

1 American Bar Association
2 Model Code of Judicial Conduct

3 **JULY 2004 DRAFT**

4
5 **CANON 4**
6 **Rules 4.01-4.12**
7

8 **CANON 4: EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL**
9 **CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES TO**
10 **MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL**
11 **OBLIGATIONS**¹

12 **4.01 Extra-judicial Activities in General.** A judge shall conduct
13 all of the judge's extra-judicial activities so they:²

14 (a) do not interfere with the proper performance of
15 judicial duties;³

16 (b) do not cast reasonable doubt on the judge's
17 capacity to act with impartiality, integrity and
18 independence;⁴

19 (c) do not demean the judicial office; and⁵

20 (d) comply with the requirements of this Code.

21 **Commentary:**

22 [1] Complete separation of a judge from extra-judicial activities is
23 neither possible nor wise; a judge should not become isolated from
24 the community in which the judge lives.⁶

25 [2] Expressions of bias or prejudice by a judge, even outside the
26 judge's judicial activities, may cast reasonable doubt on the judge's
27 capacity to act impartially as a judge. Expressions which may do so

¹ Canon 4

² Canon 4A

³ Canon 4A(3)

⁴ Canon 4A(1)

⁵ Canon 4A(2)

⁶ Canon 4A Commentary

1 include jokes or other remarks demeaning individuals on the basis
2 of their race, sex, religion, national origin, disability, age, sexual
3 orientation or socioeconomic status. See Rule 3.03 and
4 accompanying Commentary.⁷

5 [4] As a judicial officer and person specially learned in the law, a
6 judge is in the unique position to contribute to the improvement of
7 the law, the legal system, and the administration of justice,
8 including revision of substantive and procedural law and
9 improvement of the justice system. Such contributions may take the
10 form of speaking, writing, teaching or participating in other
11 extrajudicial activities. In many instances, these activities may
12 contribute significantly to the promotion of the fair administration of
13 justice and to ensuring the integrity, independence and impartiality
14 of the judiciary. To the extent that time permits, a judge is
15 encouraged to undertake such activities, either independently or
16 through a bar association, judicial conference or other organization.

18 [5] As a private individual, a judge may also wish to engage in
19 writing, speaking, teaching, or being otherwise active in regard to
20 non-legal subjects. To the extent that such activity is not in conflict
21 with any of the judges' duties under this Code, it is permitted by this
22 Rule.

23 **4.02 Appearances Before Governmental Bodies. A judge shall**
24 **not appear at a public hearing before, or otherwise consult**
25 **with, an executive or legislative body or official except:⁸**

26 **(a) on matters concerning the law*, the legal system or**
27 **the administration of justice;⁹**

28 **(b) on other matters that might reasonably merit the**
29 **attention and comment of the judge because of knowledge or**
30 **expertise acquired in the course of the judge's judicial duties;**
31 **or**

32 **(c) when acting pro se in a matter involving the judge or**
33 **the judge's interests.¹⁰**

34 **Commentary:**

⁷ Canon 4A Commentary

⁸ Canon 4C(1) partial

⁹ Canon 4C(1) partial

¹⁰ Canon 4C(1) partial

1 [1] Judges possess special expertise on matters of law, the legal
2 system, and the administration of justice and may properly share
3 that expertise with governmental bodies. In addition, judges may
4 acquire information on issues before them that are not law-related
5 but upon which they may be well qualified to comment from their
6 unique vantage point as jurists who have presided over such
7 matters in court. For example, a juvenile court judge may be
8 uniquely situated to comment to a public body on the potential
9 benefits of proposed improvements in the community, such as the
10 creation of new athletic or other recreational opportunities that
11 could lead to a decrease in delinquency among juveniles. Judges
12 must be mindful, however, that their appearance before
13 governmental bodies remains subject to other provisions of this
14 Code, such as Rule 2.11, governing public comment on pending
15 and impending matters, and Rule 4.01(b), prohibiting judges from
16 engaging in extra-judicial activities that cast reasonable doubt on
17 the judge's impartiality, integrity and independence.

18 [2] In general, it would be an unnecessary and unfair burden to
19 prohibit judges from appearing before governmental bodies on
20 matters that are likely to have special effect upon them as private
21 citizens, for example, zoning proposals that will affect their real
22 property or proposals having to do with the availability of local
23 health services. The judge must exercise care, however, not to lend
24 the prestige of judicial office to advance general causes with
25 respect to which the judge possesses no special judicial
26 competence.

