19 4.13.

20 “Impartiality” or “impartial” denotes the condition of being without bias or prejudice in
21 favor of, or against, particular parties or classes of parties, or their representatives, and of
22 maintaining an open mind in considering issues that may come before the judge. See
23 Canon 1 and Rule 1.02, Canon 2 and Rules 2.04, 2.11, 2.12, and Rules 4.01, 4.04, 4.14
24 and 4.15, and Canon 5.

25 “Impropriety” denotes conduct that compromises the ability of a judge to carry out
26 judicial responsibilities with integrity, impartiality, and independence, or otherwise
27 demeans the judicial office. See Canon 1 and Rule 1.03.

28 “Independence” denotes a judge’s freedom from influence, guidance or controls other
29 than those established by law. See Canon 1 and Rule 1.02, Rule 2.07 Comments.

30 “Integrity” denotes probity, fairness, honesty, uprightness and soundness of character.
31 See Canon 1 and Rule 1.02.

32 “Knowingly,” “knowledge,” “known” and “knows” denote actual knowledge of the fact
33 in question. A person’s knowledge may be inferred from circumstances. See Rule 5.01(J)
34 and Comment [18].

35 “Law” encompasses court rules as well as statutes, constitutional provisions and
36 decisional law. See Rules 1.04, 2.01, 2.04, 2.09, 2.10(A)(2) and (7), 4.02(A), 4.03,
37 4.04(A) and (B), 4.06, 5.06(B) and (D), and 5.07(A).

1 “Member of the candidate’s family” denotes a spouse, child, grandchild, parent,
2 grandparent or other relative or person with whom the candidate maintains a close
3 familial relationship. See Rule 5.01, Comment [18].

4 “Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent
5 or other relative or person with whom the judge maintains a close familial relationship.
6 See Rules 4.05(A), 4.08 and 4.13(B).

7 “Member of a judge’s family residing in the judge’s household” denotes any relative of a
8 judge by blood or marriage or a person treated by a judge as a member of the judge’s
9 family who resides in the judge’s household. See Rule 4.13.

10 “Nonpublic information” denotes information that is not available to the public.
11 Nonpublic information may include, but is not limited to, information that is sealed by
12 statute or court order, impounded or communicated *in camera*, and information offered in
13 grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports.
14 See Rule 3.02.

15 “Political organization” denotes a political party or other group sponsored by or affiliated
16 with a political party or candidate, the principal purpose of which is to further the election
17 or appointment of candidates for political office. For purposes of this Code, the term does
18 not include a judicial candidate’s campaign committee created as authorized by Rule
19 5.06. See Rules 5.01 through 5.05.

20 “Public election” includes primary and general elections, partisan elections, nonpartisan
21 elections and retention elections. See Rules 5.01, 5.02, 5.03 and 5.06

22 “Spouse” denotes an individual to whom a judge is married or a domestic partner. See
23 Rules 2.12, 4.13, and 4.14.

24 “Third degree of relationship” includes the following individuals: great-grandparent,
25 grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild,
26 nephew and niece. See Rule 2.12.

27 “Widely-attended event” denotes a convention, conference, symposium, forum, panel
28 discussion, dinner, reception or similar event that more than [25] persons are expected to
29 attend. See Rule 4.13.

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CANON 1

A JUDGE SHALL UPHOLD THE INTEGRITY, IMPARTIALITY, AND INDEPENDENCE OF THE JUDICIARY¹ AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL THE JUDGE’S ACTIVITIES²

RULE 1.01: COMPLIANCE WITH THIS CODE

A judge shall observe the standards of conduct embodied in these Rules.³

COMMENT

[1] An independent judiciary is indispensable to justice in our society.⁴ Judicial compliance with high standards of judicial conduct promotes the integrity, impartiality, and independence of the judiciary and fosters public confidence in the administration of justice.

[2] Judges should also participate in activities that promote ethical conduct generally among judges and lawyers. Judges are encouraged to study, develop, maintain, implement and enforce codes of conduct, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

RULE 1.02: PROMOTING CONFIDENCE IN THE JUDICIARY

A judge shall act at all times in a manner that promotes public confidence in the integrity, impartiality, and independence of the judiciary.⁵

COMMENT

[1] Deference to the judgments and rulings of courts depends upon public confidence in the integrity, impartiality, and independence of judges. The integrity, impartiality, and independence of judges depends in turn upon their acting without fear or favor in a manner free from favoritism, self-interest, or bias. Violations of this Code diminish public

¹ Canon 1A
² Canon 1A
³ Canon 2A (partial)
⁴ Canon 1A Comment
⁵ Canon 2A (partial)

1 confidence in the judiciary and thereby do injury to the system of
2 government under law.⁶

3 **RULE 1.03: IMPROPRIETY AND ITS APPEARANCE**

4 **A judge shall avoid impropriety and the appearance of**
5 **impropriety.**⁷

6 **COMMENT**

7 [1] Public confidence in the judiciary is eroded by improper conduct
8 by judges. The prohibition against acting with impropriety or the
9 appearance of impropriety applies to both the professional and personal
10 conduct of a judge. A judge must expect to be the subject of public
11 scrutiny. A judge must therefore accept restrictions on the judge's conduct
12 that might be viewed as burdensome by the ordinary citizen and should do
13 so freely and willingly.⁸

14 [2] The test for impropriety is whether the conduct compromises the
15 ability of the judge to carry out judicial responsibilities with integrity,
16 impartiality, independence and competence. Examples of actual
17 improprieties under this Rule include violations of law, court rules, or
18 other specific provisions of this Code. The test for an appearance of
19 impropriety is whether the conduct would create, in reasonable minds, a
20 perception that the judge's ability to carry out judicial responsibilities with
21 integrity, impartiality, independence and competence is impaired.⁹

22 **RULE 1.04: COMPLYING WITH THE LAW**

23 **A judge shall respect and comply with the law.**¹⁰

24 **COMMENT**

25 [1] The provisions of this Code focus primarily on judicial compliance
26 with an established set of ethical norms, which, when officially adopted by
27 an entity having regulatory power over the judiciary, are only one of the
28 many types of laws that judges must obey. Judges are no less obligated to
29 observe all valid forms of law than are those who come before them. Thus,
30 a judge's obligation to respect and comply with all law extends as well to
31 require compliance with statutes and court rules.

⁶ Canon 1A Commentary (note some statements appear in a different order)

⁷ Canon 2 Commentary

⁸ Canon 2A Commentary (note some statements appear in a different order)

⁹ Canon 2A Commentary

¹⁰ Canon 2A (partial)

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CANON 2

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE
IMPARTIALLY AND DILIGENTLY¹**

IN GENERAL

RULE 2.01: GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE

A judge shall not allow other activities to take precedence over the duties of judicial office. The duties of judicial office include all the responsibilities of the judge's office prescribed by law*.²

COMMENT

[1] Although judges engage in a variety of activities, the most fundamental feature of their judicial role is the interpretation and application of the law. For that reason, those official duties that further the judicial function directly, through adjudication, or indirectly, through the performance of administrative or reporting responsibilities, are of paramount significance.

ADJUDICATION

Rule 2.02: THE RESPONSIBILITY TO DECIDE

A judge shall hear and decide matters assigned to the judge except those in which disqualification is required by Rule 2.12³ or other applicable law.

COMMENT

[1] Judges must be available to decide the matters that come before the court. To protect the rights of litigants and preserve public confidence in the integrity, impartiality, and independence of the judiciary, however, there will be times when disqualification is necessary. On the other hand, unwarranted disqualification may bring public disfavor to the bench and to the judge personally. The dignity of the bench, the judge's respect for fulfillment of judicial duties and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification simply to avoid cases that present difficult, controversial, or distasteful issues.

¹ Canon 3

² Canon 3A

³ Canon 3B(1)

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[2] A judge’s obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify has been filed.

[3] To ensure that judges remain available to fulfill their judicial duties, a judge must conduct his or her extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 4.

RULE 2.03: COMPETENCE

A judge shall perform the duties of judicial office competently.⁴

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness and preparation reasonably necessary to perform the judge’s responsibilities of office.

[2] When applying and interpreting the law 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, may in some circumstances constitute a violation of this Rule.

[3] Judicial competence may be diminished and compromised when a judge is impaired by drugs, alcohol or other mental or physical impairments. See Rule 2.19.

RULE 2.04: IMPARTIALITY AND FAIRNESS

A judge shall uphold and apply the law, and decide all cases with impartiality and fairness.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded, and must not demonstrate favoritism toward anyone.

[2] Although a judge’s background and personal philosophy may influence the way in which the judge analyzes and interprets a legal issue, a judge must interpret and apply the law without regard to whether the judge personally approves or disapproves of the law in question.

⁴ Canon 3B(2)(partial)

1 **RULE 2:05 BIAS AND DISCRIMINATION**

2
3 **A. A judge shall perform judicial duties without bias or prejudice.**
4 **A judge shall not, in the performance of judicial duties, by words or**
5 **conduct manifest bias or prejudice, including but not limited to bias or**
6 **prejudice based upon race, gender, religion, national origin, ethnicity,**
7 **disability, age, sexual orientation or socioeconomic status, and shall not**
8 **permit staff, court officials and others subject to the judge’s direction**
9 **and control to do so.⁵**

10
11 **B. A judge shall require lawyers in proceedings before the judge to**
12 **refrain from manifesting bias or prejudice based upon race, gender,**
13 **religion, national origin, ethnicity, disability, age, sexual orientation or**
14 **socioeconomic status, against parties, witnesses, counsel or others. This**
15 **Rule does not preclude legitimate advocacy when these or other similar**
16 **factors are issues in the proceeding.⁶**

17
18 **COMMENT**

19
20 [1] A judge who manifests bias in a proceeding impairs the fairness of
21 the proceeding and brings the judiciary into disrepute. Even facial
22 expression and body language can convey to parties or lawyers in the
23 proceeding, jurors, the media and others an appearance of bias. A judge
24 must avoid conduct that may be perceived as prejudiced or biased.⁷

25
26 [2] Examples of manifestations of bias include but are not limited to
27 epithets, slurs, demeaning nicknames, negative stereotyping, attempted
28 humor based on stereotypes, threatening, intimidating or hostile acts,
29 suggesting a connection between race or nationality and crime, and
30 irrelevant references to personal characteristics. This rule does not preclude
31 legitimate references to those factors when relevant to an issue in a
32 proceeding.

33
34 [3] A judge must refrain from speech, gestures or other conduct that
35 could reasonably be perceived as harassment and must require the same
36 standard of conduct of others subject to the judge’s direction and control.⁸

37
38 **RULE 2.06: DILIGENCE**

39
40 **A judge shall act diligently in the performance of all his or her judicial**
41 **duties, disposing of all judicial matters promptly, efficiently and fairly.⁹**

⁵ Canon 3B(5)

⁶ Canon 3B(6)

⁷ Canon 3B(5)

⁸ Canon 3B(5)

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COMMENT

[1] Prompt disposition of the court’s business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.¹⁰

[2] In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

RULE 2.07: EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

A. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.¹¹

B. A judge shall not allow family, social, political or other relationships to influence the judge’s judicial conduct or judgment.¹²

C. A judge shall not convey or permit other persons to convey the impression that such persons are in a position to influence the judge.¹³

COMMENT

[1] An independent judiciary requires that judges decide cases according to law and facts without regard to whether the law or the litigants are popular or unpopular with the public, the media, government officials, or the judge’s own friends or family.

[2] Confidence in the judiciary is eroded if judicial decision-making is perceived to be subject to inappropriate outside influences. It is essential to judicial independence, impartiality and maintaining the public’s confidence in the justice system that judges not create a perception that their decisions could be colored by such influences.

RULE 2.08: DEMEANOR AND DECORUM

⁹ Canon 3B(8)
¹⁰ Canon 3B(8) Commentary (paragraphs reversed in order)
¹¹ Canon 3B(2) second sentence
¹² Canon 2B first sentence
¹³ Canon 2B (partial)

1 **A. A judge shall require order and decorum in proceedings before**
2 **the judge.**¹⁴

3
4 **B. A judge shall be patient, dignified and courteous to litigants,**
5 **jurors, witnesses, lawyers and others with whom the judge deals in an**
6 **official capacity, and shall require similar conduct of lawyers, and of**
7 **staff, court officials and others subject to the judge’s direction and**
8 **control.**¹⁵

9
10 **C. A judge shall not commend or criticize jurors for their verdict**
11 **other than in a court order or opinion in a proceeding, but may express**
12 **appreciation to jurors for their service to the judicial system and the**
13 **community.**¹⁶

14
15 **COMMENT**

16
17 [1] The duty to hear all proceedings fairly and with patience is not
18 inconsistent with the duty to dispose promptly of the business of the court.
19 Judges can be efficient and businesslike while being patient and deliberate.¹⁷

20
21 [2] Commending or criticizing jurors for their verdict may imply a
22 judicial expectation in future cases and may impair a juror’s ability to be fair
23 and impartial in a subsequent case.¹⁸

24
25 [3] If a judge exercises caution and is not otherwise prohibited by law, a
26 judge may meet with jurors after trial to answer questions about and discuss
27 ways to improve the jury process, but should not engage in any substantive
28 discussion of the case. At such a meeting, a judge should not, for example,
29 suggest or imply to a jury that he or she agrees or disagrees with the verdict,
30 reveal evidence that had been suppressed or the subject of a motion in
31 limine, discuss the rulings on objections made at trial, or review any
32 proceedings that took place outside the presence of the jury.

