

1 **PREAMBLE**

2 June 30, 2005 draft ("Preliminary Draft"), redlined to reflect changes from current
3 ABA Model Code
4

5 The judiciary is the cornerstone of the American legal system and a highly visible symbol
6 of our commitment to justice and to government under the rule of law. The rule of law
7 depends on an independent judiciary composed of men and women of integrity who
8 perform their duties competently and impartially.
9

10 ~~Our legal system is based on the principle that an independent, fair and competent~~
11 ~~judiciary will interpret and apply the laws that govern us. The role of the judiciary is~~
12 ~~central to American concepts of justice and the rule of law. Intrinsic to all sections of the~~
13 ~~Code are the precepts that~~ In order to sustain the rule of law judges must possess the
14 qualities of integrity, impartiality, independence and competence. They must also
15 promote public confidence in the judiciary. That confidence is eroded if judges engage in
16 improper or unethical conduct. Accordingly, judges, individually and collectively, must
17 respect and honor the judicial office as a public trust, and strive to enhance and maintain
18 confidence in our legal system. The judge is an arbiter of facts and law for the resolution
19 of disputes and a highly visible symbol of government under the rule of law the dignity of
20 the office at all times. They must respect as well all other persons who serve and
21 participate in the judicial system, including other judges, court employees, public
22 officials, jurors, litigants, and lawyers.¹
23

24 Because of their role as public symbols of justice and the rule of law, judges must not
25 only avoid impropriety in their professional and personal lives, but avoid the appearance
26 of impropriety as well. They should expect to be the subject of public scrutiny, and
27 should freely and willingly accept restrictions on their conduct that might be viewed as
28 burdensome by ordinary citizens.
29

30 The black letter Rules of the Model Code of Judicial Conduct provide a body of clear,
31 succinct and enforceable rules to regulate the conduct of individual judges. They
32 establish minimum standards of conduct with which all judges – and where applicable –
33 judicial candidates must comply. The Model Code also articulates aspirational goals and
34 ideals, encouraging judges and candidates to establish and maintain standards of judicial
35 and personal conduct that exceed the minimum standards set forth in the Rules. Taken
36 together, the Code accomplishes the two objectives of any code of conduct. In providing
37 judges with guidance in the face of potential ethical problems, it serves a prophylactic
38 purpose. In establishing rules that can be effectively enforced by those who regulate the
39 judiciary, it serves a purpose of protecting the public.
40

41 The Model Code consists of five Canons, which collectively state the five overarching
42 core principles of judicial conduct that are indispensable to sustaining the rule of law and
43 to enhancing public confidence in the judiciary and the justice system. As further

¹ Preamble. The majority of the text of the 1990 Preamble has been incorporated into a new Scope section.

1 described in the Scope section, the Rules organized under each Canon implement these
2 core principles.

3
4 Canon 1 provides that “A Judge Shall Avoid Impropriety and the Appearance of
5 Impropriety in All the Judge’s Activities, so as to Uphold the Integrity, Impartiality, and
6 Independence of the Judiciary.” Judges apply the law, and, like lawyers, are often
7 referred to as “servants of the law.” In the public mind, however, judges embody the law
8 itself, and through their daily work demonstrate the majesty of the law as it is employed
9 to resolve conflicts and maintain a just society. The public must be able to trust every
10 judge and the judicial system itself. It is imperative that judges obey the law and other
11 rules applicable to them, while exhibiting sound character and moral rectitude in their
12 professional work and in their personal lives.

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

20
21 Judges are obligated to work diligently on matters presented to them, maintain decorum
22 and respect in the courtroom and in ancillary proceedings, provide every litigant with the
23 right to be heard according to established procedures, and avoid *ex parte*
24 communications. When these goals are achieved, the public’s regard for the judiciary is
25 deservedly high.

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

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

1
2 The Rules under Canon 4 also impose significant restrictions on the acceptance of gifts
3 by judges and require judges to file meaningful and timely reports regarding those gifts.
4

5 Canon 5 admonishes that “A Judge or Candidate for Judicial Office Shall Refrain From
6 Political Activity that is Inconsistent with the Integrity, Impartiality, and Independence of
7 the Judiciary.” This necessarily complex Canon addresses the tension created by two
8 long-standing features of our system. First is the traditional constitutional principle of
9 separation of powers, which operates to allow judges to maintain a healthy distance from
10 the politics of legislative and executive branch activities. In those arenas decision-
11 making may be based, for example, on appeals to expediency, which would be
12 inappropriate in the judicial arena.
13

14 The second feature is the practical reality that judges in a majority of American
15 jurisdictions are subject to public election. It is impossible to serve as a candidate for
16 public office without engaging in some political activity, even in judicial elections.
17 Canon 5 attempts to remove as much political influence as possible from the judicial
18 election process and from the judiciary by imposing certain narrowly tailored restrictions
19 on the political activity—including campaign activity—of all sitting judges and all
20 candidates for judicial office. Its Rules operate to guarantee to judges and candidates the
21 constitutional rights of free speech and expressive association, but in so doing, draw a
22 bright line between statements of personal views on disputed legal and political issues on
23 the one hand, and specific pledges or promises to reach a particular result in pending or
24 impending cases on the other.
25
26

1 **SCOPE**

2 6/05 draft redlined to 1990 Code

3
4 ~~The Code of Judicial Conduct is intended to establish standards for ethical conduct of~~
5 ~~judges. It consists of broad statements called Canons, specific rules set forth in Sections~~
6 ~~under each Canon, a Terminology Section, an Application Section and Commentary. The~~
7 ~~text of the Canons and the Sections, including the Terminology and Application Sections,~~
8 ~~is authoritative. The Commentary, by explanation and example, provides guidance with~~
9 ~~respect to the purpose and meaning of the Canons and Sections. The Commentary is not~~
10 ~~intended as a statement of additional rules.¹~~

11
12 The Model Code of Judicial Conduct consists of five Canons, numbered Rules under
13 each Canon, and Comments that accompany and explicate each Rule. This Scope
14 Section and a Terminology Section provide additional guidance in interpreting and
15 applying the Code. At the end of the Code, an Application Section identifies those
16 persons who must comply with the Rules, including full-time judges and others who hold
17 judicial office on other than a full-time basis.

18
19 As noted in the Preamble, the Canons state overarching principles of judicial ethics.
20 Compliance with all of the Rules inevitably results in adherence to these principles, thus
21 ensuring the respect for our judiciary that sustains our system of democratic government
22 under the rule of law. Although the Canons are cast in mandatory terms, it is the Rules
23 that establish independently enforceable standards of conduct.

24
25 ~~When the text uses Where the Rules use the terms “shall” or “shall not,” it is intended to~~
26 ~~impose binding they establish mandatory obligations the violation of which can result in~~
27 ~~disciplinary action. When “should or “should not” is used, the text is intended as~~
28 ~~hortatory and as a statement of what is or is not appropriate conduct but not as a binding~~
29 ~~rule under which a judge may be disciplined. When “may” is used, it denotes permissible~~
30 ~~discretion or, depending on the context, it refers to action that is not covered by specific~~
31 ~~proscriptions and constitute minimum standards to which judges and candidates for~~
32 ~~judicial office will be held. Where a Rule uses permissive terms, such as "may," the~~
33 ~~matter being addressed is committed to the personal and professional discretion of the~~
34 ~~judge or candidate in question; judges and candidates whose action or inaction falls~~
35 ~~within the boundaries of such discretion are not subject to disciplinary action.²~~

36 Enforcement of these standards through appropriate disciplinary processes is effected by
37 the development and application of rules and procedures external to the ethical standards
38 themselves.

39
40 The Comments accompanying the Rules provide guidance with respect to the purpose,
41 meaning, and proper application of the Rule. They contain explanatory material and, in
42 some places, provide examples of permitted or prohibited conduct; they neither add to
43 nor subtract from the binding obligations set forth in the Rules. In no instance does a

1 Preamble

2 Preamble

1 Comment supersede a Rule. When a Comment uses the term “must,” it does not mean
2 that the Comment itself is binding or enforceable; it signifies instead that the Rule in
3 question, properly applied, is obligatory as to the point in issue.

4
5 The Comments also identify aspirational goals for judges. To implement fully the
6 principles of this Code as articulated in the Canons, judges should strive to exceed the
7 minimum standards of conduct established by the Rules, holding themselves to the
8 highest ethical standards, seeking to achieve those aspirational goals, and thereby
9 enhancing the dignity of the judicial office.

10
11 The ~~Canons and Sections~~ Rules set forth under each Canon are rules of reason. They
12 should be interpreted in light of the overarching purposes of the Model Code, with due
13 regard for all relevant circumstances. They ~~should~~ are to be applied consistent
14 consistently with constitutional requirements, statutes, ~~other court~~ rules of court, and
15 decisional law and in the context of all relevant circumstances. The Code is to ~~They must~~
16 also be construed so as not to impinge on the essential independence of judges in making
17 judicial decisions, or on their right to freedom of speech and association.³

18
19 The text of the ~~Canons and Sections~~ is intended to govern conduct of judges and to be
20 binding upon them. It is not intended, however, ~~Although the text of each Rule is binding~~
21 and enforceable, it is not contemplated that every transgression will result in disciplinary
22 action. Whether disciplinary action is appropriate, and the degree of discipline to be
23 imposed, should be determined through a reasonable and reasoned application of the text
24 and should depend on such factors as the ~~seriousness~~ gravity of the transgression,
25 whether there is a pattern of improper activity, and the effect of the ~~improper activity~~
26 misconduct on ~~others or on the judicial system~~ the judiciary and the public. See ABA
27 Standards Relating to Judicial Discipline and Disability Retirement.⁴

28
29 The Code is ~~designed to provide guidance to judges and candidates for judicial office and~~
30 to provide a structure for regulating conduct through disciplinary agencies. It is not
31 designed or intended as a basis for ~~establishing~~ civil liability or ~~instituting~~ criminal
32 prosecution. Furthermore, the purpose of the Code would be subverted if the Code were
33 invoked by lawyers for mere tactical advantage in a proceeding. ~~Neither is it intended to~~
34 serve as the basis for litigants to seek collateral remedies against each other or to obtain
35 tactical advantages in proceedings before a court. Each of these uses subverts the true
36 purposes of this Code.⁵

37
38 The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of
39 judges. They should also be governed in their judicial and personal conduct by general
40 ethical standards. The Code is intended, however, to state basic standards which should
41 govern the conduct of all judges and to provide guidance to assist judges in establishing
42 and maintaining high standards of judicial and personal conduct.⁶

³ Preamble

⁴ Preamble

⁵ Preamble

⁶ Preamble

TERMINOLOGY

6/05 Draft Redlined to 1990 Code

1
2 Terms ~~explained~~ below are noted with an asterisk (*) in the ~~Sections~~ Rules where they
3 appear. In addition, the Sections where terms appear are ~~referenced~~ referred to after the
4 explanation of each term.