27 [3] See Rules 2.10 and 3.01 and Commentary regarding the
28 obligation to avoid improper influence.¹¹

29 **4.03 Appointments to Governmental Bodies.** A judge shall not
30 accept appointment to a governmental committee or
31 commission or other governmental position that is concerned
32 with issues of fact or policy on matters other than the
33 improvement of the law,* the legal system or the
34 administration of justice. A judge may, however, represent a
35 country, state or locality on ceremonial occasions or in
36 connection with historical, educational or cultural activities.¹²

37 **Commentary:**

38 [1] A judge must assess the appropriateness of accepting extra
39 judicial assignments in light of the demands on judicial resources

¹¹ Canon 4C(1) Commentary

¹² Canon 4C(2)

1 created by crowded dockets, and should not accept governmental
2 appointments that are likely to interfere with the effective operation
3 of the courts. Judges must also avoid appointments that are likely
4 to embroil the court in controversial issues or impair the impartiality,
5 integrity and independence of the judiciary.¹³

6 **4.04 Civic or Charitable Activities.** A judge may participate in
7 civic or charitable activities that do not reflect adversely upon
8 a judge's impartiality, integrity and independence, or interfere
9 with the performance of judicial duties, subject to the
10 following limitations and the other requirements of this Code.¹⁴

11
12 **(a) With respect to any activities in which a judge participates**
13 **on behalf of a civic or charitable organization:¹⁵**

14
15 **(1) A judge shall not:**

- 16
17 i. use or permit the use of the prestige of
18 judicial office for fundraising or
19 membership solicitation;¹⁶
20
21 ii. personally solicit funds for the
22 organization;¹⁷
23
24 iii. personally participate in membership
25 solicitation if the solicitation is primarily a
26 fundraising mechanism, or if it might
27 reasonably be perceived as coercive.¹⁸
28

29 **(1) Notwithstanding paragraph (1) above, a judge may:**

- 30
31 i. personally solicit funds from other judges
32 over whom the judge does not exercise
33 supervisory or appellate authority;¹⁹
34
35 ii. assist the organization in fundraising and
36 participate in the management and
37 investment of the organization's funds;²⁰
38

¹³ Canon 4C(2) Commentary

¹⁴ Canon 4C(3) (see Rule 4.04(b) for deleted portions of this Rule)

¹⁵ Canon 4C(3)(b)

¹⁶ Canon 4C(3)(b)(iv)

¹⁷ Canon 4C(3)(b)(i) partial

¹⁸ Canon 4C(3)(b)(iii)

¹⁹ Canon 4C(3)(b)(i) partial

²⁰ Canon 4C(3)(b)(i) partial

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- iii. appear at, participate in, and permit the judge’s title to be used in connection with an event of an organization devoted to the improvement of law, the legal system, or the administration of justice, even though the event may serve a fundraising purpose;
- iv. make recommendations to public and private fund-granting organizations on programs and activities concerning the law, the legal system or the administration of justice.²¹

b. ²² A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental entity devoted to the improvement of the law,* the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, unless it is likely that the organization or governmental entity:²³

- (1) will be engaged in proceedings that would ordinarily come before the judge, or²⁴
- (2) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.²⁵

Commentary:

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

[2] Solicitation of funds for an organization involves the danger that the person solicited will feel obligated to respond favorably to the

²¹ Canon 4C(3)(b)(ii)
²² Canon 4C(3)(a)
²³ Canon 4C(3)
²⁴ 4C(3)(a)(i)
²⁵ Canon 4C(3)(a)(ii)

1 solicitor if the solicitor is in a position of influence or control.²⁶ For
2 that reason, a judge is not permitted to solicit funds in person, in
3 writing or by telephone, unless the person being solicited is another
4 judge over whom the judge exercises no appellate or supervisory
5 control. Similarly, a judge is not permitted personally to solicit
6 memberships in an organization if the solicitation is primarily a
7 fundraising mechanism. A judge may, however, participate in
8 fundraising activities by performing tasks other than soliciting or
9 accepting donations at fundraising events, without the attendant
10 risk of coercion that makes personal solicitation of funds
11 problematic.