33
34 **RULE 2.09: ENSURING THE RIGHT TO BE HEARD**

35
36 **A judge shall accord to every person who has a legal interest in a**
37 **proceeding, or that person’s lawyer, the right to be heard according to**
38 **law*.**¹⁹

39

¹⁴ Canon 3B(3)
¹⁵ Canon 3B(4)
¹⁶ Canon 3B(11)
¹⁷ Canon 3B(4)
¹⁸ Canon 3B(11)
¹⁹ Canon 3B(7) (partial)

1 **COMMENT**

2
3 [1] The right to be heard is an essential component of a fair and
4 impartial system of justice. Substantive rights of litigants can be protected
5 only if procedures protecting the right to be heard are respected.

6
7 [2] The judge has an important role to play in overseeing the settlement
8 of disputes, but should be careful that efforts to further settlement do not
9 undermine a party's right to be heard according to law. A judge may
10 therefore encourage parties to a proceeding and their lawyers to settle
11 matters in dispute but should not act in a manner that coerces a party into
12 settlement.

13
14 **RULE 2.10 : EX PARTE COMMUNICATIONS**

15
16 **A. A judge shall not initiate, permit, or consider ex parte**
17 **communications, or consider other communications made to the judge**
18 **outside the presence of the parties concerning a pending or impending**
19 **proceeding except as provided in sections (1) through (5), below:²⁰**

20
21 **(1) Where circumstances require, ex parte communications**
22 **for scheduling, administrative purposes or emergencies that do**
23 **not deal with substantive matters are authorized, provided:²¹**

24 **(a) the judge reasonably believes that no party will**
25 **gain a procedural, substantive, or tactical advantage as a**
26 **result of the ex parte communication, and²²**

27 **(b) the judge makes provision by delegation or**
28 **otherwise promptly to notify all other parties of the**
29 **substance of the ex parte communication and allows them**
30 **an opportunity to respond.²³**

31 **(2) A judge may solicit information and opinions from a**
32 **disinterested expert on the law in a proceeding before the judge**
33 **if the judge first gives notice to the parties of the person to be**
34 **consulted and the substance of the information or opinions**
35 **sought, and affords the parties reasonable opportunity to**
36 **respond.²⁴**

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²⁰ Canon 3B(7) (partial)

²¹ Canon 3B(7)(a)

²² Canon 3B(7)(a)(i)

²³ Canon 3B(7)(a)(ii)

²⁴ Canon 3B(7)(b)

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(3) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities, or with other judges,²⁵ provided that 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.

(4) 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.²⁶

(5) A judge may initiate or consider any ex parte communications when expressly authorized by law* to do so.²⁷

B. A judge shall not independently investigate facts in a case and shall consider only the evidence presented.²⁸

C. A judge shall make reasonable efforts, including the provision of appropriate supervision, to ensure that Rule 2.10 is not violated through law clerks or other personnel on the judge’s staff.²⁹

COMMENT³⁰

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

[2] Whenever the presence of a party or notice to a party is required by Rule 2.10, 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.

[3] 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.

[4] Certain ex parte communication is approved by Rule 2.10 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 Rule 2.10 are

²⁵ Canon 3B(7)(c)
²⁶ Canon 3B(7)(d)
²⁷ Canon 3B(7)(e)
²⁸ Canon 3B(7)
²⁹ Canon 3B(7)

1 clearly met. A judge must disclose to all parties, in a manner that ensures
2 notice, all ex parte communications described in Rules 2.10A(1) and
3 2.10A(2) regarding a proceeding pending or impending before the judge.
4

5 [5] An appropriate and often desirable method of obtaining the advice of
6 a disinterested expert on legal issues is to invite the expert to file a brief
7 *amicus curiae*.
8

9 [6] A judge may consult with other judges on pending matters, but must
10 avoid ex parte discussions of a case with other judges who have previously
11 been disqualified from hearing the matter.
12

13 [7] If communication between the trial judge and the appellate court
14 with respect to a proceeding is permitted, a copy of any written
15 communication or the substance of any oral communication should be
16 provided to all parties.
17

18 [8] The prohibition against a judge investigating the facts of a case
19 independently or through a member of the judge’s staff extends to
20 information available in all mediums, including electronic ones.
21

22 **RULE 2.11: JUDICIAL STATEMENTS ON PENDING AND FUTURE CASES**
23

24 **A. A judge shall not make any comment that might reasonably be**
25 **expected to affect the outcome or impair the fairness of a matter**
26 **pending or impending in any court.**
27

28 **B. The judge shall require similar abstention on the part of staff,**
29 **court officers, and others subject to the judge’s direction and control.**³¹
30

31 **C. A judge shall not, with respect to cases, controversies or issues**
32 **that are likely to come before the court, make pledges, promises or**
33 **commitments that are inconsistent with the impartial performance of**
34 **the adjudicative duties of judicial office.**³²
35

36 **COMMENT**
37

38 [1] Rule 2.11 restrictions on judicial speech are essential to the
39 maintenance of the integrity, impartiality, and independence of the
40 judiciary.³³
41

³¹ Canon 3B(9)
³² Canon 3B(10)
³³ Canon 3B(10)

1 [2] A pending matter is any one that has commenced; a matter remains
2 pending and continues through any appellate process until final disposition.
3 An impending proceeding is one that is anticipated but not yet commenced.
4 A matter is impending when there is reason to believe a case may be filed,
5 for example, when a crime is being investigated but no charges have been
6 brought, or when someone has been arrested but not yet charged.³⁴
7

8 [3] This Rule does not prohibit a judge from commenting on
9 proceedings in which the judge is a litigant in a personal capacity. In cases
10 such as a writ of mandamus, however, in which the judge is a litigant in an
11 official capacity, the judge must not comment publicly.
12

13 [4] Provided that the judge complies with the requirements of 2.11A and
14 B this Rule does not prohibit judges from making public statements in the
15 course of their official duties, from explaining the procedures of the court to
16 the public,³⁵ or from responding directly, or through a third party to
17 allegations in the media or elsewhere concerning the judge's conduct in a
18 matter.
19

20 [5] Subject to the provisions of this Rule, candidates for judicial office
21 may respond to unjust criticism. See Rule 5.01, Comment [12].
22

23 **RULE 2.12: DISQUALIFICATION**
24

25 **A. A judge shall disqualify himself or herself in any proceeding in**
26 **which the judge's impartiality might be questioned by a reasonable**
27 **person including but not limited to circumstances where:³⁶**
28

29 (1) **the judge has a personal bias or prejudice concerning a**
30 **party or a party's lawyer, or personal knowledge of disputed**
31 **evidentiary facts concerning the proceeding;³⁷**
32

33 (2) **the judge, the judge's spouse or domestic partner, a**
34 **person within the third degree of relationship to either of them,**
35 **or the spouse or domestic partner of such a person is**
36

37 (a) **a party to the proceeding, or an officer, director or**
38 **trustee of a party;**
39

40 (b) **acting as a lawyer in the proceeding;**
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³⁴Canon 3B(10)

³⁵Canon 3B(9) portion of the black letter

³⁶Canon 3E(1)

³⁷Canon 3E(1)(a)

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(c) known by the judge to be a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) to the judge’s knowledge likely to be a material witness in the proceeding;

(3) the judge knows that he or she, individually or as a 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;³⁸

(4) the judge knows or learns by means of a timely motion that a party or party’s lawyer has within the previous [1 year] made aggregate contributions to the judge’s campaign in an amount that is greater than [[\\$] for an individual or [\$] for an entity] [is reasonable and appropriate for an individual or an entity];³⁹

(5) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit the judge with respect to an issue in the proceeding or the controversy in the proceeding;⁴⁰

(6) the judge

(a) 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;⁴¹

(b) within the preceding [three] years, was associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy.⁴²

(c) served in governmental employment and in such capacity participated as lawyer, advisor, or material witness concerning the proceeding or expressed an

³⁸ Canon 3E(1)(c)
³⁹ Canon 3E(1)(e)
⁴⁰ Canon 3E(1)(f)
⁴¹ Canon 3E(1)(b)
⁴² Canon 3E(1)(b)

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opinion concerning the merits of the particular case in controversy; or

(d) served as a material witness concerning the matter

(e) previously presided as a judge over the proceeding in the same or another court.

B. A judge shall keep informed about the judge’s personal and fiduciary* economic interests*, and make a reasonable effort to keep informed about the personal economic interests of the judge’s spouse or domestic partner and minor children residing in the judge’s household.⁴³

C. A judge subject to disqualification by the terms of this Rule, other than paragraph A(1), may disclose on the record the basis of the judge’s disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification if such waiver is permitted by law. If the parties and lawyers, without participation by the judge, subsequently agree that the judge should not be disqualified, the judge may participate in the proceeding. Such a remittal agreement shall be written and shall be incorporated in the record of the proceeding.⁴⁴

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge’s impartiality might reasonably be questioned, regardless of whether any of the specific provisions of Rule 2.12A (1) – (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm was appearing, unless the disqualification was waived by the parties after disclosure by the judge.⁴⁵

[2] By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for

⁴³ Canon 3E(2)

⁴⁴ Canon 3F

⁴⁵ Canon 3E(1)

1 possible disqualification and make reasonable efforts to transfer the matter
2 to another judge as soon as practicable.⁴⁶
3

4 [3] A lawyer in a government agency does not ordinarily have an
5 association with other lawyers employed by that agency within the meaning
6 of Rule 2.12A(6)(a); a judge formerly employed by a government agency,
7 however, shall disqualify himself or herself in a proceeding if the judge's
8 impartiality might reasonably be questioned because of such association.⁴⁷
9

10 [4] The fact that a lawyer in a proceeding is affiliated with a law firm
11 with which a relative of the judge is affiliated does not of itself disqualify
12 the judge. If, however, "the judge's impartiality might reasonably be
13 questioned" under Rule 2.12A or the relative is known by the judge to have
14 an interest in the law firm that could be "substantially affected by the
15 proceeding" under Rule 2.12A(3) the judge's disqualification may be
16 required.⁴⁸
17

18 [5] A judge should disclose on the record information that the judge
19 believes the parties or their lawyers might consider relevant to the question
20 of disqualification, even if the judge believes there is no basis for
21 disqualification.⁴⁹ The procedure described in Rule 2.12C provides the
22 parties an opportunity to proceed without delay if they wish to waive the
23 disqualification. A party may act through counsel if counsel represents on
24 the record that the party has been consulted and consents. As a practical
25 matter, a judge may wish to have all parties and their lawyers sign any
26 remittal agreement.⁵⁰
27

28 [6] "Fiduciary" includes such relationships as executor, administrator,
29 trustee and guardian.
30

31 [7] An "economic interest" does not extend to such holdings or interests
32 as a judge might have, for example, in mutual or common investment funds,
33 deposits a judge might maintain in financial institutions, mutual savings
34 associations or credit unions, or government securities owned by a judge,
35 unless a proceeding pending or impending before the judge could
36 substantially affect the value of such holdings or interests, or the judge is
37 involved in the management of such entities' holdings. The fact that
38 securities might be held by an educational, charitable, fraternal or civic
39 organization in whose service a judge or the judge's spouse, parent or child
40 may serve as a director, officer, advisor or other participant does not thereby

⁴⁶ Canon 3E(1)

⁴⁷ Canon 3E(1)(b)

⁴⁸ Canon 3E(1)(f)

⁴⁹ Canon 3E(1)

⁵⁰ Canon 3F

1 give a judge an economic interest in such an organization for the purposes of
2 this Rule.

3
4 **ADMINISTRATION**

5
6 **RULE 2.13: ADMINISTRATIVE COMPETENCE AND DILIGENCE**

7
8 **A judge shall discharge the judge’s administrative responsibilities**
9 **promptly and without bias or prejudice, maintain competence in**
10 **judicial administration, and shall cooperate with other judges and court**
11 **officials in the administration of court business.**⁵¹

12
13 **COMMENT**

14
15 [1] The judge’s obligation to perform responsibilities diligently,
16 competently, and without bias or prejudice, applies equally to the judge’s
17 administrative responsibilities.

18
19 **RULE 2.14: SUPERVISION OF STAFF**

20
21 **A judge shall require staff, court officials and others subject to the**
22 **judge’s direction and control to act in a manner consistent with this**
23 **Code.**⁵²

24
25 **COMMENT**

26
27 [1] The first contact that members of the public have with the judicial
28 system is often with court staff. It is therefore especially important that
29 judges ensure that the conduct of personnel subject to their direction and
30 control is consistent with the standards of conduct embodied in this code.

31
32 **RULE 2.15: SUPERVISION OF OTHER JUDGES**

33
34 **A judge with supervisory authority for the performance of other judges**
35 **shall take reasonable measures to assure the prompt, efficient and fair**
36 **disposition of matters before them and the proper discharge of their**
37 **other judicial responsibilities.**⁵³

38
39 **COMMENT**

40
41 [1] Public confidence in the courts depends on timely justice. To
42 promote the efficient administration of justice, judges with supervisory

⁵¹ Canon 3C(1)
⁵² Canon 3C(2)
⁵³ Canon 3C(3)

1 authority must take the steps needed to ensure that judges under their
2 supervision administer their workload expeditiously.