5
6 “Aggregate” in relation to contributions for a candidate ~~under Sections 3E(1)(e) and~~
7 ~~5C(3) and (4)~~ denotes not only contributions in cash or in kind made directly to a
8 candidate’s committee or treasurer, but also, except in retention elections, all
9 contributions made indirectly with the understanding that they will be used to support the
10 election of ~~the~~ a candidate or to oppose the election of the candidate’s opponent. See
11 ~~Sections 3E(1)(e), 5C(3) and 5C(4)~~ Rules 2.12(a)(5) and 5.06(b) and (d).

12
13 “Appropriate authority” denotes the authority with responsibility for initiation of
14 disciplinary process with respect to the violation to be reported. See ~~Sections 3D(1) and~~
15 ~~3D(2)~~ Rules 2.17 and 2.18.

16
17 “Candidate for judicial office” ~~A candidate is~~ describes a person seeking selection for or
18 retention in judicial office by election or appointment. A person becomes a candidate for
19 judicial office as soon as he or she makes a public announcement of candidacy, declares
20 or files as a candidate with the election or appointment authority, ~~or~~ authorizes or, where
21 permitted, engages in solicitation or acceptance of contributions or support, or is
22 nominated for election or appointment to office. ~~The term “candidate” has the same~~
23 ~~meaning when applied to a judge seeking election or appointment to nonjudicial office.~~
24 See Preamble and ~~Sections 5A, 5B, 5C and 5E~~ Rules 5.01 through 5.07.

25
26 “~~Continuing part-time judge.~~” ~~A continuing part-time judge is a judge who serves~~
27 ~~repeatedly on a part-time basis by election or under a continuing appointment, including a~~
28 ~~retired judge subject to recall who is permitted to practice law. See Application Section~~
29 ~~C.~~

30
31 “~~Court personnel~~” ~~does not include the lawyers in a proceeding before a judge. See~~
32 ~~Sections 3B(7)(e) and 3B(9).~~

33
34 “De minimis”, in the context of a judge’s interests, denotes an insignificant interest that
35 could not raise a reasonable question as to the judge’s impartiality. See ~~Sections 3B(7)(e)~~
36 ~~and 3B(9)~~ Rules 2.12(a)(2)(iii) and (a)(3).

37
38 “Economic interest” denotes ownership of more than a de minimis legal or equitable
39 interest, ~~or a relationship as officer, director, advisor or other active participant in the~~
40 ~~affairs of a party, except that:~~

41 (i) ~~ownership of an interest in a mutual or common investment fund that holds~~
42 ~~securities is not an economic interest in such securities unless the judge participates in the~~

1 management of the fund or a proceeding pending or impending before the judge could
2 substantially affect the value of the interest;

3 (ii) ~~service by a judge as an officer, director, advisor or other active participant in
4 an educational, religious, charitable, fraternal or civic organization, or service by a
5 judge's spouse, parent or child as an officer, director, advisor or other active participant
6 in any organization does not create an economic interest in securities held by the
7 organization;~~

8 (iii) ~~a deposit in a financial institution, the proprietary interest of a policy holder
9 in a mutual insurance company, of a depositor in a mutual savings association or of a
10 member in a credit union, or a similar proprietary interest, is not an economic interest in
11 the organization unless a proceeding pending or impending before the judge could
12 substantially affect the value of the interest;~~

13 (iv) ~~ownership of government securities is not an economic interest in the issuer
14 unless a proceeding pending or impending before the judge could substantially affect the
15 value of the securities.~~

16 but does not extend to a judge's holdings or interests in mutual or common investment
17 funds, deposits a judge maintains in financial institutions, mutual savings associations or
18 credit unions, or government securities owned by a judge, unless a proceeding pending or
19 impending before the judge could substantially affect the value of such holdings or
20 interests, or the judge is involved in the management of such entities' holdings. The fact
21 that securities might be held by an educational, charitable, fraternal or civic organization
22 in whose service the judge or the judge's spouse, parent or child may serve as a director,
23 officer, advisor or other participant does not thereby give the judge an economic interest
24 in such an organization for the purposes of this Code. See Sections 3E(1)(e) and 3E(2)
25 Rule 2.12(a)(2), (3) and (6).

26
27 "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.
28 See ~~Sections 3E(2) and 4E~~ Rules 2.12(D)(1) and (H).

29
30 "Gift" denotes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance,
31 bequest, or anything of monetary value, but does not include:

- 32 (A) ordinary social hospitality common among people in the judge's community,
33 extended for non-business purpose by an individual, not a corporation, and
34 limited to the provision of modest items, such as food and refreshments;
35 (B) items having little intrinsic value that are intended solely for presentation,
36 such as plaques, certificates, trophies and greeting cards;
37 (C) bank and other financial institution loans that are made available on the same
38 terms and based on the same criteria applied to applicants who are not judges;
39 (D) opportunities and benefits, including favorable rate and commercial discounts,
40 made available on the same terms and based on the same criteria applied to
41 applicants who are not judges;
42 (E) rewards and prizes that are given to competitors in random drawings, contests
43 or other events that are open to the public, awarded on the same terms and
44 based on the same criteria applied to other competitors;
45 (F) scholarships and fellowships awarded on the same terms and based on the
46 same criteria applied to applicants who are not judges;

1 (G) reimbursement or waiver of charges for travel-related expenses governed by
2 Rule 4.13;

3 (H) compensation for extra-judicial activities that is governed by Rule 4.14.
4 See Rule 4.13.

5
6 “Impartiality” or “impartial” denotes the condition of being without absence of bias or
7 prejudice in favor of, or against, particular parties or classes of parties, or their
8 representatives, and of as well as maintaining an open mind in considering issues that
9 may come before the judge. See Sections 2A, 3B(10), 3E(1), 5A(3)(a) and 5A(3)(d)(i)
10 Canon 1 and Rule 1.02; Canon 2 and Rules 2.04, 2.11 and 2.12, and Rules 4.01, 4.04,
11 4.13 and 4.14, and Canon 5.

12
13 “Impropriety” denotes conduct that compromises the ability of a judge to carry out
14 judicial responsibilities with integrity, impartiality, and independence, or otherwise
15 demeans the judicial office. See Canon 1 and Rule 1.03.

16
17 “Independence” denotes a judge’s freedom from influence, guidance or controls other
18 than those established by law. See Canon 1 and Rule 1.02, Rule 2.07 Comments.

19
20 “Integrity” denotes probity, fairness, honesty, uprightness and soundness of character.
21 See Canon 1 and Rule 1.02.

22
23 “Knowingly,” “knowledge,” “known” and ~~or~~ “knows” denotes actual knowledge of the
24 fact in question. A person’s knowledge may be inferred from circumstances. See Sections
25 3D, 3E(1), and 5A(3) Rule 5.01(j) and Comment [18].

26
27 “Law” encompasses ~~denotes~~ court rules as well as statutes, constitutional provisions and
28 decisional law. See Sections 2A, 3A, 3B(2), 3B(6), 4B, 4C, 4D(5), 4F, 4I, 5A(2), 5A(3),
29 5B(2), 5C(1), 5C(3) and 5D Rules 1.03, 2.01, 2.04, 2.09, 2.10(a)(2) and (5), 4.02(a), 4.03,
30 4.04(A) and (b), 4.06, 5.06(B) and (D), and 5.07(a).

31
32 “Member of the candidate’s family” denotes a spouse, child, grandchild, parent,
33 grandparent, or other relative or person with whom the candidate maintains a close
34 familial relationship. See Section 5A(3)(a) Rule 5.01, Comment [18].

35
36 “Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent,
37 or other relative or person with whom the judge maintains a close familial relationship.
38 See Sections 4D(3), 4E and 4G Rules 4.05(a), 4.08 and 4.13(B).

39
40 “Member of ~~the~~ a judge’s family residing in the judge’s household” denotes any relative
41 of a judge by blood or marriage, or a person treated by a judge as a member of the
42 judge’s family, who resides in the judge’s household. See Sections 3E(1) and 4D(5) Rule
43 4.13.

44
45 “Nonpublic information” denotes information that, by law, is not available to the public.
46 Nonpublic information may include but is not limited to: information that is sealed by

1 statute or court order, impounded or communicated *in camera*, and information offered in
2 grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports.
3 See ~~Section 3B(11)~~ Rule 3.03.

4
5 ~~“Periodic part-time judge.” A periodic part-time judge is a judge who serves or expect to~~
6 ~~serve repeatedly on a part-time basis but under a separate appointment for each limited~~
7 ~~period of service or for each matter. See Application Section D.~~

8
9 ~~“Political organization” denotes a political party or other group sponsored or affiliated~~
10 ~~with a political party or candidate, the principal purpose of which is to further the election~~
11 ~~or appointment of candidates for to political office, but For purposes of the Code the term~~
12 ~~does not include a judicial candidate’s campaign committee created as authorized by Rule~~
13 ~~5.06. See Sections 5A(1), 5B(2) and 5C(1) Rules 5.01 through 5.05.~~

14
15 ~~“Pro tempore part-time judge.” A pro tempore part-time judge is a judge who serves or~~
16 ~~expects to serve once or only sporadically on a part-time basis under a separate~~
17 ~~appointment for each period of service or for each case heard. See Application Section E.~~

18
19 ~~“Public election” This term includes primary and general elections, it includes partisan~~
20 ~~elections, nonpartisan elections and retention elections. See Section 5C Rules 5.01, 5.02,~~
21 ~~5.03 and 5.06.~~

22
23 ~~“Require.” The rules prescribing that a judge “require” certain conduct of others are, like~~
24 ~~all of the rules in this Code, rules of reason. The use of the term “require” in that context~~
25 ~~means a judge is to exercise reasonable direction and control over the conduct of those~~
26 ~~persons subject to the judge’s direction and control. See Sections 3B(3), 3B(4), 3B(5),~~
27 ~~3B(6), 3B(9) and 3C(2).~~

28
29 ~~“Spouse” denotes an individual to whom a judge is married or a domestic partner. See~~
30 ~~Rules 2.12, 4.12 and 4.13.~~

31
32 ~~“Third degree of relationship” The includes the following individuals persons are~~
33 ~~relatives within the third-degree of relationship: great-grandparent, grandparent, parent,~~
34 ~~uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or and niece. See~~
35 ~~Section 3E(1)(d) Rule 2.12.~~

36
37 ~~“Widely-attended event” denotes a convention, conference, symposium, forum, panel~~
38 ~~discussion, dinner, reception or similar event that more than [25] persons are expected to~~
39 ~~attend. See Rule 4.12.~~

American Bar Association
Model Code of Judicial Conduct

June 30, 2005 Draft (“Preliminary Draft”), redlined to
reflect changes from current ABA Model Code

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 OF THE JUDGE’S ACTIVITIES²**

Rule 1.01 Compliance With This Code. ~~An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe the these standards of conduct embodied in these Rules so that the integrity, and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.~~³

Comments:

[1] An independent and honorable judiciary is indispensable to justice in our society.⁴ Judicial compliance with high standards of judicial conduct promote the integrity, impartiality and independence of the judiciary and foster 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.