12 [3] Solicitation of membership poses potential problems similar to
13 those associated with the solicitation of funds. For that reason, a
14 judge must not personally solicit membership or endorse or
15 encourage membership efforts for civic or charitable organizations
16 if the solicitation could reasonably be perceived as coercive. For
17 example, a judge must not solicit memberships from other judges
18 over whom the judge exercises supervisory or appellate authority,
19 or from persons or those affiliated with persons who are likely ever
20 to appear before the court on which the judge serves.

21 [4] Notwithstanding the foregoing limitations, no comparable risk of
22 coercion arises when a judge who is an officer of such an
23 organization sends a general membership solicitation mailing over
24 the judge's signature. In addition, lawyer and judicial organizations
25 with diverse memberships, whose members are balanced in
26 representing all parties in litigation, often include judges in their
27 leadership. Judges may be involved in member recruitment for
28 such organizations even though the dues or fees associated with
29 membership may be used, in part, as fundraising to support the
30 objectives of those organizations.²⁷

31 [5] Judges are an integral part of the legal community and may
32 participate as judges in the activities of organizations within the
33 legal community without inappropriately lending the prestige of
34 office to those activities, even when they serve a fundraising
35 purpose. Therefore, a judge may, for example, accept an invitation
36 to speak at or be recognized or honored at an event hosted by a
37 legal organization, law school, or other entity devoted to improving
38 the law, the legal system or the administration of justice, even if
39 such an event raises funds for the benefit of the sponsoring
40 organization.

²⁶ Canon 4C(3)(b) Commentary partial

²⁷ Canon 4C(3)(b) Commentary

1 [6] Use of an organization letterhead for fundraising or membership
2 solicitation does not violate Rule 4.04 provided the letterhead lists
3 only the judge's name, office or other position in the organization,
4 and, if comparable designations are listed for other persons, the
5 judge's judicial designation. In addition, a judge must also make
6 reasonable efforts to ensure that the judge's staff, court officials
7 and others subject to the judge's direction and control do not solicit
8 funds on the judge's behalf for any purpose, charitable or
9 otherwise.²⁸

10 [7] This Rule does not prohibit a judge's service in a governmental
11 position associated with the improvement of the law, the legal
12 system or the administration of justice; see Rule 4.03.²⁹

13 [8] In this and other Rules in Canon 4, the phrase "subject to the
14 requirements of this Code" is used to remind judges that the use of
15 permissive language in various Rules of the Code does not relieve
16 a judge from the other requirements of the Code that apply to the
17 specific conduct.³⁰ As an example of the meaning of the phrase, a
18 judge permitted by this Rule to serve on the board of a fraternal
19 institution may be prohibited from such service by Rules 3.03 or
20 4.01 if the institution practices invidious discrimination or if service
21 on the board otherwise casts reasonable doubt on the judge's
22 capacity to act impartially as a judge.³¹

23 [9] Service by a judge on behalf of a civic, fraternal or charitable
24 organization may be governed by other provisions of Canon 4 in
25 addition to Rules 4.02, 4.03 and 4.04. For example, a judge is
26 prohibited by Rule 4.07 from serving as a legal advisor to a civic,
27 fraternal or charitable organization.³²

28 [10] The changing nature of some organizations and of their
29 relationship to the law makes it necessary for a judge regularly to
30 reexamine the activities of each organization with which the judge
31 is associated to determine if it is proper for the judge to continue
32 the affiliation.³³

33 [11] This Rule, not Rule 4.03, governs a judge's service in a
34 nongovernmental position. This Rule permits service by a judge
35 with organizations devoted to the improvement of the law, the legal

²⁸ Canon 4C(3)(b) Commentary

²⁹ Canon 4C(3)(b) Commentary

³⁰ Canon 4B Commentary

³¹ Canon 4C(3) Commentary

³² Canon 4C(3) Commentary

³³ Canon 4C(3)(a) Commentary

1 system or the administration of justice and with educational,
2 religious, charitable, fraternal or civic organizations not conducted
3 for profit. Service on the board of a public educational institution,
4 unless it were a law school, would be prohibited under Rule 4.03,
5 but service on the board of a public law school or any private legal
6 institution would generally be permitted under this Rule.³⁴

7 **4.05 Appointments to Fiduciary Positions.**

8 **(a) A judge shall not serve as executor,**
9 **administrator or other personal representative,**
10 **trustee, guardian, attorney in fact or other**
11 **fiduciary,* except for the estate, trust or person of**
12 **a member of the judge's family,* and then only if**
13 **such service will not interfere with the proper**
14 **performance of judicial duties.**³⁵