3
4 **RULE 2.16: ADMINISTRATIVE APPOINTMENTS**
5

6 **A. A judge shall exercise the power of appointment impartially and**
7 **on the basis of merit. A judge shall avoid nepotism, favoritism, and**
8 **unnecessary appointments. A judge shall not approve compensation of**
9 **appointees beyond the fair value of services rendered.⁵⁴**

10
11 **B. A judge shall not appoint a lawyer to a position if the judge**
12 **either knows that the lawyer has contributed more than [\$] within the**
13 **prior [] years to the judge's election campaign,⁵⁵ or learns of such a**
14 **contribution by means of a timely motion by a party or other person**
15 **properly interested in the matter, unless⁵⁶**

16
17 (1) **the position is substantially uncompensated;⁵⁷**

18
19 (2) **the lawyer has been selected in rotation from a list of**
20 **qualified and available lawyers compiled without regard to their**
21 **having made political contributions; or⁵⁸**

22
23 (3) **the judge or another presiding or administrative judge**
24 **affirmatively finds that no other lawyer is willing, competent and**
25 **able to accept the position.⁵⁹**

26
27 **COMMENT**
28

29 [1] Appointees of a judge include assigned counsel, officials such as
30 referees, commissioners, special masters, receivers and guardians, and
31 personnel such as clerks, secretaries, and bailiffs. Consent by the parties to
32 an appointment or an award of compensation does not relieve the judge of
33 the obligation prescribed by Rule 2.16.⁶⁰

34
35 **Rule 2.17: REPORTING JUDICIAL MISCONDUCT**
36

⁵⁴ Canon 3C(4)

⁵⁵ The following footnote appears in the 1990 Code: This provision is meant to be applicable wherever judges are subject to public election; specific amount and time limitations, to be determined based on circumstances within the jurisdiction, should be inserted in the brackets.

⁵⁶ Canon 3C(5)

⁵⁷ Canon 3C(5)(a)

⁵⁸ Canon 3C(5)(b)

⁵⁹ Canon 3C(5)(c)

⁶⁰ Canon 3C(5)

1 **A judge having knowledge* that another judge has committed a**
2 **violation of this Code that raises a substantial question as to the judge’s**
3 **honesty, trustworthiness or fitness as a judge in other respects shall**
4 **inform the appropriate authority*. A judge who receives information**
5 **indicating a substantial likelihood that another judge has committed a**
6 **violation of this Code should take appropriate action.**⁶¹

7
8 **COMMENT**

9
10 [1] As an officer of the judicial system, each judge has a responsibility
11 to participate in efforts to ensure public respect for the system’s operation.
12 Ignoring or denying known misconduct among one’s fellow judges
13 undermines that responsibility. Taking affirmative action to address known
14 misconduct is therefore a judge’s obligation. Appropriate action may
15 include direct communication with the judge who has committed the
16 violation, other direct action if available, and reporting the violation to the
17 appropriate authority or other agency or body.⁶²

18
19 **RULE 2.18: REPORTING LAWYER MISCONDUCT**

20
21 **A judge having knowledge* that a lawyer has committed a violation of**
22 **the [Rules of Professional Conduct] [other title for the jurisdiction’s**
23 **rules for lawyer conduct] that raises a substantial question as to the**
24 **lawyer’s honesty, trustworthiness or fitness as a lawyer in other**
25 **respects shall inform the appropriate authority*. A judge who receives**
26 **information indicating a substantial likelihood that a lawyer has**
27 **committed a violation of the [Rules of Professional Conduct] should**
28 **take appropriate action.**⁶³

29
30 **COMMENT**

31
32 [1] Appropriate action may include direct communication with the
33 lawyer who has committed the violation, and reporting the violation to the
34 appropriate authority or other agency or body.⁶⁴

35
36 **RULE 2.19: DISABILITY AND IMPAIRMENT**

37
38 **A judge having knowledge that the performance of a lawyer or another**
39 **judge is impaired by drugs, alcohol, or other mental, emotional or**
40 **physical condition shall take appropriate action, which may include a**

⁶¹ Canon 3D(1) (order of sentences reversed)

⁶² Canon 3D

⁶³ Canon 3D(2) (order of sentences reversed)

⁶⁴ Canon 3D

1 **confidential referral to a lawyer assistance program or a judicial**
2 **assistance program.**

3
4 **COMMENT**

5
6 [1] Taking or initiating corrective action by way of referral to an
7 assistance program can fulfill several laudable purposes. For example, an
8 intervention can be the first step toward a successful recovery program. That
9 action alone may satisfy the mandates expressed in this Rule. Depending on
10 the gravity of the conduct, however (i.e., the conduct in response to which
11 action is necessary), a judge having knowledge of such conduct may be
12 required to take action in addition to or in lieu of a referral to a relevant
13 assistance program.

14
15 [2] “Appropriate action” means action intended and reasonably likely to
16 help the judge or lawyer in question to correct the problem.

17
18 **RULE 2.20: IMMUNITY FOR DISCHARGE OF DUTIES**

19
20 **Acts of a judge in responding to judicial misconduct, lawyer**
21 **misconduct, or disability and impairment under Rules 2.17, 2.18, and**
22 **2.19 are part of a judge’s judicial duties and shall be absolutely**
23 **privileged, and no civil action predicated thereon may be instituted**
24 **against the judge.⁶⁵**

25
26 **COMMENT**

27
28 [1] To encourage judges to report or otherwise act on evidence of lawyer
29 and judicial misconduct as required by these Rules, it is important that
30 judges be insulated from threats of civil action when they act in compliance
31 with their obligations under such rules.

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⁶⁵ Canon 3D(3)

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CANON 3

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

RULE 3.01: INFLUENCE OF PERSONAL INTERESTS ON JUDICIAL CONDUCT

A judge shall not allow his or her financial, political or other personal interests or relationships to influence his or her judicial conduct or judgment.¹

RULE 3.02: MISUSING THE PRESTIGE OF JUDICIAL OFFICE

A judge shall not lend the prestige of judicial office, or allow others to do so, to advance the personal interests of the judge or others.²

COMMENT

[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.³

[2] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.⁴

[3] Special considerations arise when judges write or contribute to publications, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writings, the judge should retain sufficient control over the advertising to avoid exploitation of the judge's office. Prohibited conduct includes, but is not limited to, allowing the publisher to praise the judge's judicial accomplishments or, when the work is unrelated to the law, to emphasize the judge's position.⁵

¹ Canon 2B (partial)

² Canon 2B (partial)

³ Canon 2B Commentary

⁴ Canon 2B Commentary

⁵ Canon 2B Commentary

1 [4] This rule does not apply to a judge's use of his or her name in connection
2 with campaign activity as permitted in Canon 5. Judges may participate in the
3 process of judicial selection by cooperating with appointing authorities and
4 screening committees, and by responding to inquiries from such entities
5 concerning the professional merit of a person being considered for a judgeship.⁶
6

7 [5] A judge may provide a reference or a recommendation for an individual
8 based upon the judge's personal knowledge. When a judge is personally aware of
9 facts or circumstances that would contribute to an accurate assessment of the
10 individual under consideration, a judge may properly communicate that
11 knowledge, and his or her opinions based thereon, to those responsible for making
12 decisions concerning the applicant. The judge's awareness may be based, for
13 example, on personal knowledge of the individual or special knowledge derived
14 from some relationship, such as that with a law clerk or long-time family friend.
15 In any case, in considering whether it is appropriate to write the recommendation
16 on official or personal letterhead, the judge should carefully consider whether the
17 recommendation or endorsement might reasonably be perceived as exerting
18 pressure by reason of his or her judicial office, and should avoid any action that
19 could be so understood.⁷
20

21 [6] A judge must not initiate the communication of information to a
22 sentencing judge or a probation or corrections officer, but may provide to such
23 persons information for the record in response to a formal request.⁸
24

25 **RULE 3.03: USE OF NON-PUBLIC INFORMATION**

26
27 **A judge shall not intentionally disclose or use nonpublic information***
28 **acquired in a judicial capacity for any purpose unrelated to judicial duties.**⁹
29

30 **COMMENT**

31
32 [1] In the course of performing their judicial duties, judges may acquire
33 information of commercial or other value that is unavailable to the public. Judges
34 must not reveal or use such information for personal gain or for any purpose
35 unrelated to their judicial duties.
36

37 **RULE 3.04: AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

38
39 **A judge shall not hold membership in any organization that practices**
40 **invidious discrimination on the basis of race, gender, religion, national**

⁶ Canon 2B Commentary

⁷ Canon 2B Commentary

⁸ Canon 2B Commentary

⁹ Canon 3B(12)

1 **origin, ethnicity, or sexual orientation, and shall not use the benefits or**
2 **facilities of such an organization to any significant extent.**¹⁰

3
4 **COMMENT**¹¹

5
6 [1] A judge's membership in an organization that practices invidious
7 discrimination creates the perception that the judge's impartiality is impaired.
8 Whether an organization's practices are invidiously discriminatory is often a
9 complex question. In general, an organization is said to discriminate invidiously if
10 it arbitrarily excludes from membership on the basis of race, religion, gender,
11 national origin, ethnicity or sexual orientation those individuals who would
12 otherwise be admitted, and the exclusion is not reasonably related to a legitimate
13 purpose. Rule 3.04 does not prohibit a judge's membership in any organization
14 dedicated to the preservation of religious, ethnic or legitimate cultural values of
15 common interest to its members.

16
17 [2] Public manifestation by a judge of the judge's approval of invidious
18 discrimination on any basis gives the appearance of impropriety in violation of
19 Rule 1.01 and diminishes public confidence in the integrity and impartiality of the
20 judiciary. Rule 3.04 relates only to organizations invidiously discriminating on the
21 basis of race, gender, religion, national origin, ethnicity, or sexual orientation.
22 However, a judge's membership in or significant use of the benefits and facilities
23 of organizations practicing invidious discrimination on any other basis prohibited
24 by applicable law creates the appearance of impropriety in violation of Rule 1.01.

25
26 [3] Whether a judge's use of the benefits and facilities of a discriminatory
27 organization is significant depends on whether the frequency or nature of that use
28 is sufficient to create the impression that the judge approves of the organization
29 and its practices. Accordingly, a judge must not arrange a meeting or regularly
30 attend events at, or regularly use other benefits and facilities of, an organization
31 that the judge knows practices invidious discrimination on the basis of race,
32 gender, religion, national origin, ethnicity or sexual orientation in its membership
33 or other policies.

34
35 [4] When a judge learns that an organization to which the judge belongs
36 engages in invidious discrimination, the judge must resign immediately from the
37 organization.

38
39 **RULE 3.05: TESTIFYING AS A CHARACTER WITNESS**

40
41 **A judge shall not testify as a character witness, except when properly**
42 **summoned.**¹²

¹⁰ Canon 2C

¹¹ Comment is taken from Canon 2C Commentary

¹² Canon 2B (partial)

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COMMENT

[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.¹³

¹³ Canon 2B Commentary

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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 OBLIGATIONS¹**

RULE 4.01: EXTRA-JUDICIAL ACTIVITIES IN GENERAL

**A judge shall conduct all of the judge’s extra-judicial activities so that
they²**

**A. do not interfere with the proper performance of judicial
duties;³**

**B. do not cast reasonable doubt on the judge’s capacity to act
with integrity, impartiality, and independence; and⁴**

C. comply with the requirements of this Code.

COMMENT

[1] Judges are encouraged to engage in appropriate extra-judicial activities so as not to become isolated from their communities, and to further the public’s understanding of how courts and the judicial system affect their lives.

[2] Expressions of bias or prejudice by a judge, at any time, may cast reasonable doubt on the judge’s ability to act impartially as a judge. Such expressions include jokes and other remarks demeaning individuals on the basis of race, gender, religion, ethnicity, national origin, disability, age, sexual orientation or socioeconomic status. See Rule 3.04 and accompanying Comments.⁵

[3] As a judicial officer specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of the justice system. Such contributions may take the form of speaking, writing, teaching or participating in other extrajudicial activities. In many instances, these activities may contribute significantly to the promotion of the fair

¹ Canon 4
² Canon 4A
³ Canon 4A(3)
⁴ Canon 4A(1)
⁵ Canon 4A Commentary

1 administration of justice and to ensuring the integrity, impartiality, and
2 independence of the judiciary. To the extent that time permits, a judge is
3 encouraged to undertake such activities, either independently or through a
4 bar association, judicial conference or other organization. Judges may
5 participate in efforts to promote the fair administration of justice, the
6 independence of the judiciary and the integrity of the legal profession,
7 both within and outside their jurisdictions. For example, judges may have
8 occasion to express opposition to the persecution of lawyers and judges in
9 other countries because of their professional activities.⁶

10 [4] A judge may also wish to engage in writing, speaking, teaching, or
11 being otherwise active in regard to non-legal subjects. To the extent that
12 such activity is not in conflict with any of the judges' duties under this
13 Code, it is permitted by this Rule.