¹ Canon 1

² Canon 2

³ Canon 1A

⁴ Canon 1A

Rule 1.02 A judge shall act at all times in a manner that promotes public confidence in the integrity* and impartiality* and independence* of the judiciary.⁵

Comments:

[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. ~~A judiciary of integrity is one in which judges are known for their probity, fairness, honesty, uprightness, and soundness of character. An independent judiciary is one free of inappropriate outside influences. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the integrity, impartiality and independence of the judiciary is maintained by the adherence of each judge to this responsibility in a manner free from favoritism, self-interest or bias. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.~~⁶

Rule 1.03 A judge shall avoid impropriety* and the appearance of impropriety* in all of the judge's activities.⁷

Comments:

[1] Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. ~~A judge must avoid all impropriety and appearance of impropriety. The prohibition against behaving acting with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Code. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on judicial speech~~

⁵ Canon 2A partial

⁶ Canon 1A Commentary

⁷ Canon 2

imposed by sections 3(B)(9) and (10) that are indispensable to the maintenance of the integrity, impartiality and independence of the judiciary.⁸

[2] The test for impropriety is whether the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence. Actual Examples of actual improprieties under this standard Rule include violations of law, court rules, or other specific provisions of this Code. The test for an appearance of impropriety is whether the conduct would create, in reasonable minds, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, independence and competence is impaired. See also Commentary under Section 2C.⁹

1.04 Complying with the Law*. A judge shall respect and comply with the law*.¹⁰

Comments:

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

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

⁹ Canon 2A Commentary

¹⁰ Canon 2A partial

1 American Bar Association
2 Model Code of Judicial Conduct

3 June 30, 2005 Draft (“Preliminary Draft”), redlined to
4 reflect changes from Current ABA Model Code

5
6 **CANON 2**

7
8 **A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL**
9 **OFFICE IMPARTIALLY* AND DILIGENTLY¹**

10 **Judicial Duties In General**

11 **Rule 2.01 Giving Precedence to the Duties of Judicial Office.**
12 **The judicial duties of a judge A judge shall not allow other**
13 **activities to take precedence over the duties of judicial**
14 **officeall the judge’s other activities . The judge’s judicial**
15 **duties of judicial office include all the duties responsibilities of**
16 **the judge’s office prescribed by law*.² In the performance of**
17 **these duties, the following standards apply.**

18 **Comments:**

19 [1] Although judges engage in a variety of activities, the defining
20 feature of their judicial role is the interpretation and application of
21 the law. For that reason, those official duties that further the judicial
22 function directly, through adjudication, or indirectly, through the
23 performance of administrative or reporting responsibilities, are of
24 paramount significance.

25 **Adjudication Adjudicative Responsibilities**

26 **Rule 2.02 The Responsibility to Decide** A judge shall hear and
27 **decide matters assigned to the judge except those in which**
28 **disqualification is required by Rule 2.12, or other applicable**
29 **law*.³**

30 **Comments:**

¹ Canon 3

² Canon 3A

³ Canon 3B(1)

1 [1] A fundamental obligation of the judicial office is to be available
2 to decide the matters that come before the judge. To protect the
3 rights of litigants and preserve public confidence in the integrity,
4 impartiality and independence of the judiciary, there will be times
5 when disqualification is necessary. On the other hand,
6 unwarranted disqualification may bring public disfavor to the bench
7 and to the judge personally. The dignity of the bench, the judge's
8 respect for fulfillment of judicial duties and a proper concern for the
9 judge's colleagues require that a judge not use disqualification to
10 avoid cases that present difficult, controversial, or distasteful
11 issues.

12 [2] A judge's obligation not to hear or decide matters in which
13 disqualification is required, applies regardless of whether a motion
14 to disqualify has been filed.

15 [3] To ensure that judges remain available to fulfill their judicial
16 duties, a judge must conduct his or her extrajudicial activities to
17 minimize the risk of conflicts that would result in frequent
18 disqualification. See Canon 4.

19 **Rule 2.03 Competence. A judge shall be faithful to the law* and**
20 **maintain professional competence in it perform the duties of**
21 **judicial office competently.**⁴

22 **Comments:**

23 [1] Competence in the performance of judicial duties requires the
24 legal knowledge, skill, thoroughness and preparation reasonably
25 necessary to perform the judge's responsibilities of office.

26 [2] When applying and interpreting the law a judge may on
27 occasion make a mistake of fact or law. An error of this kind does
28 not violate this rule. Willful disregard of the law, however, may in
29 some circumstances constitute a violation of this Rule.

30 [3] Judicial competence may be diminished and compromised when
31 a judge is impaired by drugs, alcohol or other mental or physical
32 impairments. See Rule 2.19.

33 **Rule 2.04 Impartiality* and Fairness. A judge shall uphold and**
34 **apply the law*, and decide all cases with impartiality* and**
35 **fairness.**

⁴ Canon 3B(2) partial

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Comments:

[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.

Rule 2.05 Bias and Discrimination.

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

(b) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, ~~by words or conduct,~~ bias or prejudice based upon race, ~~sex~~ gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This ~~Section 3B(6)~~ Rule does not preclude legitimate advocacy when ~~race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status,~~ these or other similar factors, are issues in the proceeding.⁶

Comments:

~~[1] A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Even facial expression and body language, in addition to oral~~

⁵ Canon 3B(5)
⁶ Canon 3B(6)

1 ~~communication~~, can give convey to parties or lawyers in the
2 proceeding, jurors, the media and others an appearance of ~~judicial~~
3 bias. A judge must ~~be alert to avoid behavior~~ conduct that may be
4 perceived as prejudicial ~~or biased~~.⁷

5 [2] Examples of manifestations of bias include but are not limited to
6 epithets, slurs, demeaning nicknames, negative stereotyping,
7 attempted humor based on stereotypes, threatening, intimidating or
8 hostile acts, suggesting a connection between race or nationality
9 and crime, and irrelevant references to personal characteristics.
10 This rule does not preclude legitimate references to those factors
11 when relevant to an issue in a proceeding.

12 [3] A judge must refrain from speech, gestures or other conduct that
13 could reasonably be perceived as ~~sexual~~ harassment and must
14 require the same standard of conduct of others subject to the
15 judge's direction and control.⁸

16 **Rule 2.06 Diligence. A judge shall act diligently in the**
17 **performance of all his or her judicial duties, shall, dispose**
18 **of all judicial matters promptly, efficiently and fairly.**⁹

19 **Comments:**

20 [1] Prompt disposition of the court's business requires a judge to
21 devote adequate time to judicial duties, to be punctual in attending
22 court and expeditious in determining matters under submission,
23 and to insist that court officials, litigants and their lawyers cooperate
24 with the judge to that end.¹⁰

25 [2] In disposing of matters promptly, efficiently and fairly, a judge
26 must demonstrate due regard for the rights of the parties to be
27 heard and to have issues resolved without unnecessary cost or
28 delay. Containing costs while preserving fundamental rights of
29 parties also protects the interests of witnesses and the general
30 public. A judge should monitor and supervise cases so as to reduce
31 or eliminate dilatory practices, avoidable delays and unnecessary
32 costs. ~~A judge should encourage and seek to facilitate settlement,~~
33 ~~but parties should not feel coerced into surrendering the right to~~
34 ~~have their controversy resolved by the courts.~~¹¹

⁷ Canon 3B(5) Commentary

⁸ Canon 3B(5) Commentary

⁹ Canon 3B(8)

¹⁰ Canon 3B(8) Commentary

¹¹ Canon 3B(8) Commentary

1 **Rule 2.07 External Influences on Judicial Conduct.**

2 (a) A judge shall not be swayed by partisan
3 interests, public clamor or fear of criticism.¹²

4 (b) A judge shall not allow family, social, political
5 or other relationships to influence the judge's
6 judicial conduct or judgment.¹³

7 (c) ~~A judge shall not~~ ~~nor shall a judge~~ convey or
8 permit others persons to convey the impression
9 that ~~they~~ such persons are in a special position to
10 influence the judge.¹⁴

11 **Comments:**

12 [1] An independent judiciary requires that judges decide cases
13 according to law and facts without regard to whether the law or the
14 litigants are popular or unpopular with the public, the media,
15 government officials, or the judge's own friends or family.

16 [2] Confidence in the judiciary is eroded if judicial decision-making
17 is perceived to be subject to inappropriate outside influences. It is
18 essential to judicial independence, impartiality and maintaining the
19 public's confidence in the justice system that judges do not create a
20 perception that their decisions could be colored by such influences.