15 **(b) A judge shall not serve as a fiduciary* if it is**
16 **likely that the judge as a fiduciary will be engaged**
17 **in proceedings that would ordinarily come before**
18 **the judge, or if the estate, trust or ward becomes**
19 **involved in adversary proceedings in the court on**
20 **which the judge serves or one under its appellate**
21 **jurisdiction.**³⁶

22 **(c) The same restrictions on financial activities**
23 **that apply to a judge personally also apply to the**
24 **judge while acting in a fiduciary* capacity.**³⁷

25 **Commentary:**

26 [1] The Time for Compliance provision of this Code (Application,
27 Section F) postpones the time for compliance with certain
28 provisions of this Rule in some cases.³⁸

29 [2] The restrictions imposed by this Canon may conflict with the judge's
30 obligation as a fiduciary. For example, a judge should resign as trustee if
31 detriment to the trust would result from divestiture of holdings the retention
32 of which would place the judge in violation of Rule 4.11, or require
33 frequent disqualification.

³⁴ Canon 4C(2) Commentary

³⁵ Canon 4E(1)

³⁶ Canon 4E(2)

³⁷ Canon 4E(3)

³⁸ Canon 4E Commentary

1 **4.06 Service as Arbitrator or Mediator.** A judge shall not act as
2 **an arbitrator or mediator or otherwise perform judicial**
3 **functions in a private capacity unless expressly authorized by**
4 **law*.³⁹**

5 **Commentary:**

6 [1] Judges regularly participate in arbitration, mediation or
7 settlement conferences, either as part of their regular duties or as
8 specially authorized by court rule or other law. The integrity of the
9 judiciary is undermined, however, when judges take financial
10 advantage of their offices by rendering private dispute resolution
11 services for pecuniary gain as an extra-judicial activity. In such
12 circumstances, the prestige of the judicial office would be used to
13 advance the personal financial gain of the judge.

14 [2] Rule 4.06 does not prohibit a judge from participating in
15 arbitration, mediation or settlement conferences performed as part
16 of judicial duties.⁴⁰

17 **4.07 Testifying as a Character Witness.** A judge shall not
18 **testify as a character witness, except when properly**
19 **summoned.⁴¹**

20 **Commentary:**

21 [1] When a judge testifies as a witness, a lawyer who regularly
22 appears before the judge may be placed in the awkward position of
23 cross-examining the judge. In addition, a judge who testifies
24 voluntarily as a character witness, lends the prestige of judicial
25 office to advance the interests of another. See Rule 3.01. Except in
26 unusual circumstances where the demands of justice require, a
27 judge should discourage a party from requiring the judge to testify
28 as a character witness.⁴²

29 **4.08 Practice of Law.** A judge shall not practice law.
30 **Notwithstanding this prohibition, a judge may act pro se and**

³⁹ Canon 4F

⁴⁰ Canon 4F Commentary

⁴¹ Canon 2B partial

⁴² Canon 2B Commentary

1 **may, without compensation, give legal advice to and draft or**
2 **review documents for a member of the judge’s family.*⁴³**

3 **Commentary:**

4 [1] This prohibition refers to the practice of law in a representative
5 capacity and not in a pro se capacity. A judge may act for himself or
6 herself in all legal matters, including matters involving litigation and
7 matters involving appearances before or other dealings with
8 legislative and other governmental bodies. However, in so doing, a
9 judge must not abuse the prestige of office to advance the interests
10 of the judge or the judge’s family. See Rule 3.01.⁴⁴

11 [2] The Code allows a judge to give legal advice to and draft legal
12 documents for members of the judge’s family, so long as the judge
13 receives no compensation. A judge must not, however, act as an
14 advocate or negotiator for a member of the judge’s family in a legal
15 matter.⁴⁵

16 **4.09 Financial Activities. A judge shall not engage in financial**
17 **and business dealings that:⁴⁶**

18 **(a) may reasonably be perceived to exploit**
19 **the judge’s judicial position, or⁴⁷**

20 **(b) involve the judge in frequent**
21 **transactions or continuing business**
22 **relationships with those lawyers or other**
23 **persons likely to come before the court on**
24 **which the judge serves.⁴⁸**