14 **RULE 4.02: APPEARANCES BEFORE GOVERNMENTAL BODIES**

15 **A judge shall not appear at a public hearing before, or otherwise**
16 **consult with, an executive or legislative body or official except⁷**

17 **A. on matters concerning the law*, the legal system or the**
18 **administration of justice;⁸**

19 **B. on other matters that might reasonably merit the attention and**
20 **comment of the judge because of knowledge or expertise acquired in**
21 **the course of the judge's judicial duties; or**

22 **C. when acting pro se in a matter involving the judge or the**
23 **judge's interests.⁹**

24 **COMMENT**

25 [1] Judges possess special expertise on matters of law, the legal
26 system and the administration of justice, and may properly share that
27 expertise with governmental bodies. In addition, judges may acquire
28 information on issues before them that are not law-related but upon which
29 they may be well qualified to comment from their unique vantage point as
30 jurists. For example, a juvenile court judge may be uniquely situated to
31 comment to a public body on the potential benefits of proposed
32 community improvements that could lead to a decrease in delinquency
33 among juveniles. Judges must be mindful, however, that their appearance

⁶ Canon 4B Commentary

⁷ Canon 4C(1) (partial)

⁸ Canon 4C(1) (partial)

⁹ Canon 4C(1) (partial)

1 before governmental bodies remains subject to other provisions of this
2 Code, such as Rule 2.11, governing public comment on pending and
3 impending matters, Rule 3.02, prohibiting judges from lending the prestige
4 of office to advance the interests of themselves or others, and Rule 4.01B,
5 prohibiting judges from engaging in extra-judicial activities that cast
6 reasonable doubt on the judge's integrity, impartiality, and independence.

7 [2] In general, it would be an unnecessary and unfair burden to
8 prohibit judges from appearing before governmental bodies on matters
9 that are likely to have special effect upon them as private citizens, for
10 example, zoning proposals that will affect their real property or proposals
11 having to do with the availability of local health services. The judge must
12 exercise care, however, not to lend the prestige of judicial office to
13 advance general causes with respect to which the judge possesses no
14 special judicial competence.

15 [3] See Rules 2.07 and 3.01 and Comments regarding the obligation to
16 avoid improper influence.¹⁰

17 **RULE 4.03: APPOINTMENTS TO GOVERNMENTAL BODIES**

18 **A judge shall not accept appointment to a governmental committee or**
19 **commission or other governmental position that is concerned with**
20 **issues of fact or policy on matters other than the improvement of the**
21 **law, * the legal system or the administration of justice.**

22 **COMMENT**

23 [1] A judge must assess the appropriateness of accepting extra judicial
24 assignments both in terms of judicial availability and in terms of the
25 requirements of impartiality of the judiciary. Thus, a judge should not
26 serve on a governmental commission that requires an excessive time
27 commitment or is embroiled in controversial subject matter, or whose
28 members are limited to advocating for one side in a policy debate. A judge
29 may, however, represent a country, state or locality on ceremonial
30 occasions in connection with historical, educational or cultural activities.¹¹
31

32 **RULE 4.04: PARTICIPATION IN CIVIC OR CHARITABLE ACTIVITIES**

33
34 **A. A judge may participate in civic or charitable activities that do**
35 **not reflect adversely upon a judge's integrity, impartiality and**
36 **independence, or interfere with the performance of judicial duties,**

¹⁰ Canon 4C(1) Commentary

¹¹ Canon 4C(2) Commentary

1 subject to the following limitations and the other requirements of this
2 Code.¹²

3
4 **B. With respect to any activities in which a judge participates on**
5 **behalf of a civic or charitable organization:**¹³

6
7 (1) A judge shall not

8
9 (a) use or permit the use of the prestige of judicial
10 office for fundraising or membership solicitation;¹⁴

11
12 (b) personally solicit funds for the organization¹⁵ on
13 an other than de minimis basis;

14
15 (c) personally participate in membership solicitation
16 if the solicitation is primarily a fundraising mechanism,
17 or if it might reasonably be perceived as coercive.¹⁶

18
19 (2) Notwithstanding paragraph (1) above, a judge may

20
21 (a) personally solicit funds from members of the
22 judge's family, or judges over whom the judge does not
23 exercise supervisory or appellate authority;¹⁷

24
25 (b) assist the organization in fundraising and
26 participate in the management and investment of the
27 organization's funds;¹⁸

28
29 (c) appear at, participate in, and permit the judge's
30 title to be used in connection with an event of an
31 organization devoted to the improvement of law, the
32 legal system, or the administration of justice, even
33 though the event may serve a fundraising purpose;

34
35 (d) make recommendations to public and private
36 fund-granting organizations on programs and activities
37 concerning the law, the legal system or the
38 administration of justice.¹⁹

¹² Canon 4C(3) (see Rule 4.04(b) for deleted portions of this Rule)

¹³ Canon 4C(3)(b)

¹⁴ Canon 4C(3)(b)(iv)

¹⁵ Canon 4C(3)(b)(i) (partial)

¹⁶ Canon 4C(3)(b)(iii)

¹⁷ Canon 4C(3)(b)(i) (partial)

¹⁸ Canon 4C(3)(b)(i) (partial)

¹⁹ Canon 4C(3)(b)(ii)

1 **C. ²⁰ A judge may serve as an officer, director, trustee, or non-**
2 **legal advisor of an organization or governmental entity devoted to the**
3 **improvement of the law, * the legal system or the administration of**
4 **justice or of an educational, religious, charitable, fraternal or civic**
5 **organization not conducted for profit, unless it is likely that the**
6 **organization or governmental entity:²¹**

7
8 **(1) will be engaged in proceedings that would ordinarily**
9 **come before the judge, or²²**

10
11 **(2) will be engaged frequently in adversary proceedings in**
12 **the court of which the judge is a member or in any court**
13 **subject to the appellate jurisdiction of the court of which the**
14 **judge is a member.²³**

15
16 **COMMENT**

17
18 [1] A judge should be permitted to participate in civic, fraternal or
19 charitable activities for the benefit of the community of which the judge is
20 a part, provided that such participation does not take inappropriate
21 advantage of the judge's judicial position, or otherwise interfere with the
22 performance of the judge's judicial duties. See Rule 5.01A.

23
24 [2] Judges may solicit lawyers to participate in pro bono programs so
25 long as in doing so the judge does not misuse the prestige of the office and
26 does not solicit lawyers to accept particular cases that could come before
27 the judge or the court on which the judge sits.

28
29 [3] Solicitation of funds for an organization involves the danger that
30 the person solicited will feel obligated to respond favorably to the solicitor
31 if the solicitor is in a position of influence or control.²⁴ For that reason, a
32 judge is not permitted to solicit funds in person, in writing or by
33 telephone, on an other than de minimis basis, unless the person being
34 solicited is another judge over whom the judge exercises no appellate or
35 supervisory control. Similarly, a judge is not permitted personally to
36 solicit memberships in an organization if the solicitation is primarily a
37 fundraising mechanism. A judge may, however, participate in fundraising
38 activities by performing tasks other than soliciting or accepting donations
39 at fundraising events, without the attendant risk of coercion that makes
40 personal solicitation of funds problematic.

²⁰ Canon 4C(3)(a)

²¹ Canon 4C(3)

²² Canon 4C(3)(a)(i)

²³ Canon 4C(3)(a)(ii)

²⁴ Canon 4C(3)(b) Commentary (partial)

1 [4] De minimis solicitation includes insignificant, incidental, or
2 behind-the-scenes activities that do not use the judge's name or title and
3 situations where the judge's role is no more active or visible than that of
4 other participants.

5 [5] Solicitation of membership poses potential problems similar to
6 those associated with the solicitation of funds. For that reason, a judge
7 must not personally solicit membership or endorse or encourage
8 membership efforts for civic or charitable organizations if the solicitation
9 could reasonably be perceived as coercive. For example, a judge must not
10 solicit memberships from other judges over whom the judge exercises
11 supervisory or appellate authority, or from persons or those affiliated with
12 persons who are likely to appear before the court on which the judge
13 serves.

14 [6] Notwithstanding the foregoing limitations, no comparable risk of
15 coercion arises when a judge who is an officer of such an organization
16 sends a general membership solicitation over the judge's signature. In
17 addition, lawyer and judicial organizations with diverse memberships,
18 whose membership is balanced in representing all parties in litigation
19 often include judges in their leadership. Judges may be involved in
20 member recruitment for such organizations even though the dues or fees
21 associated with membership may be used, in part, as fundraising to
22 support the objectives of those organizations.²⁵

23 [7] Judges are an integral part of the legal community and may
24 participate as judges in the activities of organizations within the legal
25 community without inappropriately lending the prestige of office to those
26 activities, even when they serve a fundraising purpose. Therefore, a judge
27 may, for example, accept an invitation to speak at or be recognized or
28 honored at an event hosted by a legal organization, law school, or other
29 entity devoted to improving the law, the legal system or the administration
30 of justice, even if such an event raises funds for the benefit of the
31 sponsoring organization.

32 [8] Use of an organization's letterhead for fundraising or membership
33 solicitation does not violate Rule 4.04 provided that the letterhead lists
34 only the judge's name and office or other position in the organization, and,
35 if comparable designations are listed for other persons, the judge's judicial
36 designation. In addition, a judge must make reasonable efforts to ensure
37 that the judge's staff, court officials and others subject to the judge's
38 direction and control do not solicit funds on the judge's behalf for any
39 purpose, charitable or otherwise.²⁶
40

²⁵ Canon 4C(3)(b) Commentary

²⁶ Canon 4C(3)(b) Commentary

1 [9] This Rule does not prohibit a judge from serving in a governmental
2 position associated with the improvement of the law, the legal system or
3 the administration of justice; see Rule 4.03.²⁷

4 [10] In this and other Rules in Canon 4, the phrase "subject to the
5 requirements of this Code" is used to remind judges that the use of
6 permissive language in various Rules of the Code does not relieve a judge
7 from the other requirements of the Code that apply to the specific
8 conduct.²⁸ For example, a judge permitted by this Rule to serve on the
9 board of a fraternal institution may nevertheless be prohibited from such
10 service by Rules 3.03 or 4.01 if the institution practices invidious
11 discrimination or if service on the board otherwise casts reasonable doubt
12 on the judge's capacity to act impartially as a judge.²⁹

13 [11] Service by a judge on behalf of a civic, fraternal or charitable
14 organization may be governed by other provisions of Canon 4 in addition
15 to Rules 4.02, 4.03, and 4.04. For example, a judge is prohibited by Rule
16 4.07 from serving as a legal advisor to a civic, fraternal or charitable
17 organization.³⁰

18 [12] The changing nature of some organizations makes it necessary for
19 a judge regularly to reexamine the activities of each organization with
20 which the judge is associated to determine if it is proper for the judge to
21 continue such association.³¹

22 [13] This Rule, not Rule 4.03 governs a judge's service in a
23 nongovernmental position. This Rule permits service by a judge with
24 organizations devoted to the improvement of the law, the legal system or
25 the administration of justice and with educational, religious, charitable,
26 fraternal or civic organizations not conducted for profit. Service on the
27 board of a public educational institution, other than a law school, would be
28 prohibited under Rule 4.03, whereas service on the board of a public law
29 school or any private legal institution would generally be permitted.³²

30 **RULE 4.05: APPOINTMENTS TO FIDUCIARY POSITIONS**

31 **(a) A judge shall not serve as executor, administrator or**
32 **other personal representative, trustee, guardian, attorney in**
33 **fact or other fiduciary, except for the estate, trust or person of**

²⁷ Canon 4C(3)(b) Commentary

²⁸ Canon 4B Commentary

²⁹ Canon 4C(3) Commentary

³⁰ Canon 4C(3) Commentary

³¹ Canon 4C(3)(a) Commentary

³² Canon 4C(2) Commentary

1 **a member of the judge’s family,* and then only if such service**
2 **will not interfere with the proper performance of judicial**
3 **duties.**³³

4 **(b) A judge shall not serve as a fiduciary if it is likely that**
5 **the judge as a fiduciary will be engaged in proceedings that**
6 **would ordinarily come before the judge, or if the estate, trust**
7 **or ward becomes involved in adversary proceedings in the**
8 **court on which the judge serves or one under its appellate**
9 **jurisdiction.**³⁴

10 **(c) The same restrictions on financial activities that apply**
11 **to a judge personally apply to the judge while acting in a**
12 **fiduciary capacity.**³⁵

13 **COMMENT**

14 [1] The Time for Compliance provision of this Code (Application,
15 Section II) postpones the time for compliance with certain provisions of
16 this Rule in some cases.³⁶

17
18 [2] Other restrictions imposed by this Canon may conflict with the
19 judge’s obligation as a fiduciary. For example, a judge should resign as
20 trustee if detriment to the trust would result from divestiture of holdings
21 the retention of which would place the judge in violation of Rule 4.11, or
22 require frequent disqualification.