21 **Rule 2.08 Demeanor and Decorum.**

22 (a) A judge shall require* order and decorum in
23 proceedings before the judge.¹⁵

24 (b) A judge shall be patient, dignified and courteous to
25 litigants, jurors, witnesses, lawyers and others with
26 whom the judge deals in an official capacity, and shall
27 require* similar conduct of lawyers, and of staff, court
28 officials and others subject to the judge's direction and
29 control.¹⁶

30 (c) A judge shall not commend or criticize jurors
31 for their verdict other than in a court order or

¹² Canon 3B(2) partial

¹³ Canon 2B partial

¹⁴ Canon 2B partial

¹⁵ Canon 3B(3)

¹⁶ Canon 3B(4)

1 **opinion in a proceeding, but may express**
2 **appreciation to jurors for their service to the**
3 **judicial system and the community.**¹⁷

4 **Comments:**

5 [1] The duty to hear all proceedings fairly and with patience is not
6 inconsistent with the duty to dispose promptly of the business of the
7 court. Judges can be efficient and businesslike while being patient
8 and deliberate.¹⁸

9 [2] Commending or criticizing jurors for their verdict may imply a
10 judicial expectation in future cases and may impair a juror's ability
11 to be fair and impartial in a subsequent case.¹⁹

12 [3] If a judge exercises caution and is not otherwise prohibited by
13 law, a judge may meet with jurors after trial to answer questions
14 about and discuss ways to improve the jury process but should not
15 engage in any substantive discussion of the case. At such a
16 meeting, a judge should not, for example, suggest or imply to a jury
17 that he or she agrees or disagrees with the verdict, reveal evidence
18 that had been suppressed or the subject of a motion in limine,
19 discuss the rulings on objections made at trial, or review any
20 proceedings that took place outside the presence of the jury.

21 **Rule 2.09 Ensuring the Right to be Heard. A judge shall**
22 **accord to every person who has a legal interest in a**
23 **proceeding, or that person's lawyer, the right to be heard**
24 **according to law*.**²⁰

25 **Comments:**

26 [1] Ensuring the right to be heard is an essential component of a
27 fair and impartial system of justice. Substantive rights of litigants
28 can be protected only if procedures protecting the right to be heard
29 are respected.

30 [2] The judge has an important role to play in overseeing the
31 settlement of disputes, but should be careful that efforts to further
32 settlement not undermine a party's right to be heard according to
33 law. A judge may therefore encourage parties to a proceeding and

¹⁷ Canon 3B(11)

¹⁸ Canon 3B(4) Commentary

¹⁹ Canon 3B(11) Commentary

²⁰ Canon 3B(7) partial

1 their lawyers to settle matters in dispute but should not act in a
2 manner that coerces a party into settlement.

3 **Rule 2.10 Ex Parte Communications.**

4 (a) A judge shall not initiate, permit, or consider
5 ex parte communications, or consider other
6 communications made to the judge outside the
7 presence of the parties concerning a pending or
8 impending proceeding except as provided in
9 sections (1) through (5) below. that:²¹

10 (1) Where circumstances require, ex
11 parte communications for
12 scheduling, administrative purposes
13 or emergencies that do not deal with
14 substantive matters ~~or issues on the~~
15 ~~merits~~ are authorized; provided:²²

16 (i) the judge reasonably
17 believes that no party
18 will gain a procedural,
19 substantive, or tactical
20 advantage as a result of
21 the ex parte
22 communication, and²³

23 (ii) the judge makes
24 provision by delegation
25 or otherwise, promptly
26 to notify all other parties
27 of the substance of the
28 ex parte communication
29 and allows an
30 opportunity to
31 respond.²⁴

32 (2) A judge may obtain ~~the advice of~~
33 information and opinions from a
34 disinterested expert on the law*
35 applicable to in a proceeding before
36 the judge if, before the information or

²¹ Canon 3B(7) partial

²² Canon 3B(7)(a)

²³ Canon 3B(7)(a)(i)

²⁴ Canon 3B(7)(a)(ii)

1 opinions are solicited, the judge
2 gives notice to the parties of the
3 person to be consulted and the
4 substance of the advice information
5 or opinions sought, and affords the
6 parties reasonable opportunity to
7 respond.²⁵

8 (3) A judge may consult with court
9 personnel* whose function is to aid
10 the judge in carrying out the judge's
11 adjudicative responsibilities or with
12 other judges²⁶ provided that the
13 judge does not abrogate the
14 responsibility to personally decide
15 the case and takes all reasonable
16 steps to avoid receiving factual
17 information that is not part of the
18 record.

19 (4) A judge may, with the consent of
20 the parties, confer separately with the
21 parties and their lawyers in an effort
22 to ~~mediate or settle~~ matters pending
23 before the judge.²⁷

24 (5) A judge may initiate or consider
25 any ex parte communications when
26 expressly authorized by law* to do
27 so.²⁸

28 (b) A judge ~~must~~ shall not independently
29 investigate facts in a case and ~~must~~ shall
30 consider only the evidence presented.²⁹

31 (c) A judge ~~must~~ shall make reasonable efforts,
32 including the provision of appropriate
33 supervision, to ensure that ~~Section 3B(7)~~ Rule

²⁵ Canon 3B(7)(b)

²⁶ Canon 3B(7)(c)

²⁷ Canon 3B(7)(d)

²⁸ Canon 3B(7)(e)

²⁹ Canon 3B(7) Commentary

1 **2.10 is not violated through law clerks or other**
2 **personnel on the judge's staff.**³⁰

3 **Comments:**

4 [1] To the extent reasonably possible, all parties or their lawyers
5 shall be included in communications with a judge.³¹

6 [2] Whenever the presence of a party or notice to a party is required
7 by ~~Section 3B(7)~~ Rule 2.10, it is the party's lawyer, or if the party is
8 unrepresented the party, who is to be present or to whom notice is
9 to be given.³²

10 [3] The proscription against communications concerning a
11 proceeding includes communications ~~from~~ with lawyers, law
12 teachers ~~professors~~, and other persons who are not participants in
13 the proceeding, except to the limited extent permitted by this rule.³³

14 [4] Certain ex parte communication is approved by ~~Section 3B(7)~~
15 Rule 2.10 to facilitate scheduling and other administrative purposes
16 and to accommodate emergencies. In general, however, a judge
17 must discourage ex parte communication and allow it only if all the
18 criteria stated in ~~Section 3B(7)~~ Rule 2.10 are clearly met. A judge
19 must disclose to all parties, in a manner that ensures notice, all ex
20 parte communications described in ~~Sections 3B(7)(a) and 3B(7)(b)~~
21 Rules 2.10(a)(1) and 2.10(a)(2) regarding a proceeding pending or
22 impending before the judge.³⁴

23 [5] An appropriate and often desirable ~~procedure for a court to~~
24 ~~obtain~~ method of obtaining the advice of a disinterested expert on
25 legal issues is to invite the expert to file a brief *amicus curiae*.³⁵

26 [6] A judge may consult with other judges on pending matters, but
27 must avoid ex parte discussions of a case with other judges who
28 have previously been disqualified from hearing the matter.

29 [7] If communication between the trial judge and the appellate
30 court with respect to a proceeding is permitted, a copy of any

³⁰ Canon 3B(7) Commentary
³¹ Canon 3B(7) Commentary
³² Canon 3B(7) Commentary
³³ Canon 3B(7) Commentary
³⁴ Canon 3B(7) Commentary
³⁵ Canon 3B(7) Commentary

1 written communication or the substance of any oral communication
2 should be provided to all parties.³⁶

3 [8] The prohibition against a judge investigating the facts of a case
4 independently or through a member of the judge's staff, extends to
5 information available in all mediums including electronic access.

6 ~~A judge may request a party to submit proposed findings of fact and~~
7 ~~conclusions of law, so long as the other parties are apprised of the~~
8 ~~request and are given an opportunity to respond to the proposed~~
9 ~~findings and conclusions.~~

10 **Rule 2.11 Judicial Statements on Pending and Future Cases.**

11 ~~(a) A judge shall not, while a proceeding is~~
12 ~~pending or impending in any court, make any~~
13 ~~public comment that might reasonably be~~
14 ~~expected to affect its the outcome or impair its the~~
15 ~~fairness of a matter pending or impending in any~~
16 ~~court. or make any nonpublic comment that might~~
17 ~~substantially interfere with a fair trial or hearing.³⁷~~

18 ~~(b) The judge shall require* similar abstention on~~
19 ~~the part of court personnel* staff, court officers,~~
20 ~~and others subject to the judge's direction and~~
21 ~~control. This Section does not prohibit judges~~
22 ~~from making public statements in the course of~~
23 ~~their official duties or from explaining for public~~
24 ~~information the procedures of the court. This~~
25 ~~Section does not apply to proceedings in which~~
26 ~~the judge is a litigant in a personal capacity.³⁸~~

27 ~~(c) A judge shall not, with respect to cases,~~
28 ~~controversies or issues that are likely to come~~
29 ~~before the court, make pledges, promises or~~
30 ~~commitments that are inconsistent with the~~
31 ~~impartial* performance of the adjudicative duties~~
32 ~~of the judicial office.³⁹~~

33 **Comments:**

³⁶ Canon 3B(7) Commentary

³⁷ Canon 3B(9) partial

³⁸ Canon 3B(9) partial

³⁹ Canon 3B(10)

1 [1] ~~Sections 3B(9) and (10)~~ Rule 2.11 restrictions on judicial speech
2 are essential to the maintenance of the integrity, impartiality and
3 independence of the judiciary.⁴⁰

4 [2] A pending ~~proceeding~~ matter is one that has ~~begun but not yet~~
5 ~~reached~~ commenced and continues during any appellate process
6 and until final disposition. An impending proceeding is one that is
7 anticipated but not yet ~~begun~~ commenced. A matter is “impending”
8 where there is reason to believe a case may be filed, for example, if
9 a crime is being investigated but no charges have been brought, or
10 if someone has been arrested but not yet charged. ~~The requirement~~
11 ~~that judges abstain from public comment regarding a pending or~~
12 ~~impending proceeding continues during any appellate process and~~
13 ~~until final disposition.~~⁴¹

14 [3] ~~Sections 3B(9) and (10) do~~ This Rule does not prohibit a judge
15 from commenting on proceedings in which the judge is a litigant in
16 a personal capacity, ~~but in~~ cases such as a writ of mandamus,
17 however, where the judge is a litigant in an official capacity, the
18 judge must not comment publicly. ~~The conduct of lawyers relating~~
19 ~~to trial publicity is governed by [Rule 3.6 of the ABA Model Rules of~~
20 ~~Professional Conduct]. (Each jurisdiction should substitute an~~
21 ~~appropriate reference to its rule.)~~⁴²

22 [4] ~~This Section~~ Provided that the judge meets the requirements of
23 2.11(a) and (b), this Rule does not prohibit judges from making
24 public statements in the course of their official duties or from
25 explaining ~~for public information~~ the procedures of the court to the
26 public,⁴³ or from responding directly, or through a third party, to
27 allegations in the media or elsewhere concerning the judge’s
28 conduct in a matter.

