

1 American Bar Association  
2 Model Code of Judicial Conduct

3 JULY 2004 DRAFT

4  
5 CANON 3

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7 CANON 3: PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE  
8 JUDGE'S PERSONAL AFFAIRS TO PRESERVE THE INTEGRITY,  
9 IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY  
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11 3.01 Using the Judicial Office for Private Purposes. A judge  
12 shall not lend the prestige of judicial office to advance the  
13 private interests of the judge or others.<sup>1</sup>

14 **Commentary:**

15 [1] Maintaining the prestige of judicial office is essential to a system  
16 of government in which the judiciary functions independently of the  
17 executive and legislative branches. Respect for the judicial office  
18 facilitates the orderly conduct of legitimate judicial functions.  
19 Judges should distinguish between proper and improper use of the  
20 prestige of office in all of their activities.<sup>2</sup>

21 [2] It would be improper, for example, for a judge to allude to his or  
22 her judgeship to gain a personal advantage such as deferential  
23 treatment when stopped by a police officer for a traffic offense, or to  
24 use his or her judicial position to gain advantage in a civil suit  
25 involving a member of the judge's family. Similarly, a judge must  
26 not use judicial letterhead to gain an advantage in conducting his or  
27 her personal business.<sup>3</sup>

28 [3] Special considerations arise when judges write or contribute to  
29 publications, whether related or unrelated to the law. A judge  
30 should not permit the publisher of such materials to exploit the  
31 judge's office by, for example, praising the judge's judicial

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<sup>1</sup> Canon 2B (deleted portions of this Canon appear in Rule 2.10 and Rule 4.07)

<sup>2</sup> Canon 2B Commentary

<sup>3</sup> Canon 2B Commentary

1 accomplishments or, when the work is unrelated to the law,  
2 emphasizing the judge's position.<sup>4</sup>

3 [4] Judges may participate in the process of judicial selection by  
4 cooperating with appointing authorities and screening committees  
5 seeking names for consideration, and by responding to official  
6 inquiries concerning a person being considered for a judgeship.<sup>5</sup>

7 [5] A Judge may provide a reference or recommendation for an  
8 individual based upon the judge's personal knowledge. However,  
9 unless the recommendation is based upon information obtained  
10 through the judge's expertise or experience as a judge, the  
11 reference or recommendation should not be communicated on the  
12 judge's judicial letterhead.

13 [6] This rule does not apply to a judge's use of his or her name in  
14 endorsements of himself or herself, or of other judicial candidates  
15 as permitted in Canon 5.<sup>6</sup>

16 [7] A judge must not testify voluntarily as a character witness  
17 because to do so may lend the prestige of the judicial office in  
18 support of the party for whom the judge testifies.<sup>7</sup> See Rule 4.07.

19 **3.02 Use of Non-Public Information. A judge shall not disclose**  
20 **or use, for any purpose unrelated to judicial duties, nonpublic**  
21 **information\* acquired in a judicial capacity.<sup>8</sup>**

22 **Commentary:**

23 [1] In the course of performing their judicial duties, judges may  
24 acquire information of commercial or other value that is otherwise  
25 unavailable to the public. Judges must not reveal or exploit such  
26 information for personal gain or for any purpose unrelated to their  
27 judicial duties.

28 **3.03 Affiliation with Discriminatory Organizations. A judge**  
29 **shall not hold membership in any organization that practices**  
30 **invidious discrimination on the basis of race, sex, religion,**  
31 **national origin, ethnicity, or sexual orientation, and shall not**

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<sup>4</sup> Canon 2B Commentary

<sup>5</sup> Canon 2B Commentary

<sup>6</sup> Canon 2B Commentary

<sup>7</sup> Canon 2B Commentary

<sup>8</sup> Canon 3B(12)

1 use the facilities of such an organization to any significant  
2 extent.<sup>9</sup>

3 **Commentary:**<sup>10</sup>

4 [1] Membership of a judge in an organization that practices  
5 invidious discrimination gives rise to perceptions that the judge's  
6 impartiality is impaired. Whether an organization's practices are  
7 invidiously discriminatory is often a complex question. An  
8 organization is generally said to discriminate invidiously if it  
9 arbitrarily excludes from membership on the basis of race, religion,  
10 sex, national origin, ethnicity or sexual orientation of individuals  
11 who would otherwise be admitted. Rule 3.03 does not prohibit a  
12 judge's membership in any United States military organization, an  
13 organization dedicated to the preservation of religious, ethnic or  
14 legitimate cultural values of common interest to its members, or one  
15 that is in fact and effect an intimate, purely private organization  
16 whose membership limitations could not be constitutionally  
17 prohibited.

18 [2] Public manifestation by a judge of the judge's approval of  
19 invidious discrimination on any basis gives the appearance of  
20 impropriety under Canon 1 and diminishes public confidence in the  
21 integrity and impartiality of the judiciary in violation of Rule 1.01.  
22 Although Rule 3.03 relates only to organizations invidiously  
23 discriminating on the basis of race, sex, religion, national origin,  
24 ethnicity, or sexual orientation, a judge's membership in or  
25 significant use of organizations practicing invidious discrimination  
26 on any other basis prohibited by applicable law creates the  
27 appearance of impropriety.

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

37 [4] When a judge learns that an organization to which the judge  
38 belongs engages in invidious discrimination that would preclude

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<sup>9</sup> Canon 2C

<sup>10</sup> Commentary is taken from Canon 2C Commentary. Note that the sentence order does not exactly comply with the 1990 Model Code.

1 membership under Rule 3.03 or under Canon 1 and Rule 1.01, the  
2 judge is permitted, in lieu of resigning, to make immediate efforts to  
3 have the organization discontinue its invidiously discriminatory  
4 practices, but is required to suspend participation in any other  
5 activities of the organization. If the organization fails to discontinue  
6 its invidiously discriminatory practices as promptly as possible (and  
7 in all events within a year of the judge's first learning of the  
8 practices), the judge is required to resign immediately from the  
9 organization.