23 **RULE 4.06: SERVICE AS ARBITRATOR OR MEDIATOR**

24 **A judge shall not act as an arbitrator or mediator or perform judicial**
25 **functions in a private capacity unless expressly authorized by law*.**³⁷

26 **COMMENT**

27 [1] Judges regularly participate in arbitration, mediation or settlement
28 conferences, either as part of their regular duties or as specially authorized
29 by court rule or other law. See Rule 2.09, Comment [2] and Rule
30 2.10A(4).³⁸

³³ Canon 4E(1)
³⁴ Canon 4E(2)
³⁵ Canon 4E(3)
³⁶ Canon 4E Commentary
³⁷ Canon 4F
³⁸ Canon 4F Commentary

1 [2] The integrity of the judiciary is undermined, however, when judges
2 take financial advantage of their offices by rendering private dispute
3 resolution services for pecuniary gain as an extra-judicial activity. In such
4 circumstances, the prestige of the judicial office would be used to advance
5 the personal financial gain of the judge. Even when performed without
6 charge, dispute resolution services provided by a judge in an extrajudicial
7 capacity may interfere with the proper performance of the judicial office,
8 and are therefore permitted only when authorized by law.

9 **RULE 4.07: PRACTICE OF LAW**

10 **A judge shall not practice law. Notwithstanding this prohibition, a**
11 **judge may act pro se and may, without compensation, give legal**
12 **advice to and draft or review documents for a member of the judge's**
13 **family.*³⁹**

14 **COMMENT**

15 [1] This prohibition refers to the practice of law in a representative
16 capacity and not in a pro se capacity. A judge may act for himself or
17 herself in all legal matters, including matters involving litigation and
18 matters involving appearances before or other dealings with legislative
19 and other governmental bodies. However, in so doing, a judge must not
20 abuse the prestige of office to advance the interests of the judge or the
21 judge's family. See Rule 3.01.⁴⁰

22 [2] The Code allows a judge to give legal advice to and draft legal
23 documents for members of the judge's family, so long as the judge
24 receives no compensation. A judge must not, however, act as an advocate
25 or negotiator for a member of the judge's family in a legal matter.⁴¹

26 **RULE 4.08 FINANCIAL ACTIVITIES**

27 **A judge shall not engage in financial and business dealings that⁴²**

28 **A. may reasonably be perceived to exploit the judge's judicial**
29 **position, or⁴³**

³⁹ Canon 4G

⁴⁰ Canon 4G Commentary

⁴¹ Canon 4G Commentary

⁴² Canon 4D(1)

⁴³ Canon 4D(1)(a)

1 **B. involve the judge in frequent transactions or continuing**
2 **business relationships with lawyers or other persons likely to come**
3 **before the court on which the judge serves.**⁴⁴

4 **COMMENT**

5 [1] When in a judicial capacity a judge acquires information that is not
6 yet generally known, such as material contained in filings with the court,
7 the judge must not use the information for private gain. See Rules 3.01
8 and 3.02.⁴⁵

9 [2] A judge must avoid financial and business dealings that involve the
10 judge in frequent transactions or continuing business relationships with
11 persons likely to come before the judge personally or before other judges
12 on the judge’s court. In addition, a judge should discourage members of
13 the judge’s family from engaging in dealings that would reasonably appear
14 to exploit the judge’s judicial position. This rule is necessary to avoid
15 creating an appearance of exploitation of office or favoritism and to
16 minimize the potential for disqualification. With respect to affiliation of
17 relatives of a judge with law firms appearing before the judge, see
18 Comments to Rule 2.12 relating to disqualification.⁴⁶

19 [3] Participation by a judge in financial and business dealings is
20 subject to the general prohibitions in Rule 4.01 against activities that tend
21 to reflect adversely on impartiality, demean the judicial office, or interfere
22 with the proper performance of judicial duties. Such participation is also
23 subject to the general prohibition in Canon 1 against activities involving
24 impropriety or the appearance of impropriety, and the prohibition in Rule
25 3.01 against the misuse of the prestige of judicial office. In addition, a
26 judge must maintain high standards of conduct in all of the judge’s
27 activities, as set forth in Canon 1.⁴⁷

28 **RULE 4.09: REMUNERATIVE ACTIVITIES**

29 **A judge may, subject to the requirements of this Code, hold and**
30 **manage investments of the judge and members of the judge’s family, ***
31 **and engage in other remunerative activity.**⁴⁸

32 **COMMENT**

⁴⁴ Canon 4D(1)(b)

⁴⁵ Canon 4D(1) Commentary

⁴⁶ Canon 4D(1) Commentary

⁴⁷ Canon 4D(1) Commentary

⁴⁸ Canon 4D(2)

1 [1] This Rule provides that, subject to the requirements of this Code, a
2 judge may hold and manage investments owned solely by the judge,
3 investments owned solely by a member or members of the judge’s family,
4 and investments owned jointly by the judge and members of the judge’s
5 family. The term “investments” includes real estate. See Comments to
6 Rule 4.04 regarding use of the phrase "subject to the requirements of this
7 Code."⁴⁹

8 **RULE 4.10: MANAGEMENT AND DIVESTITURE OF INVESTMENTS**

9 **A judge shall manage the judge’s investments and other financial**
10 **interests to minimize the number of cases in which the judge is**
11 **disqualified. As soon as the judge can do so without serious financial**
12 **detriment, the judge shall divest himself or herself of investments and**
13 **other financial interests that might require frequent disqualification.**⁵⁰

14 **COMMENT**

15 [1] Judges must not allow their financial activities to interfere with
16 their duty to preside over cases that come before them. Although some
17 disqualifications will be unavoidable, judges must reduce unnecessary
18 conflicts of interest that arise when they retain financial interests in
19 organizations and other entities that appear regularly in their courts, by
20 divesting themselves of such interests.

21 [2] Financial interests, within the meaning of this Rule, include the
22 interests of others whom the judge serves as a fiduciary under Rule 4.05.

23 **RULE 4.11: FOR-PROFIT ACTIVITIES**

24 **A judge shall not serve as an officer, director, manager, general**
25 **partner, advisor or employee of any for-profit entity except that a**
26 **judge may, subject to the requirements of this Code, manage and**
27 **participate in**⁵¹

28 **A. a for-profit entity closely held by the judge or members of the**
29 **judge’s family, * or**⁵²

30 **B. a for-profit entity primarily engaged in investment of the**
31 **financial resources of the judge or members of the judge’s family.** ⁵³

⁴⁹ Canon 4D(2) Commentary

⁵⁰ Canon 4D(4)

⁵¹ Canon 4D(3)

⁵² Canon 4D(3)(a)

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COMMENT

[1] Although participation by a judge in a closely held family for-profit business might otherwise be permitted by Rule 4.11, a judge may be prohibited from participation by other provisions of this Code. Examples of such situations include when the business entity regularly appears before the judge’s court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely held for-profit family business if the judge’s participation would involve misuse of the prestige of judicial office.⁵⁴

RULE 4.12: 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 gifts, * from anyone except that a judge may accept⁵⁵

- (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, domestic partner or guest to attend without charge**
 - (a) a widely attended event;**
 - (b) a bar-related function; or**
 - (c) any activity devoted to the improvement of the law,* the legal system or the administration of justice;⁵⁶**
- (4) a gift*, award or benefit incident to the business, profession or other separate activity of a spouse, domestic partner 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, domestic partner or other family member and the judge (as spouse, domestic partner or family member), provided the gift, award or benefit could not**

⁵³ Canon 4D(3)(b)
⁵⁴ Canon 4D(3) Commentary
⁵⁵ Canon 4D(5)
⁵⁶ Canon 4D (5)(a)

1 reasonably be perceived as intended to influence the judge in the
2 performance of judicial duties⁵⁷

3
4 (5) a gift* from a relative or friend, for a special occasion, such as
5 a wedding, anniversary or birthday, if the gift is commensurate with
6 the occasion and the relationship;⁵⁸

7
8 (6) a gift* from a relative or personal friend whose appearance or
9 interest in a case would in any event require disqualification under
10 Rule 2.12;⁵⁹ or

11
12 (7) any other individual gift*, from any other source, valued at
13 [\$50] or less, or series of gifts from the same source whose value in the
14 aggregate does not exceed [\$150], if the donor is not

15
16 (a) a lawyer, party, or third person who has come before
17 the judge, or a person or entity whose interests have come
18 before the judge, within the preceding five years, or

19
20 (b) a lawyer, party, or third person who is likely to come
21 before the judge, or a person or entity whose interests are
22 likely to come before the judge, in the foreseeable future.⁶⁰

23
24 B. for any gift, other than a gift from a member of the judge's
25 family, that alone or in the aggregate with other gifts received from
26 the same source in the same calendar year exceeds [\$250.00] in value,
27 the judge must publicly report receipt of the gift in the same manner
28 as the judge reports compensation, reimbursement or waiver of
29 charges pursuant to Rule 4.16.⁶¹

30
31 **COMMENT**

32
33 [1] This Rule imposes restrictions on the solicitation and acceptance of
34 gifts. The Terminology section defines a "gift" as any gratuity, favor,
35 discount, entertainment, hospitality, loan, forbearance, bequest, or
36 anything of monetary value, but does not include:

37
38 (a) Ordinary social hospitality that is common among people in
39 the judge's community, extended for a non-business purpose by an

⁵⁷ Canon 4D(5)(b)

⁵⁸ Canon 4D(5)(d)

⁵⁹ Canon 4D(5)(e)

⁶⁰ Canon 4D(5)(h) (partial)

⁶¹ Canon 4D(5)(h) (partial)

1 individual, not a corporation, and limited to the provision of
2 modest items, such as food and refreshments.⁶²

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

6 (c) loans from banks and other financial institutions on terms
7 that are available based on factors other than judicial status;⁶³

8 (d) opportunities and benefits, including favorable rates and
9 commercial discounts, that are available based on factors other
10 than judicial status;

11 (e) rewards and prizes given to competitors in random
12 drawings, contests or other events that are open to the public,
13 awarded based on factors other than judicial status;

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

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

18 (h) compensation for extra-judicial activities that is governed
19 by Rule 4.14.
20

21 [2] A judge may accept a public testimonial or a gift incident thereto
22 only if the donor organization is not an organization whose members
23 comprise or frequently represent the same side in litigation, and the
24 testimonial and gift are otherwise in compliance with other provisions of
25 this Code. See Rules 4.01 and 2.09.⁶⁴
26

27 [3] Because a gift to a member of the judge's family residing in the
28 judge's household might be viewed as intended to influence the judge, a
29 judge must inform those family members of the relevant ethical
30 constraints upon the judge in this regard and discourage those family
31 members from violating them. A judge cannot, however, reasonably be
32 expected to know or control all of the financial or business activities of all
33 family members residing in the judge's household.⁶⁵
34

35 [4] A gift to a judge, or to a member of the judge's family living in the
36 judge's household, that is excessive in value raises questions about the
37 judge's impartiality and the integrity of the judicial office and might
38 require disqualification of the judge.⁶⁶
39

⁶² Canon 4D(5)(c)

⁶³ Canon 4D(5)(f)

⁶⁴ Canon 4D(5)(a) Commentary

⁶⁵ Canon 4D(5)

⁶⁶ Canon 4D(5)(f)

⁶⁷ Canon 4D(5)(h) Commentary

1 [5] Rule 4.12 prohibits judges from accepting gifts from lawyers or
2 their firms if they have come or are likely to come before the judge; it also
3 prohibits gifts from clients of lawyers or their firms when the clients'
4 interests have come or are likely to come before the judge. Rule 4.12A(5)
5 prohibits a judge from accepting gifts, even of a nominal value, from
6 people or entities who are likely to appear before the judge. The rule
7 requires a judge to consider whether a donor, or the donor's interest, might
8 come before the judge in the foreseeable future.⁶⁷
9

10 [6] Rule 4.12 does not apply to contributions to a judge's campaign for
11 judicial office. Such contributions are governed by Canon 5 and other
12 Rules of this Code.⁶⁸ Rule 4.12 likewise does not apply to the
13 reimbursement or waiver of charges for travel-related expenses, which is
14 governed by Rule 4.13.
15

16 [7] Acceptance of an invitation to a law-related function is governed
17 by Rule 4.12(a)(1) and includes acceptance of an invitation paid for by an
18 individual lawyer or group of lawyers.⁶⁹ The judge's acceptance of such
19 an invitation is subject to the provisions of Rule 4.12A(7)(a) and (b).
20

21 [8] Regardless of whether Rule 4.12 would permit receipt of a
22 particular gift by a judge or a member of the judge's family residing in the
23 judge's household, other Rules may prohibit the gift. For example, Rule
24 4.01B would apply if the gift would cast reasonable doubt on the judge's
25 capacity to act with integrity, impartiality, and independence.
26

27 **RULE 4.13: REIMBURSEMENT OR WAIVER OF CHARGES FOR TRAVEL-**
28 **RELATED EXPENSES OF THE JUDGE OR THE JUDGE'S SPOUSE, DOMESTIC**
29 **PARTNER OR GUEST**
30

31 **A. A judge may accept reimbursement of or a waiver of charges**
32 **from sources other than the judge's employing entity for necessary**
33 **travel, food, and lodging expenses associated with the judge's**
34 **participation in extra-judicial activities permitted by this Code, only if**
35 **such acceptance does not cast reasonable doubt on the judge's**
36 **capacity to act with impartiality, integrity, or independence.**⁷⁰
37