29 [5] Subject to the provisions of this Rule, candidates for judicial
30 office may respond to unjust criticism. See Rule 5, Comment [12].

31 **Rule 2.12 Disqualification.**

32 **(a) A judge shall disqualify himself or herself in a any proceeding in**
33 **which the judge’s impartiality* might reasonably be questioned by a**
34 **reasonable person*, including but not limited to instances**
35 **circumstances where:**⁴⁴

⁴⁰ Canon 3B(10) Commentary

⁴¹ Canon 3B(10) Commentary

⁴² Canon 3B(10) Commentary

⁴³ Canon 3B(9) partial

⁴⁴ Canon 3E(1)

1 (1) the judge has a personal bias or prejudice concerning a party or a
2 party's lawyer, or personal knowledge* of disputed evidentiary facts
3 concerning the proceeding;⁴⁵
4

5 (2) the judge ~~or~~, the judge's spouse* or domestic partner, or a person
6 within the third degree of relationship* to either of them, or the spouse*
7 or domestic partner of such a person is:⁴⁶

8 (i) is a party to the proceeding, or an officer, director, or
9 trustee of a party;⁴⁷

10 (ii) is acting as a lawyer in the proceeding;⁴⁸

11 (iii) is known* by the judge to ~~have a~~ be a person who has
12 more than a de minimis* interest that could be
13 substantially affected by the proceeding;⁴⁹

14 (iv) is to the judge's knowledge* likely to be a material
15 witness in the proceeding; or⁵⁰
16

17 (3) the judge knows* that he or she, individually or as a fiduciary*, or the
18 judge's spouse*, domestic partner, ~~parent~~ or child ~~wherever residing~~, or
19 any other member of the judge's family residing in the judge's household*,
20 has an economic interest* in the subject matter in controversy or in a party
21 to the proceeding or has any other more than de minimis* interest that
22 could be substantially affected by the proceeding;⁵¹
23

24 (4) the judge knows* or learns by means of a timely motion that a party or a
25 party's lawyer has within the previous [1] year[s] made aggregate*
26 contributions to the judge's campaign in an amount that is greater than [[
27 [\$] for an individual or [\$] for an entity]]-[is reasonable and appropriate
28 for an individual or an entity]].⁵²
29

30 (5) the judge, while a judge or a candidate* for judicial office, has made a
31 public statement that commits, or appears to commit, the judge with
32 respect to an issue in the proceeding or the controversy in the
33 proceeding.⁵³
34

35 (6) the judge:

⁴⁵ Canon 3E(1)(a)

⁴⁶ Canon 3E(1)(d)

⁴⁷ Canon 3E(1)(d)(i)

⁴⁸ Canon 3E(1)(d)(ii)

⁴⁹ Canon 3E(1)(d)(iii)

⁵⁰ Canon 3E(1)(d)(iv)

⁵¹ Canon 3E(1)(c)

⁵² Canon 3E(1)(e) [The following note appears in the 1990 Code: This provision is meant to be applicable wherever judges are subject to public election. Jurisdictions that adopt specific dollar limits on contributions in section 5(C)(3) should adopt the same limits in section 3(E)(1)(e). Where specific dollar amounts determined by local circumstances are not used, the "reasonable an appropriate" language should be used.]

⁵³ Canon 3E(1)(f)

1 (i) served as a lawyer in the matter in controversy, or a
2 lawyer with whom the judge previously practiced law
3 served during such association as a lawyer concerning
4 the matter;⁵⁴

5
6 (ii) within the preceding [three] years, was associated in
7 the private practice of law with any law firm or lawyer
8 currently representing any party in the controversy;

9
10 (iii) served in governmental employment and in such
11 capacity participated as lawyer, advisor, or material
12 witness concerning the proceeding or has expressed an
13 opinion concerning the merits of the particular case in
14 controversy;

15
16 (iv) or the judge has been served as a material witness
17 concerning the matter; or

18
19 (v) previously presided as a judge over the proceeding in
20 the same or another court.

21
22 (b) A judge shall keep informed about the judge's personal and
23 fiduciary* economic interests*, and make a reasonable effort to keep
24 informed about the personal economic interests* of the judge's spouse*
25 or domestic partner, and minor children residing in the judge's
26 household.⁵⁵

27
28 ~~(c) Remittal of Disqualification. A judge disqualified subject to~~
29 ~~disqualification by the terms of Section E this Rule, other than~~
30 ~~paragraph (a)(1), may disclose on the record the basis of the judge's~~
31 ~~disqualification and may ask the parties and their lawyers to consider,~~
32 ~~out of the presence of the judge, whether to waive disqualification if~~
33 ~~such waiver is permitted by law*. If following disclosure of any basis for~~
34 ~~disqualification other than personal bias or prejudice concerning a~~
35 ~~party, the parties and lawyers, without participation by the judge, all~~
36 ~~agree that the judge should not be disqualified, and the judge is then~~
37 ~~willing to participate it is permitted by law*, the judge may participate in~~
38 ~~the proceeding. Such a remittal The agreement shall be written and~~
39 ~~shall be incorporated in the record of the proceeding.~~⁵⁶

54 Canon 3E(1)(b) partial

55 Canon 3E(2)

56 Canon 3F

1 ~~(d) “De minimis*” denotes an insignificant interest that~~
2 ~~could not raise reasonable question as to a judge’s~~
3 ~~impartiality*.⁵⁷~~

4 ~~(e) “Economic interest*” denotes ownership of more than a de minimis*~~
5 ~~legal or equitable interest.⁵⁸~~
6

7 **Comments:**

8 [1] Under this ~~rule~~ Rule, a judge is disqualified whenever the
9 judge’s impartiality might reasonably be questioned, regardless of
10 whether any of the specific ~~rules in Section 3E(1)~~ provisions of Rule
11 2.12(a)(1)–(6) apply. For example, if a judge were in the process of
12 negotiating for employment with a law firm, the judge would be
13 disqualified from any matters in which that law firm appeared,
14 unless the disqualification was waived by the parties after
15 disclosure by the judge.⁵⁹

16 [2] By decisional law, the rule of necessity may override the rule of
17 disqualification. For example, a judge might be required to
18 participate in judicial review of a judicial salary statute, or might be
19 the only judge available in a matter requiring immediate judicial
20 action, such as a hearing on probable cause or a temporary
21 restraining order. ~~In the latter case~~ matters such as these latter two,
22 that require immediate action, the judge must disclose on the
23 record the basis for possible disqualification and use reasonable
24 efforts to transfer the matter to another judge as soon as
25 practicable.⁶⁰

26 [3] A lawyer in a government agency does not ordinarily have an
27 association with other lawyers employed by that agency within the
28 meaning of ~~Section 3E(1)(b)~~ Rule 2.12(a)(6)(i); a judge formerly
29 employed by a government agency, however, shall ~~should~~
30 disqualify himself or herself in a proceeding if the judge’s
31 impartiality might reasonably be questioned because of such
32 association.⁶¹

33 [4] The fact that a lawyer in a proceeding is affiliated with a law firm
34 with which a relative of the judge is affiliated does not of itself
35 disqualify the judge. ~~Under appropriate circumstances, the fact that~~

⁵⁷ Terminology

⁵⁸ Terminology

⁵⁹ Canon 3E(1) Commentary

⁶⁰ Canon 3E(1) Commentary

⁶¹ Canon 3E(1)(b) Commentary

1 If, however, "the judge's impartiality might reasonably be
2 questioned" under Section 3E(1), Rule 2.12(a) or that the relative is
3 known by the judge to have an interest in the law firm that could be
4 "substantially affected by the proceeding" under Section
5 3E(1)(d)(iii) Rule 2.12(a)(3) may require the judge's disqualification
6 may be required.⁶²

7 [5] A judge should disclose on the record information that the judge
8 believes the parties or their lawyers might consider relevant to the
9 question of disqualification, even if the judge believes there is no
10 ~~real~~ basis for disqualification.⁶³ A remittal procedure provides the
11 parties an opportunity to proceed without delay if they wish to waive
12 the disqualification. ~~To assure that consideration of the question of~~
13 ~~remittal is made independently of the judge, a judge must not~~
14 ~~solicit, seek or hear comment on possible remittal or waiver of the~~
15 ~~disqualification unless the lawyers jointly propose remittal after~~
16 ~~consultation as provided in the rule.~~ A party may act through
17 counsel if counsel represents on the record that the party has been
18 consulted and consents. As a practical matter, a judge may wish to
19 have all parties and their lawyers sign the remittal agreement.⁶⁴

20 [6] "Fiduciary" includes such relationships as executor,
21 administrator, trustee and guardian.

22 [7] An "economic interest" does not extend to such holdings or
23 interests as a judge might have, for example, in mutual or common
24 investment funds, deposits a judge might maintain in financial
25 institutions, mutual savings associations or credit unions, or
26 government securities owned by a judge, unless a proceeding
27 pending or impending before the judge could substantially affect the
28 value of such holdings or interests, or the judge is involved in the
29 management of such entities' holdings. The fact that securities
30 might be held by an educational, charitable, fraternal or civic
31 organization in whose service a judge or the judge's spouse, parent
32 or child may serve as a director, officer, advisor or other participant
33 does not thereby give a judge an economic interest in such an
34 organization for the purposes of this Rule.

35 **Administration Administrative Responsibilities.**

36 **Rule 2.13 Administrative Competence and Diligence. A judge**
37 **shall diligently discharge the judge's administrative**
38 **responsibilities promptly and without bias or prejudice and**

⁶² Canon 3E(1)(f) Commentary

⁶³ Canon 3E(1) Commentary

⁶⁴ Canon 3F Commentary

1 maintain ~~professional~~ competence in judicial administration,
2 and ~~should~~ shall cooperate with other judges and court
3 officials in the administration of court business.⁶⁵

4 **Comments:**

5 [1] The judge's obligation to perform responsibilities diligently,
6 competently and without bias or prejudice, applies equally to the
7 judge's administrative responsibilities.