25 **Commentary:**

26 [1] When a judge acquires information in a judicial capacity, such
27 as material contained in filings with the court that is not yet
28 generally known, the judge must not use the information for private
29 gain. See Rule 3.01; see also Rule 3.02.⁴⁹

⁴³ Canon 4G

⁴⁴ Canon 4G Commentary

⁴⁵ Canon 4G Commentary

⁴⁶ Canon 4D(1)

⁴⁷ Canon 4D(1)(a)

⁴⁸ Canon 4D(1)(b)

⁴⁹ Canon 4D(1) Commentary

1 [2] A judge must avoid financial and business dealings that involve
2 the judge in frequent transactions or continuing business
3 relationships with persons likely to come either before the judge
4 personally or before other judges on the judge's court. In addition, a
5 judge should discourage members of the judge's family from
6 engaging in dealings that would reasonably appear to exploit the
7 judge's judicial position. This rule is necessary to avoid creating an
8 appearance of exploitation of office or favoritism and to minimize
9 the potential for disqualification. With respect to affiliation of
10 relatives of a judge with law firms appearing before the judge, see
11 Commentary to Rule 2.12 relating to disqualification.⁵⁰

12 [3] Participation by a judge in financial and business dealings is
13 subject to the general prohibitions in Rule 4.01 against activities
14 that tend to reflect adversely on impartiality, demean the judicial
15 office, or interfere with the proper performance of judicial duties.
16 Such participation is also subject to the general prohibition in
17 Canon 1 against activities involving impropriety or the appearance
18 of impropriety and the prohibition in Rule 3.01 against the misuse of
19 the prestige of judicial office. In addition, a judge must maintain
20 high standards of conduct in all of the judge's activities, as set forth
21 in Canon 1.⁵¹

22 **4.10 Remunerative Activities. A judge may, subject to**
23 **the requirements of this Code, hold and manage**
24 **investments of the judge and members of the judge's**
25 **family,* including real estate, and engage in other**
26 **remunerative activity.⁵²**

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⁵⁰ Canon 4D(1) Commentary

⁵¹ Canon 4D(1) Commentary

⁵² Canon 4D(2)

1 **Commentary:**

2 [1] This Rule provides that, subject to the requirements of this
3 Code, a judge may hold and manage investments owned solely by
4 the judge, investments owned solely by a member or members of
5 the judge's family, and investments owned jointly by the judge and
6 members of the judge's family. See Commentary for Rule 4.04
7 regarding use of the phrase "subject to the requirements of this
8 Code."⁵³

9 **4.11 Management and Divestiture of Investments. A**
10 **judge shall manage the judge's investments and other**
11 **financial interests to minimize the number of cases in**
12 **which the judge is disqualified. As soon as the judge**
13 **can do so without serious financial detriment, the judge**
14 **shall divest himself or herself of investments and other**
15 **financial interests that might require frequent**
16 **disqualification.⁵⁴**

17 **Commentary:**

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

25 [2] Financial interests, within the meaning of this rule, include
26 the interests of others whom the judge serves as a fiduciary
27 under Rule 4.05.

28 **4.12 Business Activities. A judge shall not serve as an**
29 **officer, director, manager, general partner, advisor or**
30 **employee of any business entity except that a judge**
31 **may, subject to the requirements of this Code, manage**
32 **and participate in:⁵⁵**

33 **(a) a business closely held by the judge or**
34 **members of the judge's family,* or⁵⁶**

⁵³ Canon 4D(2) Commentary

⁵⁴ Canon 4D(4)

⁵⁵ Canon 4D(3)

⁵⁶ Canon 4D(3)(a)

1 **(b) a business entity primarily engaged in investment of**
2 **the financial resources of the judge or members of**
3 **the judge’s family.*⁵⁷**

4 **Commentary:**

5 [1] Although participation by a judge in a closely-held family
6 business might otherwise be permitted by Rule 4.12, a judge may
7 be prohibited from participation by other provisions of this Code
8 when, for example, the business entity frequently appears before
9 the judge’s court or the participation requires significant time away
10 from judicial duties. Similarly, a judge must avoid participating in a
11 closely-held family business if the judge’s participation would
12 involve misuse of the prestige of judicial office.⁵⁸

13 **Rules 4.13 through 4.16, pertaining to gifts,**
14 **compensation, reimbursement, reporting**
15 **and disclosure are posted under separate**
16 **cover.**

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⁵⁷ Canon 4D(3)(b)

⁵⁸ Canon 4D(3) Commentary