38 **B. Expense reimbursement and waiver of charges shall be limited**
39 **to the actual cost of travel, food, and lodging reasonably incurred by**
40 **the judge and, where appropriate to the occasion, by the judge's**
41 **spouse, domestic partner or guest. Any reimbursement or waiver of**

⁶⁸ Canon 4D(5) Commentary

⁶⁹ Canon 4D(5)(a) Commentary

⁷⁰ Canon 4H(1)

1 **charges that alone or in the aggregate with other expenses reimbursed**
2 **from the same source in the preceding [twelve months] exceeds [\$250]**
3 **shall be reported and made accessible to the public in the same**
4 **manner as required by Rule 4.15.⁷¹**
5

6 **COMMENT**
7

8 [1] Participation in judicial education in law-related and academic
9 disciplines is in keeping with a judge's duty to remain competent in the
10 law and is encouraged under the provisions of Canon 4. Attendance at
11 educational activities where the expenses are paid for by persons or
12 entities other than the judge, or a government entity, must nevertheless be
13 evaluated by the judge to determine whether attendance is consistent with
14 the requirements of this Code. For example, Rule 4.01B requires that a
15 judge's extra-judicial activities be conducted so that they do not cast
16 reasonable doubt on the judge's capacity to act with impartiality, integrity,
17 and independence.
18

19 [2] A judge's decision whether to attend such an expense-paid
20 educational activity should be based on an assessment of all of the
21 circumstances, and the judge must undertake a reasonable inquiry to
22 obtain the information necessary to make an informed judgment. The
23 judge should, for example, consider whether the sponsor or the funding
24 source of the educational activity is currently appearing, or likely to
25 appear, before the judge in a matter, thus requiring disqualification of the
26 judge in the matter. See Rule 2.12. A judge also should not attend
27 educational activities sponsored by organizations with which the judge
28 may not properly be associated, such as organizations referred to in Rule
29 3.03; to do so would violate Rule 1.01 if the judge's attendance manifests
30 approval of the organization's policies. See Rule 3.03, Comment [2].
31 Other factors that may affect whether the judge should or should not
32 attend an educational activity include:
33

- 34 (a) Whether the sponsor is an accredited educational institution
35 or bar association rather than a for-profit entity or trade
36 association;
37 (b) Whether the source of the funding is largely from
38 numerous contributors rather than from a single entity and
39 earmarked for programs with specific content;
40 (c) Whether the content is unrelated to the subject matter of
41 litigation before the judge or is related to matters that are, or are
42 likely to come before the judge;

⁷¹ Canon4H (1)(b)

- 1 (d) Whether the activity is purely educational rather than
2 recreational, and whether expenses of attending are a reasonable
3 amount;
4 (e) Whether information concerning the activity and its
5 funding sources are available upon inquiry.

6 [3] Consistent with Rules 4.12B and 4.15, a judge must take
7 reasonable steps to ensure that information concerning the judge's
8 participation in educational activities and other events, as well as
9 reasonable information regarding the nature and circumstances of such
10 events, are available to the public. A judge should therefore promptly and
11 publicly disclose participation in extra-judicial events at which the
12 expenses are paid for by entities other than the judge or a government
13 entity.

14 **RULE 4.14: COMPENSATION FOR EXTRA-JUDICIAL ACTIVITIES**

15
16 **A. A judge may accept compensation for extra-judicial activities**
17 **permitted by this Code, if such acceptance does not cast reasonable**
18 **doubt on the judge's capacity to act with impartiality, integrity, or**
19 **independence.**⁷²

20
21 **B. Compensation shall not exceed a reasonable amount nor shall**
22 **it exceed what a person who is not a judge would receive for the same**
23 **activity.**⁷³

24
25 **COMMENT**

26
27 [1] The Code does not prohibit a judge from accepting honoraria or
28 speaking fees provided that the compensation is reasonable and
29 commensurate with the task performed. A judge should ensure, however,
30 that no conflicts are created by the arrangement. A judge must not exploit
31 or appear to exploit the judicial position for personal advantage. Nor
32 should a judge spend significant time away from court duties to meet
33 speaking or writing commitments for compensation. The source of the
34 payment of any such compensation must not raise any question of undue
35 influence or the judge's ability or willingness to be impartial.⁷⁴ See Rule
36 4.01.

37

⁷² Canon 4H(1)

⁷³ Canon 4H(1)(a)

⁷⁴ Canon 4H(2) Commentary

1 **RULE 4.15: REPORTING OF COMPENSATION, REIMBURSEMENT OF**
2 **EXPENSES AND WAIVER OF CHARGES**

3
4 **A judge shall report the date, place, and nature of any activity for**
5 **which the judge received compensation, reimbursement of expenses**
6 **or waiver of charges, the name of the payor or waivor and the amount**
7 **of compensation, reimbursement of expenses, or waiver of charges so**
8 **received. The judge’s report shall be made at least annually, except**
9 **with respect to reimbursements and waivers, which shall be reported**
10 **at least quarterly, and shall be filed as a public document in the office**
11 **of the clerk of the court on which the judge serves or other office**
12 **designated by law,* and when technically feasible, posted on the**
13 **website of that court or office.**⁷⁵

14
15 **COMMENT**

16
17 [1] By reporting and publicly disclosing their compensation,
18 reimbursement of expenses or waiver of charges for extrajudicial
19 activities, judges promote transparency and public confidence in the
20 integrity, impartiality, and independence of the judiciary.
21

⁷⁵ Canon 4H(2)

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CANON 5

A JUDGE OR CANDIDATE* FOR JUDICIAL OFFICE SHALL REFRAIN FROM POLITICAL ACTIVITY THAT IS INCONSISTENT WITH THE INTEGRITY*, INDEPENDENCE*, AND IMPARTIALITY* OF THE JUDICIARY

RULE 5.01: RESTRICTIONS ON POLITICAL ACTIVITIES OF JUDGES AND CANDIDATES* FOR JUDICIAL OFFICE

Except as permitted by Rule 5.02 (Partisan Public Elections), Rule 5.03 (Non-partisan Public Elections), Rule 5.04 (Retention Elections), and Rule 5.05 (Appointment to Judicial Office), a judge or a candidate* for judicial office shall not directly or indirectly

- (a) act as a leader or hold an office in a political organization*;¹**
- (b) make speeches on behalf of a political organization*;²**
- (c) publicly endorse or oppose a candidate* for any public office;³**
- (d) solicit funds for, pay an assessment to, or make a contribution to a political organization* or a candidate* for public office;⁴**
- (e) purchase tickets for dinners or other events sponsored by a political organization* or a candidate* for public office, unless the tickets are for the judge or candidate's* personal use and the cost of the tickets does not appear to exceed significantly the value of the goods and services to be received by the judge or candidate* at the dinner or other event;**
- (f) publicly identify oneself as a candidate* of a political organization*;**
- (g) seek or use endorsements from a political organization*;**
- (h) personally solicit or personally accept campaign contributions;⁵**
- (i) use or permit the use of campaign contributions for the private benefit of the candidate* or others;⁶**

¹ Canon 5A(1)(a)

² Canon 5A(1)(c)

³ Canon 5A(1)(b)

⁴ Canon 5A(1)(e)

⁵ Canon 5C(2) partial black letter rule

1
2 (j) knowingly* make any false or misleading statement regarding
3 any candidate* for judicial office;⁷
4

5 (k) make any comment that might reasonably be expected to affect
6 the outcome or impair the fairness of a proceeding while it is pending
7 or impending in any court;
8

9 (l) manifest bias or prejudice based upon a person's race, gender
10 religion, national origin, ethnicity, disability, age, sexual orientation,
11 or socioeconomic status; or
12

13 (m) with respect to cases, controversies, or issues that are likely to
14 come before the court, make pledges, promises or commitments that
15 are inconsistent with the impartial* performance of the adjudicative
16 duties of the office.⁸
17

18 COMMENT

19
20 *General Considerations*
21

22 [1] The state has a compelling interest in maintaining the integrity,
23 independence, and impartiality of the judiciary, thus enhancing public confidence
24 in the justice system. In furtherance of this interest, judges and candidates for
25 judicial office should be free from political influence, taking into account the
26 various methods of selecting judges and constitutional provisions governing free
27 speech and expressive association. In order to advance the state's compelling
28 interest, Rule 5.01 imposes restrictions on the political and campaign activities of
29 all sitting judges and all candidates for judicial office. In all events, a candidate
30 for judicial office should maintain the dignity appropriate to judicial office.
31

32 [2] A successful candidate for judicial office may be subject to discipline
33 under this Code for violation of any of the Rules set forth in Canon 5, even if the
34 candidate was not a judge during the period of candidacy. An unsuccessful
35 candidate who was a lawyer may be subject to discipline instead under the [name
36 of jurisdiction] Rules of Professional Conduct, Rule [8.2B]. When a non-judge
37 becomes a candidate for judicial office, Rule 5.01 is immediately applicable to his
38 or her conduct.⁹
39

40 [3] Many of the restrictions imposed by Rule 5.01 apply only with respect to
41 political organizations. Engagement with other organizations might be improper

⁶ Canon 5C(2) partial black letter rule

⁷ Canon 5A(3)(d)(ii)

⁸ Canon 5A(3)(d)(i)

⁹ Reference to content of deleted Canon 5E

1 under a different Rule, however. For example, if an organization frequently
2 litigates in the courts, or has matters pending or impending in the court on which
3 the judge sits, other Rules may be applicable. See Rule 2.11 (Judicial Statements
4 on Pending and Future Cases), Rule 2.12 (Disqualification), and Rule 4.04 (Civic
5 or Charitable Activities).

6
7 ***Participation in Political, Fund-Raising, and Campaign Activities of Political***
8 ***Organizations* and Candidates****
9

10 [4] Public confidence in the independence and impartiality of the judiciary is
11 eroded if judges or candidates for judicial office are perceived to be subject to
12 political influence. Accordingly, sitting judges as well as all candidates for
13 judicial office are prohibited by Rule 5.01A from assuming a leadership role in a
14 political organization. A judge or a candidate may register to vote as a member of
15 a political party.

16
17 [5] Rules 5.01B and 5.01C prohibit judges and candidates for judicial office
18 from making speeches on behalf of political organizations or publicly endorsing
19 or opposing candidates for public office. These provisions do not prohibit
20 candidates from campaigning on their own behalf, however, or from endorsing or
21 opposing candidates for a position on the same court for which they are running.
22 See Rules 5.02D and E, Rules 5.03B and D, and Rules 5.04B and D.

23
24 [6] Rule 5.01C does not prohibit judges or candidates for judicial office from
25 privately expressing their views on candidates for any public office.¹⁰
26

27 [7] Sitting judges and candidates for judicial office retain the right to
28 participate in the political process as voters, in both primary and general elections.
29 Participation in a caucus-type election procedure does not constitute public
30 support for or endorsement of a political organization or candidate, and therefore
31 is not prohibited by Rules 5.01B or 5.01C.¹¹
32

33 [8] Political organizations and candidates running for public office often use
34 ticketed events as a method of fund-raising. Judges and candidates for judicial
35 office may generally attend dinners and other public events sponsored by political
36 organizations or candidates running for public office, but are prohibited by Rule
37 5.01E from purchasing tickets to such events to the extent that the purchase
38 includes a fund-raising aspect.

39
40 ***Soliciting or Accepting Campaign Contributions and Other Public Support***
41

42 [9] Candidates for judicial office are prohibited from identifying themselves
43 as candidates of a particular political organization and from seeking or using

¹⁰ Canon 5A Commentary

¹¹ Canon 5A Commentary

1 political organization endorsements, except when running in a partisan public
2 election; see Rules 5.02A and 5.02B.

3
4 [10] Although candidates for judicial office are prohibited from personally
5 soliciting or personally accepting campaign contributions for their own
6 campaigns, see Rule 5.01H, candidates running in partisan, non-partisan or
7 retention elections are permitted to form campaign committees for the purpose of
8 soliciting and accepting contributions, subject to the regulations contained in Rule
9 5.06 and [insert applicable provisions of law].

10
11 [11] Candidates for judicial office are permitted to solicit public support and to
12 seek or use endorsements from individuals or organizations other than political
13 organizations. See Rule 5.01G.

14
15 ***Statements and Comments Made During a Campaign for Judicial Office***

16
17 [12] Candidates for judicial office are sometimes the subject of unfair or unjust
18 allegations made by an opposing candidate, a third party, or the media. For
19 example, false or misleading statements might be made regarding the identity,
20 present position, experience, qualifications, or judicial rulings of a candidate. In
21 other situations, false or unjust allegations may be made that bear upon a
22 candidate's integrity or fitness for judicial office. To mitigate the effects of these
23 attacks, and to avoid escalation of the situation, a candidate for judicial office is
24 permitted to make a measured and dignified public response, but only if the
25 response itself does not violate Rule 5.01J.

26
27 [13] Although candidates for judicial office are permitted to respond directly to
28 unfair or unjust allegations made against them during a campaign, it is often
29 preferable for someone else, such as a bar association or a bar association
30 committee, to utilize established mechanisms to make the response.