8 **Rule 2.14 Supervision of Staff.** A judge shall require* staff,
9 court officials and others subject to the judge's direction and
10 control to ~~observe the standards of fidelity and diligence that~~
11 ~~apply to the judge and to refrain from manifesting bias or~~
12 ~~prejudice in the performance of their official duties~~ act in a
13 manner consistent with this Code.⁶⁶

14 **Comments:**

15 [1] The first contact that members of the public have with the
16 judicial system is often with court staff. It is therefore especially
17 important that judges ensure that the conduct of personnel subject
18 to their direction and control is consistent with the standards of
19 conduct embodied in this code.

20 **Rule 2.15 Supervision of Other Judges.** A judge with
21 supervisory authority for the judicial performance of other
22 judges shall take reasonable measures to assure the prompt,
23 efficient and fair disposition of matters before them and the
24 proper performance of their other judicial responsibilities.⁶⁷

25 **Comments:**

26 [1] Public confidence in the courts depends on timely justice. To
27 promote the efficient administration of justice, judges with
28 supervisory authority must take the steps needed to ensure that
29 judges under their supervision administer the workload of their
30 courts expeditiously.

31 **Rule 2.16 Administrative Appointments.**

32 ~~(a) A judge shall not make unnecessary~~
33 ~~appointments.~~ A judge shall exercise the power

⁶⁵ Canon 3C(1)

⁶⁶ Canon 3C(2)

⁶⁷ Canon 3C(3)

1 of appointment impartially* and on the basis of
2 merit. A judge shall avoid nepotism, and
3 favoritism and unnecessary appointments. A
4 judge shall not approve compensation of
5 appointees beyond the fair value of services
6 rendered.⁶⁸

7 (b) A judge shall not appoint a lawyer to a position
8 if the judge either knows* that the lawyer has
9 contributed more than [\$] within the prior []
10 years to the judge's election campaign,⁶⁹ or learns
11 of such a contribution by means of a timely
12 motion by a party or other person properly
13 interested in the matter, unless

14 (1) the position is substantially
15 uncompensated;

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

21 (3) the judge or another presiding or
22 administrative judge affirmatively
23 finds that no other lawyer is willing,
24 competent and able to accept the
25 position.⁷⁰

26 **Comments:**

27 [1] Appointees of a judge include assigned counsel, officials such
28 as referees, commissioners, special masters, receivers and
29 guardians and personnel such as clerks, secretaries and bailiffs.
30 Consent by the parties to an appointment or an award of
31 compensation does not relieve the judge of the obligation
32 prescribed by ~~Section 3C(4)~~ Rule 2.16.⁷¹

33 **Disciplinary Responsibilities Reporting**

⁶⁸ Canon 3C(4)

⁶⁹ 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.

⁷⁰ Canon 3C(5)

⁷¹ Canon 3C(5) Commentary

1 **Rule 2.17. A judge having knowledge* that another judge has**
2 **committed a violation of this Code that raises a substantial**
3 **question as to the ~~other judge's~~ honesty, trustworthiness or**
4 **fitness for office as a judge in other respects shall inform the**
5 **appropriate authority*. A judge who receives information**
6 **indicating a substantial likelihood that another judge has**
7 **committed a violation of this Code should take appropriate**
8 **action.⁷²**

9 **Comments:**

10 [1] As an officer of the judicial system, each judge has a
11 responsibility to participate in efforts to ensure public respect for the
12 system's operation. Ignoring or denying known misconduct among
13 one's fellow judges undermines that responsibility. Taking
14 affirmative action to address known misconduct is therefore a
15 judge's obligation. Appropriate action may include direct
16 communication with the judge ~~or lawyer~~ who has committed the
17 violation, other direct action if available, and reporting the violation
18 to the appropriate authority or other agency or body.⁷³

19 **2.18 Lawyer Misconduct. A judge having knowledge* that a**
20 **lawyer has committed a violation of the Rules of Professional**
21 **Conduct [substitute correct title if the applicable rules of**
22 **lawyer conduct have a different title] that raises a substantial**
23 **question as to the lawyer's honesty, trustworthiness or fitness**
24 **as a lawyer in other respects shall inform the appropriate**
25 **authority*. A judge who receives information indicating a**
26 **substantial likelihood that a lawyer has committed a violation**
27 **of the Rules of Professional Conduct [substitute correct title if**
28 **the applicable rules of lawyer conduct have a different title]**
29 **should take appropriate action.⁷⁴**

30 **Comments:**

31 [1] Appropriate action may include direct communication with the
32 ~~judge or lawyer~~ who has committed the violation, ~~other direct action~~
33 ~~if available~~, and reporting the violation to the appropriate authority
34 or other agency or body.⁷⁵

35 **Rule 2.19 Disability and Impairment. A judge having**
36 **knowledge* that the performance of a lawyer or another judge**

⁷² Canon 3D(1)

⁷³ Canon 3D(3) Commentary

⁷⁴ Canon 3D(2)

⁷⁵ Canon 3D(3) Commentary

1 is impaired by drugs, alcohol, or other mental, emotional or
2 physical condition shall take appropriate action, which may
3 include a confidential referral to a lawyer or judicial assistance
4 program.

5 **Comments:**

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

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

17 **Rule 2.20 Immunity for Discharge of Duties . Acts of a judge, in**
18 **the discharge of disciplinary responsibilities, required or**
19 **permitted by Sections 3D(1) and 3D(2) in responding to judicial**
20 **misconduct, lawyer misconduct, or disability and impairment**
21 **under Rules 2.17, 2.18, and 2.19 are part of a judge’s judicial**
22 **duties and shall be absolutely privileged, and no civil action**
23 **predicated thereon may be instituted against the judge.**⁷⁶

24 **Comments:**

25 [1] To encourage judges to report or otherwise act on evidence of
26 lawyer and judicial misconduct as required by these Rules, it is
27 important that judges be insulated from threats of civil action when
28 they attempt to comply with their obligations under such rules.

⁷⁶ Canon 3D(3)

1 **June 30, 2005 Draft (“Preliminary Draft”), redlined to reflect**
2 **Changes from the current ABA Model Code**

3
4 **CANON 3**

5
6
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**
10

11 **Rule 3.01 Influence of Personal Interests on Judicial Conduct.**

12 **A judge shall not allow ~~family, social~~ his or her financial,**
13 **political or other personal interests or relationships to**
14 **influence the judge’s his or her judicial conduct or judgment.¹**

15 **Rule 3.02. Misusing the Prestige of Judicial Office.**

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

19 **Commentary**

20 [1] Maintaining the prestige of judicial office is essential to a system
21 of government in which the judiciary functions independently of the
22 executive and legislative branches. Respect for the judicial office
23 facilitates the orderly conduct of legitimate judicial functions.
24 Judges should distinguish between proper and improper use of the
25 prestige of office in all of their activities.³

26 [2] ~~For example, it would be~~ It is improper for a judge to ~~allude to~~
27 use or attempt to use his or her ~~judgeship~~ position to gain a
28 personal advantage such as ~~or~~ deferential treatment when stopped
29 ~~by a police officer for a traffic offense~~ of any kind. Similarly, ~~For~~
30 example, a judge must not use judicial letterhead ~~must not be used~~
31 ~~for~~ to gain an advantage in conducting a judge’s his or her personal
32 business.⁴

¹ Canon 2B partial

² Canon 2B partial

³ Canon 2B Commentary

⁴ Canon 2B Commentary

1 ~~[3] A judge must avoid lending the prestige of judicial office for the~~
2 ~~advancement of the private interests of others. For example, a~~
3 ~~judge must not use the judge's judicial position to gain advantage in~~
4 ~~a civil suit involving a member of the judge's family. Special~~
5 ~~considerations arise when judges write or contribute to publications,~~
6 ~~whether related or unrelated to the law. A judge should not permit~~
7 ~~anyone associated with the publication of such materials to exploit~~
8 ~~the judge's office in a manner that violates these Canons, Rules or~~
9 ~~other applicable law. In contracts for publication of a judge's~~
10 ~~writings, a the judge should retain sufficient control over the~~
11 ~~advertising to avoid exploitation of the judge's office. Prohibited~~
12 ~~conduct includes, but is not limited to, allowing the publisher to~~
13 ~~praise the judge's judicial accomplishments or, when the work is~~
14 ~~unrelated to the law, to emphasize the judge's position. As to the~~
15 ~~acceptance of awards, see Section 4D(5)(a) and Commentary.⁵~~

16 ~~[4] This rule does not apply to a judge's use of his or her name in~~
17 ~~connection with campaign activity as permitted in Canon 5. Judges~~
18 ~~may participate in the process of judicial selection by cooperating~~
19 ~~with appointing authorities and screening committees ~~seeking~~~~
20 ~~~~names for consideration,~~ and by responding to official inquiries ~~from~~~~
21 ~~~~such entities concerning the professional merit of a person being~~~~
22 ~~considered for a judgeship. See also Canon 5 regarding use of a~~
23 ~~judge's name in political activities.⁶~~

24 ~~[5] Although a judge should be sensitive to possible abuse of the~~
25 ~~prestige of office, a A judge may, based on the judge's personal~~
26 ~~knowledge, ~~serve as~~ provide a reference or provide a letter of~~
27 ~~recommendation for an individual based upon the judge's personal~~
28 ~~knowledge. When a judge is personally aware of facts or~~
29 ~~circumstances that would contribute to an accurate assessment of~~
30 ~~the individual under consideration, a judge may properly~~
31 ~~communicate that knowledge, and his or her opinions based~~
32 ~~thereon, to those responsible for making decisions concerning the~~
33 ~~applicant. The judge's awareness may be based, for example, on~~
34 ~~personal knowledge of the individual or special knowledge derived~~
35 ~~from some relationship, such as that with a law clerk or long-time~~
36 ~~family friend. In any case, in considering whether it is appropriate to~~
37 ~~write the recommendation on official or personal letterhead, the~~
38 ~~judge should carefully consider whether the recommendation or~~
39 ~~endorsement might reasonably be perceived as exerting pressure~~
40 ~~by reason of his or her judicial office, and should avoid any action~~
41 ~~that could be so understood.⁷~~

⁵ Canon 2B Commentary

⁶ Canon 2B Commentary

⁷ Canon 2B Commentary

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2 [6] ~~However, a~~ A judge must not initiate the communication of
3 information to a sentencing judge or a probation or corrections
4 officer but may provide to such persons information for the record in
5 response to a formal request.⁸

6 **Rule 3.03 Use of Non-Public Information*. A judge shall not**
7 **intentionally disclose or use, for any purpose unrelated to**
8 **judicial duties, nonpublic information* acquired in a judicial**
9 **capacity for any purpose unrelated to judicial duties.**⁹

10 **Commentary**

11 [1] In the course of performing their judicial duties, judges may
12 acquire information of commercial or other value that is otherwise
13 unavailable to the public. Judges must not reveal or use such
14 information for personal gain or for any purpose unrelated to their
15 judicial duties.