31
32 ***Pledges, Promises or Commitments Inconsistent with Impartial Performance of***
33 ***the Adjudicative Duties of Judicial Office***

34
35 [14] A judge's obligation to avoid prejudgment is well established. Under the
36 First Amendment and in light of the voters' right to have information about an
37 elective candidate's views, judicial ethics rules may not prohibit judicial
38 candidates from announcing their views on disputed legal and political issues.
39 Rule 5.01M, which applies the relevant prohibitions of Rule 2.11 to all candidates
40 for judicial office, does not proscribe a candidate's public expression of personal
41 views on disputed issues. To ensure that voters understand a judge's duty to
42 uphold the Constitution and laws of [name of state jurisdiction] where the law
43 differs from the candidate's personal belief, however, candidates are encouraged
44 to emphasize their duty to uphold the law regardless of their personal views.

1 [15] Some speech restrictions are indispensable to maintaining the integrity,
2 impartiality, and independence of the judiciary. The state has a compelling
3 interest in enforcing these restrictions. Thus, under this Rule it remains improper
4 for a judicial candidate to make pledges, promises or commitments regarding
5 pending or impending cases, specific classes of cases, specific litigants or classes
6 of litigants, or specific propositions of law, that would reasonably lead to the
7 conclusion that the candidate has prejudged a decision or ruling in cases that
8 would fall within the scope of the pledge, promise or commitment. To fall within
9 the proscription of this Rule the statement by the candidate must pertain to
10 matters likely to come before the court on which the candidate would serve, if
11 elected. Statements by a candidate that would have this effect are inconsistent
12 with the obligation of all judges to perform impartially the adjudicative duties of
13 office.

14
15 [16] Candidates for judicial office often receive questionnaires or requests for
16 interviews from the media and from issue advocacy or other community
17 organizations, seeking to learn their views on disputed or controversial legal or
18 political issues. Rule 5.01M does not generally prohibit candidates from
19 responding to this kind of inquiry, but candidates should proceed with caution if
20 they choose to respond. Depending on the wording of the questions and the
21 format provided for answering, a candidate's responses might constitute pledges,
22 promises or commitments to perform the adjudicative duties of office other than
23 in an impartial way. In order to avoid violating Rule 5.01M, therefore, candidates
24 who choose to respond should make clear their commitment to keeping an open
25 mind while on the bench, regardless of their own personal views.

26
27 [17] Rule 5.01M does not prohibit a candidate for judicial office from making
28 public statements concerning improvements to the legal system or to the
29 administration of justice.¹²

30
31 ***Indirect Participation in Political and Campaign Activity***

32
33 [18] A candidate for judicial office should encourage members of the
34 candidate's family to adhere to the same standards of political conduct in support
35 of the candidate as apply to the candidate; should discourage employees and other
36 court personnel from doing on the candidate's behalf what the candidate is
37 prohibited from doing under the Rules of this Canon; and should not authorize or
38 knowingly permit any other person to do for the candidate what the candidate is
39 prohibited from doing under the Rules of this Canon. However, members of a
40 candidate's duly-created campaign committee are permitted to engage in
41 solicitation and other fund-raising activities that would not be permitted to the
42 candidate himself or herself.

43

¹² Canon 5A Commentary

1 **RULE 5.02: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES FOR JUDICIAL**
2 **OFFICE* IN PARTISAN PUBLIC ELECTIONS**

3 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
4 **judicial office in a partisan public election may:**

5
6 (a) **publicly identify themselves as candidates* of a political**
7 **organization*;¹³**

8
9 (b) **seek or use endorsements from any individual or organization,**
10 **including a political organization*;**

11
12 (c) **establish a campaign committee pursuant to the provisions of**
13 **Rule 5.06;**

14
15 (d) **communicate with the public by speaking on their own behalf,**
16 **or through any media, including, but not limited to, advertisements,**
17 **websites, or campaign literature;**

18
19 (e) **publicly endorse or publicly oppose other candidates* for a**
20 **position on the same court for which they are running.¹⁴**

21
22 **COMMENT**

23
24 [1] In partisan public elections for judicial office, candidates may be
25 nominated by, affiliated with, or otherwise publicly identified or associated with a
26 particular political organization. Typically, this association is maintained
27 throughout the period of the public campaign, and includes use of political party
28 or similar designations on campaign literature and on the ballot.

29
30 [2] Rule 5.02 permits partisan public election candidates, including sitting
31 judges who have become candidates, to engage in some political activities that
32 would otherwise be prohibited by Rule 5.01. Nevertheless, candidates must be
33 mindful of the prohibition of Rule 5.01M relating to the making of promises,
34 pledges, and commitments.

35
36 [3] For purposes of Rule 5.02E, candidates are considered to be running for a
37 position on the same court if they are competing for a single judgeship or if
38 several judgeships on the same court are to be filled as a result of the election.

39
40 **5.03: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES* FOR JUDICIAL**
41 **OFFICE IN NON-PARTISAN PUBLIC ELECTIONS**

42

¹³ Canon 5C(1)(a)(ii)

¹⁴ Canon 5C(1)(b)(iv)

1 **Notwithstanding any restrictions set forth in Rule 5.01, candidates***
2 **for judicial office in a non-partisan public election may:**

3
4 **(a) seek or use endorsements from any individual or organization,**
5 **other than a political organization*;**

6
7 **(b) establish a campaign committee pursuant to the provisions of**
8 **Rule 5.06;**

9
10 **(c) communicate with the public by speaking on their own behalf,**
11 **or through any media, including, but not limited to, advertisements,**
12 **websites, or campaign literature;**

13
14 **(d) publicly endorse or publicly oppose other candidates* for a**
15 **position on the same court for which they are running.**

16
17 **COMMENT**

18
19 [1] In non-partisan public elections for judicial office, candidates may not
20 accept nominations by a particular political organization. Most of the restrictions
21 on political activities set forth in Rule 5.01 continue to apply to candidates for
22 judicial office running in non-partisan elections.

23
24 [2] Rule 5.03A would operate to prohibit a non-partisan candidate from filling
25 out a questionnaire if he or she knows or has reason to know that the purpose of
26 the questionnaire is for a political organization to decide whom to endorse in a
27 non-partisan judicial election.

28
29 [3] Although candidates in non-partisan public elections for judicial office are
30 prohibited from running on a ticket or slate associated with a political
31 organization, individual candidates may group themselves into slates or other
32 alliances in order to conduct their campaigns more effectively. For purposes of
33 Rule 5.03D, candidates who have grouped themselves together in this fashion are
34 considered to be running for a position on the same court if they are competing
35 for a single judgeship, or if several judgeships on the same court are to be filled as
36 a result of the election.

37
38 **5.04: PERMITTED POLITICAL ACTIVITIES OF CANDIDATES* FOR JUDICIAL**
39 **OFFICE IN RETENTION ELECTIONS**

40
41 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
42 **judicial office in a retention election may:**

43
44 **(a) seek or use endorsements from any individual or organization,**
45 **other than a political organization*;**

1
2 (b) establish a campaign committee pursuant to the provisions of
3 Rule 5.06;

4
5 (c) communicate with the public by speaking on their own behalf,
6 or through any media, including, but not limited to, advertisements,
7 websites, or campaign literature;

8
9 (d) publicly endorse or publicly oppose other candidates* for a
10 position on the same court for which they are running.

11
12 **COMMENT**

13
14 [1] Candidates for judicial office who are subject to retention election are
15 sometimes publicly supported or opposed by individuals or organizations,
16 including political organizations. Retention election candidates are not permitted
17 to seek endorsements from political organizations, however, or to use such
18 endorsements to further their campaigns.

19
20 [2] Candidates running in retention elections are by definition sitting as judges
21 during the period of their candidacies. Moreover, opposition to a candidate for
22 retention sometimes focuses on particular decisions that the candidate has made
23 as a judge, or even on cases that are pending before the judge during the campaign
24 period. In the course of their campaigns, therefore, retention election candidates
25 should be especially mindful of their obligations not to make comments that
26 might affect the outcome or impair the fairness of a proceeding and not to make
27 pledges, promises or commitments that are inconsistent with the impartial
28 performance of the adjudicative duties of the office. See Rules 5.01K and 5.01M.

29
30 **RULE 5.05: PERMITTED ACTIVITIES OF CANDIDATES* FOR APPOINTIVE**
31 **JUDICIAL OFFICE**

32
33 **Notwithstanding any restrictions set forth in Rule 5.01, candidates* for**
34 **appointment to judicial office may**

35
36 (a) communicate with the appointing or confirming authority,
37 including any selection, screening, or nominating commission or
38 similar agency;¹⁵

39
40 (b) seek or use endorsements for the appointment from any
41 individual or organization other than a political organization*.¹⁶
42

¹⁵ Canon 5B(2)(a)(i)

¹⁶ Canon 5B(2)(a)(ii)

1 **COMMENT**

2
3 [1] Candidates for appointive judicial office have no need to raise or spend
4 campaign funds. Accordingly, they are not only prohibited from personally
5 soliciting or personally accepting such funds, (see Rule 5.01H), but they are also
6 prohibited from establishing campaign committees for this purpose.

7
8 [2] When seeking support or endorsement from others, or when
9 communicating directly with an appointing or confirming authority, candidates
10 for appointive judicial office must not make any pledges, promises or
11 commitments that are inconsistent with the impartial performance of the
12 adjudicative duties of the office. See Rule 5.01, Comments [15] and [16].

13
14 **RULE 5.06: CAMPAIGN COMMITTEES**

15
16 (a) **Candidates* for judicial office subject to public elections* may**
17 **establish campaign committees to conduct campaigns for the**
18 **candidate*, subject to the regulations contained in this Rule. The**
19 **candidate* is responsible for ensuring that the committee complies**
20 **with these regulations and with other applicable law.**¹⁷

21
22 (b) **Campaign committees may solicit and accept reasonable**
23 **campaign contributions, not to exceed, in the aggregate*, [\$ ___]**
24 **from any individual or [\$ ___] from any entity or organization. Such**
25 **committees may also manage the campaign, including the expenditure**
26 **of funds.**¹⁸

27
28 (c) **A campaign committee shall not solicit or accept contributions**
29 **for a candidate's* current campaign more than [one year] prior to a**
30 **scheduled election, nor more than [90] days after the last election in**
31 **which the candidate* participated.**¹⁹

32
33 (d) **In addition to complying with all applicable statutory**
34 **requirements for disclosure of campaign contributions, a campaign**
35 **committee established by a candidate* for judicial office shall file with**
36 **[name of appropriate regulatory authority] a report stating the name,**
37 **address, occupation and employer of each person who has made**
38 **campaign contributions to the committee in an aggregate* value**
39 **exceeding [\$ __]. The report must be filed within [___] days following**
40 **an election, or within such other period as is required by law.**²⁰

41

¹⁷ Canon 5C(2)

¹⁸ Canon 5C(3)

¹⁹ Canon 5C(2)

²⁰ Canon 5C(4)

1 **COMMENT**

2
3 [1] Candidates for judicial office are prohibited from personally raising
4 campaign funds. See Rule 5.01H. Nonetheless, Rule 5.06 recognizes that in many
5 jurisdictions candidates for judicial office must raise campaign funds to support
6 their candidacies, and therefore permits candidates, other than candidates for
7 appointive judicial office, to establish campaign committees to solicit and accept
8 reasonable financial contributions.

9
10 [2] Campaign committees established by candidates for judicial office not
11 only solicit and accept campaign contributions, but manage the expenditure of
12 campaign funds and generally conduct the campaign. Candidates, however, are
13 ultimately responsible for the actions of their campaign committees, including
14 compliance with this Code and with the requirements of election law and other
15 applicable law.

16
17 [3] At the start of a campaign, candidates must instruct their campaign
18 committees to solicit or accept only such contributions as are reasonable in
19 amount, appropriate under the circumstances, and in conformity with governing
20 law. Although lawyers and others who might appear before a successful candidate
21 for judicial office are permitted to make campaign contributions, candidates
22 should instruct their campaign committees to be especially cautious with respect
23 to such contributions, lest they create grounds for disqualification. Compare Rule
24 2.12.

25
26 **RULE 5.07: ACTIVITY OF JUDGES WHO BECOME CANDIDATES* FOR NON-**
27 **JUDICIAL OFFICE**

28
29 (a) **Upon becoming a candidate* for a non-judicial elective office,**
30 **a judge shall resign from judicial office, except that the judge may**
31 **continue to hold judicial office while being a candidate* for election**
32 **to, or serving as a delegate in, a state constitutional convention if the**
33 **judge is otherwise permitted by law to do so.²¹**

34
35 (b) **Upon becoming a candidate* for a non-judicial appointive**
36 **office, a judge is not required to resign from judicial office and is**
37 **permitted to engage in the activities permitted for candidates* for**
38 **appointive judicial office by Rule 5.05.**

39
40 **COMMENT**

41
42 [1] In most, if not all, campaigns for non-judicial elective public office,
43 candidates make pledges, promises or commitments as to positions they would

²¹ Canon 5A(2)

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take and ways they would act if elected to office. Although appropriate in non-judicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The combination of the potential for abuse of the judicial office on one hand, and the political promises that the judge would be compelled to make in the course of campaigning for non-judicial elective office on the other, dictates that a judge who wishes to run for such office must resign upon becoming a candidate. A judge who wishes to become a candidate for a non-judicial appointive, rather than elective office, where no election campaign will be conducted, need not resign from judicial office in order to be considered for appointment.