16 **Rule 3.04 Affiliation with Discriminatory Organizations. A**
17 **judge shall not hold membership in any organization that**
18 **practices invidious discrimination on the basis of race, sex**
19 **gender, religion or, national origin, ethnicity, or sexual**
20 **orientation, and shall not use the benefits or facilities of such**
21 **an organization to any significant extent.**¹⁰

22 **Commentary¹¹**

23 ~~[1] Membership of a judge~~ A judge's membership in an organization
24 that practices invidious discrimination ~~gives rise to~~ creates the
25 perceptions that the judge's impartiality is impaired. Section 2C
26 refers to the current practices of the organization. Whether an
27 organization's practices invidious discrimination are
28 invidiously discriminatory is often a complex question to which
29 judges should be sensitive. The answer cannot be determined from
30 a mere examination of an organization's current membership rolls
31 but rather depends on how the organization selects members and
32 other relevant factors, such as that the organization is dedicated to
33 the preservation of religious, ethnic or cultural values of legitimate
34 common interest to its members, or that it is in fact and effect an
35 intimate, purely private organization whose membership limitations

⁸ Canon 2B Commentary

⁹ Canon 3B(12)

¹⁰ Canon 2C

¹¹ Commentary is taken from Canon 2C Commentary

1 could not be constitutionally prohibited. Absent such factors, an In
2 general, an organization is generally said to discriminate invidiously
3 if it arbitrarily excludes from membership on the basis of race,
4 religion, ~~sex or~~ gender, national origin, ethnicity or sexual
5 orientation persons those individuals who would otherwise be
6 admitted to membership, and the exclusion is not reasonably
7 related to a legitimate purpose. See *New York State Club Ass'n.*
8 *Inc. v. City of New York*, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988);
9 *Board of Directors of Rotary International v. Rotary Club of Duarte*,
10 481 U.S. 537, 107 S. Ct. 1940 (1987), 95 L. Ed. 2d 474; *Roberts v.*
11 *United States Jaycees*, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d
12 462 (1984). Rule 3.04 does not prohibit a judge's membership in
13 any organization dedicated to the preservation of religious, ethnic
14 or legitimate cultural values of common interest to its members.

15 [2] ~~Moreover, public~~ Public manifestation by a judge of the judge's
16 ~~knowing approval of invidious discrimination on any basis gives the~~
17 ~~appearance of impropriety under Canon 2~~ in violation of Rule 1.01
18 ~~and diminishes public confidence in the integrity and impartiality of~~
19 ~~the judiciary., in violation of Section 2A Canon 1.~~ Although Section
20 ~~2C Rule 3.04 relates only to membership in organizations that~~
21 ~~invidiously discriminate~~ discriminating on the basis of race, sex
22 gender, religion or, national origin, ethnicity, or sexual orientation.
23 However, a judge's membership in or significant use of the benefits
24 and facilities of an organization that engages in any discriminatory
25 membership practices organizations practicing invidious
26 discrimination on any other basis prohibited by the applicable law of
27 the jurisdiction also violates Canon 2 and Section 2A and gives
28 creates the appearance of impropriety in violation of Rule 1.01.

29 [3] Whether a judge's use of the benefits and facilities of a
30 discriminatory organization is significant depends on whether the
31 frequency or nature of that use is sufficient to create the impression
32 that the judge approves of the organization and its practices.
33 Accordingly, a judge must not ~~In addition, it would be a violation of~~
34 ~~Canon 2 and Section 2A for a judge to arrange a meeting at a club,~~
35 or regularly attend events at, or regularly use other benefits and
36 facilities of, an organization that the judge knows practices invidious
37 discrimination on the basis of race, sex gender, religion or, national
38 origin, ethnicity or sexual orientation in its membership or other
39 policies, or for the judge to regularly use such a club.

40 [4] ~~When a person who is a judge on the date this Code becomes~~
41 ~~effective [in the jurisdiction in which the person is a judge] learns~~
42 ~~that an organization to which the judge belongs engages in~~
43 ~~invidious discrimination that would preclude membership under~~

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

10 **Rule 3.05. Testifying as a Character Witness. A judge shall not**
11 **testify voluntarily as a character witness, except when**
12 **properly summoned.**¹²

13 **Comments**

14 [1] ~~Moreover, when~~ When a judge testifies as a witness, a lawyer
15 who regularly appears before the judge may be placed in the
16 awkward position of cross-examining the judge. A In addition, a
17 ~~judge must not testify who testifies~~ voluntarily as a character
18 witness ~~because to do so may lend~~ lends the prestige of the judicial
19 office ~~in support of the party for whom the judge testifies to advance~~
20 the interests of another. See Rule 3.01. A judge may, however,
21 ~~testify when properly summoned.~~ Except in unusual circumstances
22 where the demands of justice require, a judge should discourage a
23 party from requiring the judge to testify as a character witness.¹³

¹² Canon 2B partial

¹³ Canon 2B Commentary

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CANON 4

June 30, 2005 draft ("Preliminary Draft"), redlined to reflect changes from current ABA Model Code

CANON 4: EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL SO 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 they ~~do not~~:²

(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 impartiality*, integrity* and independence* impartially as a judge; and⁴

(c) comply with the requirements of this code.

~~(2) demean the judicial office; or~~

~~B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extra-judicial activities concerning the law*, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Code.~~⁵

Comments:

~~Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.~~⁶

¹ Canon 4
² Canon 4A
³ Canon 4A(3)
⁴ Canon 4A(1)
⁵ Canon 4B (black letter rule moved to Commentary of Rule 4.01)
⁶ Canon 4A Commentary

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

5 [2] Expressions of bias or prejudice by a judge, ~~even outside the~~
6 ~~judge's judicial activities at any time,~~ may cast reasonable doubt on
7 the judge's ~~capacity~~ ability to act impartially as a judge.
8 ~~Expressions which may do so~~ Such expressions include jokes ~~or~~
9 and other remarks demeaning individuals on the basis of ~~their~~ race,
10 ~~sex~~ gender, religion, ethnicity, national origin, disability, age, sexual
11 orientation or socioeconomic status. See ~~Section 2C~~ Rule 3.04 and
12 accompanying ~~Commentary~~ Comments.⁷

13 [3] As a judicial officer ~~and person~~ specially learned in the law, a
14 judge is in a unique position to contribute to the improvement of the
15 law, the legal system, and the administration of justice, including
16 revision of substantive and procedural law and improvement of
17 ~~criminal and juvenile~~ the justice system. Such contributions may
18 take the form of speaking, writing, teaching or participating in other
19 extrajudicial activities. In many instances, these activities may
20 contribute significantly to the promotion of the fair administration of
21 justice and to ensuring the integrity, independence and impartiality
22 of the judiciary. To the extent that time permits, a judge is
23 encouraged to ~~do so~~ undertake such activities, either independently
24 or through a bar association, judicial conference or other
25 organization ~~dedicated to the improvement of the law~~. Judges may
26 participate in efforts to promote the fair administration of justice, the
27 independence of the judiciary and the integrity of the legal
28 profession ~~and, both within and outside their jurisdictions~~. For
29 example, judges may have occasion to express opposition to the
30 persecution of lawyers and judges in other countries because of
31 their professional activities.⁸

32 [4] As a private individual, a judge may also wish to engage in
33 writing, speaking, teaching, or being otherwise active in regard to
34 non-legal subjects. To the extent that such activity is not in conflict
35 with any of the judges' duties under this Code, it is permitted by this
36 Rule.

37 **Rule 4.02 Governmental, Civic or Charitable Activities**
38 **Appearances Before Governmental Bodies.** A judge shall not

⁷ Canon 4A Commentary

⁸ Canon 4B Commentary

1 appear at a public hearing before, or otherwise consult with,
2 an executive or legislative body or official except:⁹

3 (a) on matters concerning the law*, the legal system or
4 the administration of justice ~~or except~~;¹⁰

5 (b) on other matters that might reasonably merit the
6 attention and comment of the judge because of
7 knowledge* or expertise acquired in the course of the
8 judge's judicial duties; or

9 (c) when acting pro se in a matter involving the judge or
10 the judge's interests.¹¹

11 **Comments:**

12 [1] Judges possess special expertise on matters of law, the legal
13 system and the administration of justice, and may properly share
14 that expertise with governmental bodies. In addition, judges may
15 acquire information on issues before them that are not law-related
16 but upon which they may be well qualified to comment from their
17 unique vantage point as jurists. For example, a juvenile court judge
18 may be uniquely situated to comment to a public body on the
19 potential benefits of proposed community improvements that could
20 lead to a decrease in delinquency among juveniles. Judges must
21 be mindful, however, that their appearance before governmental
22 bodies remains subject to other provisions of this Code, such as
23 Rule 2.11, governing public comment on pending and impending
24 matters, Rule 3.02, prohibiting judges from lending the prestige of
25 office to advance the interests of themselves or others, and Rule
26 4.01(b), prohibiting judges from engaging in extra-judicial activities
27 that cast reasonable doubt on the judge's impartiality, integrity and
28 independence.

29 [2] In general, it would be an unnecessary and unfair burden to
30 prohibit judges from appearing before governmental bodies on
31 matters that are likely to have special effect upon them as private
32 citizens, for example, zoning proposals that will affect their real
33 property or proposals having to do with the availability of local
34 health services. The judge must exercise care, however, not to lend
35 the prestige of judicial office to advance general causes with
36 respect to which the judge possesses no special judicial
37 competence.