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APPLICATION

This Section identifies the persons to whom this Code applies and prescribes generally when and how it applies. In summary, the Code provisions apply to full-time judges and to four additional categories of judges, each of which may be described as less-than-full-time. Each of these four categories is necessarily defined in general terms because each type of judicial service may be structured somewhat differently in various jurisdictions. The determination of which specific Code provisions apply to a particular judicial officer depend upon the facts of the particular judicial service.

I. APPLICABILITY OF THIS CODE

Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, hearing officer, administrative law judge,¹ or referee, is a judge within the meaning of this Code.

The provisions of the Code apply to all judges except as provided in Sections A - D.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any individual who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles is applicable to the judicial process generally.

[2] In recent years, however, many jurisdictions have created what are sometimes called ‘problem solving’ courts, in which judges are authorized by local rules to act in non-traditional ways. For example, judges may be authorized or even encouraged to communicate directly with social workers, probation officers and others outside the context of their usual judicial role as an independent decision maker of issues of fact and law. Where local rules have been developed that specifically authorize conduct not otherwise permitted under these Rules, a judge’s activity in compliance with such local rules does not constitute a disciplinary violation. Nevertheless, judges serving on ‘problem

¹ Administrative law judges are commonly officers of the executive, rather than the judicial branch of government. Accordingly, each adopting jurisdiction should consider the characteristics of particular administrative law judge positions in adopting, adapting, applying and enforcing the Code for administrative law judges. See, e.g., Model Code of Judicial Conduct for Federal Administrative Law Judges, endorsed by the National Conference of Administrative Law Judges in February 1989.

1 solving' courts shall comply with this Code except to the extent local rules
2 provide and permit otherwise.

3
4 **A. RETIRED JUDGES SUBJECT TO RECALL**

5
6 **A retired judge subject to recall who by law is not permitted to practice law**
7 **is not required to comply**

8
9 (1) **except while serving as a judge, with Rule 4.06 (Service as**
10 **Arbitrator or Mediator); and**

11
12 (2) **at any time with Rule 4.05 (Appointments to Fiduciary**
13 **Positions).**

14
15 **COMMENT**

16
17 [1] For the purposes of this Rule, as long as a retired judge is subject to recall
18 the judge is considered to “perform judicial functions.”

19
20 **B. CONTINUING PART-TIME JUDGE**

21
22 **A judge who serves repeatedly on a part-time basis by election or under a**
23 **continuing appointment, including a retired judge subject to recall who is**
24 **permitted to practice law (“continuing part-time judge”)**

25
26 (1) **is not required to comply**

27
28 (a) **except while serving as a judge, with Rule 2.11A and B**
29 **(Judicial Statements on Pending and Future Cases); and**

30
31 (b) **at any time with Rules 4.03 (Appointments to**
32 **Governmental Bodies), 4.05 (Appointments to Fiduciary**
33 **Positions), 4.06 (Service as Arbitrator or Mediator), 4.08**
34 **(Practice of Law), 4.12 (Business Activities), 4.14**
35 **(Reimbursement or Waiver of Charges for Travel-related**
36 **Expenses of the Judge, the Judge’s Spouse, Domestic Partner**
37 **or Guest), 4.16 (Reporting of Compensation, Reimbursement,**
38 **and Waiver of Charges), 5.02 (Permitted Political Activities of**
39 **Candidates), 5.03 (Permitted Political Activities of Candidates**
40 **for Judicial Office in Non-partisan Public Elections), 5.04**
41 **(Permitted Political Activities of Candidates for Judicial**
42 **Office in Retention Elections), 5.05 (Permitted Activities of**
43 **Candidates for Appointive Judicial Office), 5.06 (Campaign**
44 **Committees), 5.07 (Activity of Candidates for Judicial Office**
45 **Subject to Retention Elections); and**

1 **(2) shall not practice law in the court on which the judge serves or**
2 **in any court subject to the appellate jurisdiction of the court on**
3 **which the judge serves, and shall not act as a lawyer in a proceeding**
4 **in which the judge has served as a judge or in any other proceeding**
5 **related thereto.**

6
7 **COMMENT**

8
9 [1] When a person who has been a continuing part-time judge is no longer a
10 continuing part-time judge, including a retired judge no longer subject to recall,
11 that person may act as a lawyer in a proceeding in which he or she has served as
12 a judge or in any other proceeding related thereto only with the express consent
13 of all parties pursuant to [Rule 1.12(a) of the ABA Model Rules of Professional
14 Conduct. An adopting jurisdiction should substitute a reference to its applicable
15 rule].

16
17 **C. PERIODIC PART-TIME JUDGE**

18
19 **A periodic part-time judge who serves or expects to serve repeatedly on a**
20 **part-time basis, but under a separate appointment for each limited period of**
21 **service or for each matter**

22
23 **(1) is not required to comply**

24
25 **(a) except while serving as a judge, with Rule 2.11**
26 **(Judicial Statements on Pending and Future Cases);**

27
28 **(b) at any time, with Rules 4.03 (Appointments to**
29 **Governmental Bodies), 4.04 (Civic or Charitable Activities),**
30 **4.05 (Appointments to Fiduciary Positions), 4.06 (Service as**
31 **Arbitrator or Mediator), 4.08 (Practice of Law), 4.09**
32 **(Financial Activities), 4.11 (Management and Divestiture of**
33 **Investments), 4.12 (Business Activities), 4.13 (Solicitation and**
34 **Acceptance of Gifts), 4.16 (Reporting of Compensation,**
35 **Reimbursement, and Waiver of Charges), 5.01 (Restrictions**
36 **on Political Activities of Judges and Candidates for Judicial**
37 **Office), and 5.05 (Activity of Candidates for Appointive**
38 **Judicial Office), and**

39
40 **(2) shall not practice law in the court on which the judge serves or**
41 **any court subject to the appellate jurisdiction of the court on which**
42 **the judge serves, and shall not act as a lawyer in a proceeding in**
43 **which the judge has served as a judge or in any other proceeding**
44 **related thereto.**

1 **COMMENT**

2
3 [1] When a person who has been a periodic part-time judge is no longer a
4 periodic part-time judge (no longer accepts appointments), that person may act as
5 a lawyer in a proceeding in which he or she has served as a judge or in any other
6 proceeding related thereto only with the express consent of all parties pursuant to
7 [Rule 1.12(a) of the ABA Model Rules of Professional Conduct].
8

9 **D. PRO TEMPORE PART-TIME JUDGE**

10
11 **A pro tempore part-time judge who serves or expects to serve once or only**
12 **sporadically on a part-time basis under a separate appointment for each**
13 **period of service or for each case heard**

14
15 (1) **is not required to comply**

16
17 (a) **except while serving as a judge, with Rules 1.01 (A**
18 **Judge Shall Avoid Impropriety and the Appearance of**
19 **Impropriety in All the Judge’s Activities, so as to Uphold the**
20 **Integrity, Impartiality, and Independence of the Judiciary),**
21 **2.10 (External Influences on Judicial Conduct), 2.11 (Judicial**
22 **Statements on Pending and Future Cases), and 4.02**
23 **(Appearances Before Governmental Bodies), or**

24
25 (b) **at any time with Rules 3.03 (Affiliation with**
26 **Discriminator Organizations), 4.03 (Appointments to**
27 **Governmental Bodies), 4.04 (Civic or Charitable Activities),**
28 **4.05 (Appointments to Fiduciary Positions), 4.06 (Service as**
29 **Arbitrator or Mediator), 4.08 (Practice of Law), 4.09**
30 **(Financial Activities), 4.11 (Management and Divestiture of**
31 **Investments), 4.13 (Solicitation and Acceptance of Gifts), 4.12**
32 **(Business Activities), 4.16 (Reporting of Compensation,**
33 **Reimbursement, and Waiver of Charges), 5.01 (Restrictions**
34 **on Political Activities of Judges and Candidates for Judicial**
35 **Office), and 5.05 (Activity of Candidates for Appointive**
36 **Judicial Office).**

37
38 (2) **A person who has been a pro tempore part-time judge shall**
39 **not act as a lawyer in a proceeding in which the judge has served as a**
40 **judge or in any other proceeding related thereto except as otherwise**
41 **permitted by [Rule 1.12(a) of the ABA Model Rules of Professional**
42 **Conduct].**

43
44 **II. TIME FOR COMPLIANCE**

1 **A person to whom this Code becomes applicable shall comply immediately**
2 **with all provisions of this Code except Rules 4.05 (Appointments to**
3 **Fiduciary Positions), 4.10 (Remunerative Activities), 4.12 (Business**
4 **Activities). He or she shall comply with those Rules as soon as reasonably**
5 **possible, but in no event later than one year after the Code became**
6 **applicable to him or her.**

7
8 **COMMENT**

9
10 [1] If serving as a fiduciary when selected as judge, a new judge may,
11 notwithstanding the prohibitions in Rule 4.05, continue to serve as fiduciary but
12 only for that period of time necessary to avoid serious adverse consequences to
13 the beneficiary of the fiduciary relationship and in no event longer than one year.
14 Similarly, if engaged at the time of judicial selection in a business activity, a new
15 judge may, notwithstanding the prohibitions in Rule 4.12, continue in that
16 activity for a reasonable period but in no event longer than one year.

NOTE ON JUDICIAL ETHICS COMMITTEES

Because of the need to encourage the establishment of judicial ethics committees in jurisdictions that do not have such committees either as free-standing entities or in combination with lawyer ethics committees, the following sample rules for the creation and operation of a judicial ethics committee are provided.

ESTABLISHMENT OF A JUDICIAL ETHICS COMMITTEE

A. The [chief judge of the highest court of the jurisdiction] shall appoint a Judicial Ethics Committee consisting of [nine] members. [Five] members shall be judges; [two] members shall be non-judge lawyers; and [two] members shall be public members. Of the judicial members, one member shall be appointed from each of [the highest court, the intermediate levels of courts, and the trial courts]. The remaining judicial members shall be judges appointed from any of the above courts, but not from the [highest court of the jurisdiction]. The [chief judge] shall designate one of the members as chairperson. Members shall serve three-year terms; terms shall be staggered; and no individual shall serve for more than two consecutive terms.

B. The Judicial Ethics Committee so established shall have authority to:

(1) by the concurrence of a majority of its members, express its opinion on proper judicial conduct with respect to the provisions of [the code of judicial conduct adopted by the jurisdiction and any other specified sections of law of the jurisdiction regarding the judiciary, such as financial reporting requirements], either on its own initiative, at the request of a judge or candidate for judicial office, or at the request of a court or an agency charged with the administration of judicial discipline in the jurisdiction, provided that an opinion may not be issued on a matter that is pending before a court or before such an agency except on request of the court or agency;

(2) make recommendations to [the highest court of the jurisdiction] for amendment of the Code of Judicial Conduct [of the jurisdiction]; and

(3) adopt rules relating to the procedures to be used in expressing opinions, including rules to assure a timely response to inquiries.

C. A judge or candidate for judicial office as defined in the Terminology Section of this Code who has requested and relied upon an opinion may not be disciplined for conduct conforming to that opinion.

D. An opinion issued pursuant to this rule shall be filed with [appropriate official of the judicial conference of the jurisdiction]. Such an opinion is confidential and not public information unless [the highest court of the jurisdiction] otherwise directs. However, the [appropriate official of the judicial conference of the jurisdiction] shall cause an edited version of each opinion to be prepared, in which the identity and geographic location of the person who has requested the opinion, the specific court involved, and the identity of other individuals, organizations or groups mentioned in the opinion are not disclosed. Opinions so edited shall be published periodically in the manner [the appropriate official of the judicial conference of the jurisdiction] deems proper.

PLEASE NOTE: As was the case when the ABA Model Code of Judicial Conduct was adopted on August 8, 1990 by the ABA House of Delegates, this "Note on Judicial Ethics Committees" is not intended for adoption as part of the ABA Model Code of Judicial Conduct.

**ABA MODEL CODE OF JUDICIAL CONDUCT
CORRELATION TABLE**

PROPOSED 2005 CODE TO 1990 CODE

PROPOSED 2005 CODE

1990 CODE

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Preamble (partial)

SCOPE

Preamble (partial)

TERMINOLOGY

Terminology

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Canons 1 and 2

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Rule 1.02

Canon 2A (partial)

Rule 1.03

Canon 2

Rule 1.04

Canon 2A (partial)

CANON 2

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Canon 2B (partial)

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Rule 2.09

Canon 3B(7) (partial)

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Canon 3B(7) Commentary

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Canon 3E(1)(b) (partial)
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No equivalent
No equivalent
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Terminology
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No equivalent
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No equivalent
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Canon 4D(5)
Canon 4D(5)(a) (partial)
Canon 4D(5)(a) (partial)
Canon 4D(5)(a) (partial)
No equivalent
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Canon 4D(5)(a) (partial)
Canon 4D(5)(b)
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APPLICATION**1990 CODE**

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No equivalent
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No equivalent
No equivalent
Canon 5A(3)(d)(i)
No equivalent
No equivalent
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No equivalent
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Canons 5C(1)(b)(i), (ii) and (iii)
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No equivalent
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Application

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MODEL CODE OF JUDICIAL CONDUCT**

2003 - 2005

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