⁹ Canon 4C(1)

¹⁰ Canon 4C(1)

¹¹ Canon 4C(1)

1 [3] See ~~Section 2B~~ Rules 2.07 and 3.01 and Comments regarding
2 the obligation to avoid improper influence.¹²

3 **Rule 4.03 Appointments to Governmental Bodies.** A judge
4 shall not accept appointment to a governmental committee or
5 commission or other governmental position that is concerned
6 with issues of fact or policy on matters other than the
7 improvement of the law,* the legal system or the
8 administration of justice. ~~A judge may, however, represent a~~
9 ~~country, state or locality on ceremonial occasions or in~~
10 ~~connection with historical, educational or cultural activities.~~¹³

11 **Comments:**

12 [1] ~~Section 4C(2) prohibits a judge from accepting any~~
13 ~~governmental position except one relating to the law, legal system~~
14 ~~or administration of justice as authorized by Section 4C(3). The A~~
15 ~~judge must assess the~~ appropriateness of accepting extra judicial
16 assignments must be assessed in light of the demands on judicial
17 resources created by crowded dockets and the need to protect the
18 courts from involvement in extrajudicial matters that may prove to
19 be controversial. Judges should not accept governmental
20 appointments that are likely to interfere with the effectiveness and
21 independence of the judiciary both in terms of judicial availability
22 and in terms of the requirements of impartiality of the judiciary.
23 Thus, a judge should not serve on a governmental commission that
24 requires an excessive time commitment or is embroiled in
25 controversial subject matter, or whose members are limited to
26 advocating for one side in a policy debate.¹⁴ A judge may, however,
27 represent a country, state or locality on ceremonial occasions in
28 connection with historical, educational or cultural activities.¹⁵

29 **Rule 4.04 Civic or Charitable Activities.** A judge may
30 **participate in civic or charitable activities that do not reflect**
31 **adversely upon a judge's impartiality*, integrity* and**
32 **independence*, or interfere with the performance of judicial**
33 **duties, subject to the following limitations and the other**
34 **requirements of this Code.**

35
36 **A. A judge, as an officer, director, trustee or nonlegal**
37 **advisor, or as a member or otherwise With respect to**

¹² Canon 4C(1) Commentary

¹³ Canon 4C(2)

¹⁴ Canon 4C(2) Commentary

¹⁵ Canon 4C(2)

1 any activities in which a judge participates on behalf of
2 a civic or charitable organization:¹⁶
3

4 (1) A judge shall not
5

6 (a) ~~shall not use~~ or permit the use of the prestige
7 of judicial office for fundraising or membership
8 solicitation.¹⁷
9

10 i. ~~but shall not personally participate in the~~
11 ~~solicitation of solicit funds or other~~
12 ~~fundraising activities for the~~
13 ~~organization~~¹⁸ on an other than de minimis*
14 basis.
15

16 ii. ~~shall not personally participate in~~
17 ~~membership solicitation if the solicitation is~~
18 ~~primarily a fundraising mechanism, or if it~~
19 ~~might reasonably be perceived as coercive~~
20 ~~or, except as permitted in Section~~
21 ~~4C(3)(b)(i), if the solicitation is essentially a~~
22 ~~fund-raising mechanism.~~¹⁹
23

24 (2) Notwithstanding paragraph (1) above, a judge may:
25

26 i. ~~except that a judge may personally solicit~~
27 ~~funds from other members of the judge's~~
28 ~~family*, or judges over whom the judge~~
29 ~~does not exercise supervisory or appellate~~
30 ~~authority;~~²⁰
31

32 ii. ~~may assist the such an organization in~~
33 ~~planning fundraising and may participate in~~
34 ~~the management and investment of the~~
35 ~~organization's funds;~~²¹
36

37 iii. appear at, participate in, and permit the
38 judge's title to be used in connection with
39 an event of an organization devoted to the
40 improvement of law*, the legal system, or

¹⁶ Canon 4C(3)(b)

¹⁷ Canon 4C(3)(b)(iv)

¹⁸ Canon 4C(3)(b)(i) partial

¹⁹ Canon 4C(3)(b)(iii)

²⁰ Canon 4C(3)(b)(i) partial

²¹ Canon 4C(3)(b)(i) partial

- 1 iv. the administration of justice, even though
2 the event may serve a fundraising purpose;
3
4 v. ~~may~~ make recommendations to public and
5 private fund-granting organizations on
6 ~~projects and programs~~ and activities
7 concerning the law*, the legal system or the
8 administration of justice.²²
9

10
11 b. A judge may serve as an officer, director, trustee, or
12 non-legal advisor of an organization or governmental
13 agency entity devoted to the improvement of the
14 law,* the legal system or the administration of justice
15 or of an educational, religious, charitable, fraternal or
16 civic organization not conducted for profit, ~~subject to~~
17 ~~the following limitations and the other requirements~~
18 ~~of this Code.~~²³ ~~A judge shall not serve as an officer,~~
19 ~~director, trustee or non-legal advisor if~~ unless it is
20 likely that the organization or governmental entity:²⁴
21

22 (1) will be engaged in proceedings that would
23 ordinarily come before the judge, or²⁵
24

25 (2) will be engaged frequently in adversary
26 proceedings in the court of which the judge is a
27 member or in any court subject to the appellate
28 jurisdiction of the court of which the judge is a
29 member.²⁶
30

31 **Comments:**

32
33 [1] A judge should be permitted to participate in civic, fraternal or
34 charitable activities for the benefit of the community of which the
35 judge is a part, provided that such participation does not take
36 inappropriate advantage of the judge's judicial position, or
37 otherwise interfere with the performance of the judge's judicial
38 duties. See Rule 5.01(a).
39

40 [2] Judges may solicit lawyers to participate in pro bono programs
41 so long as in doing so the judge does not misuse the prestige of the

²² Canon 4C(3)(b)(ii)

²³ Canon 4C(3)

²⁴ Canon 4C(3)(a)

²⁵ Canon 4C(3)(a)(i)

²⁶ Canon 4C(3)(a)(ii)

1 office and does not solicit lawyers to accept particular cases that
2 could come before the judge or the court on which the judge sits.
3

4 [2] Solicitation of funds for an organization and solicitation of
5 memberships similarly involves the danger that the person solicited
6 will feel obligated to respond favorably to the solicitor if the solicitor
7 is in a position of influence or control.²⁷ For that reason, a judge is
8 not permitted to solicit funds in person in writing or by telephone, on
9 an other than de minimis basis, unless the person being solicited is
10 another judge over whom the judge exercises no appellate or
11 supervisory control. Similarly, a judge is not permitted to personally
12 solicit memberships in an organization if the solicitation is primarily
13 a fundraising mechanism. A judge may, however, participate in
14 fundraising activities by performing tasks other than soliciting or
15 accepting donations at fundraising events, without the attendant
16 risk of coercion that makes personal solicitation of funds
17 problematic.
18

19 [3] De minimis solicitation includes insignificant, incidental, or
20 behind-the-scenes activities that do not use the judge's name or
21 title and situations where the judge's role is no more active or
22 visible than that of other participants.

23 [4] A Solicitation of membership poses potential problems similar to
24 those associated with the solicitation of funds. For that reason, a
25 judge must not personally may solicit membership or endorse or
26 encourage membership efforts for civic or charitable organizations
27 if an organization devoted to the improvement of the law, the legal
28 system or the administration of justice or a nonprofit educational,
29 religious, charitable, fraternal or civic organization as long as the
30 solicitation cannot could reasonably be perceived as coercive and
31 is not essentially a fundraising mechanism. A judge must not
32 engage in direct, individual solicitation of funds or memberships in
33 person, in writing or by telephone except in the following cases: 1)
34 For example, a judge may must not solicit for funds or
35 memberships from other judges over whom the judge does not
36 exercise exercises supervisory or appellate authority, 2) a judge
37 may solicit other or from persons for membership in the
38 organizations described above if neither those persons nor persons
39 with whom they are or those affiliated with persons who are likely
40 ever to appear before the court on which the judge serves.²⁸

41 [5] and 3) Notwithstanding the foregoing limitations, no comparable
42 risk of coercion arises when a judge who is an officer of such an

²⁷ Canon 4C(3)(b) commentary partial

²⁸ Canon 4C(3)(b) Commentary

1 organization ~~may send~~ sends a general membership solicitation
2 mailing over the judge's signature. In addition, lawyer and judicial
3 organizations with diverse memberships, whose membership is
4 balanced in representing all parties in litigation often include judges
5 in their leadership. Judges may be involved in member recruitment
6 for such organizations even though the dues or fees associated
7 with membership may be used, in part, as fundraising to support
8 the objectives of those organizations.²⁹

9 [6] Judges are an integral part of the legal community and may
10 participate as judges in the activities of organizations within the
11 legal community without inappropriately lending the prestige of
12 office to those activities, even when they serve a fundraising
13 purpose. Therefore, a judge may, for example, accept an invitation
14 to speak at or be recognized or honored at an event hosted by a
15 legal organization, law school, or other entity devoted to improving
16 the law, the legal system or the administration of justice, even if
17 such an event raises funds for the benefit of the sponsoring
18 organization.

19 [7] Use of an organization's letterhead for fundraising or
20 membership solicitation does not violate ~~Section 4C(3)(b)~~ Rule 4.04
21 provided that the letterhead lists only the judge's name and office or
22 other position in the organization, and, if comparable designations
23 are listed for other persons, the judge's judicial designation. In
24 addition, a judge must also make reasonable efforts to ensure that
25 the judge's staff, court officials and others subject to the judge's
26 direction and control do not solicit funds on the judge's behalf for
27 any purpose, charitable or otherwise.³⁰

28 ~~[8] Section 4C(3)~~ This Rule does not prohibit apply to a judge's
29 service judge from serving in a governmental position ~~unconnected~~
30 associated with the improvement of the law, the legal system or the
31 administration of justice; see Section 4C(2) Rule 4.03.³¹

²⁹ Canon 4C(3)(b) Commentary

³⁰ Canon 4C(3)(b) Commentary

³¹ Canon 4C(3) Commentary

1 [9] ~~See Commentary to Section 4B regarding use of the phrase~~
2 ~~"subject to the following limitations and the other requirements of~~
3 ~~this Code."~~ In this and other Sections of Rules in Canon 4, the
4 phrase "subject to the requirements of this Code" is used, notably
5 in connection with a judge's governmental, civic or charitable
6 activities. This phrase is included to remind judges that the use of
7 permissive language in various Sections Rules of the Code does
8 not relieve a judge from the other requirements of the Code that
9 apply to the specific conduct.³² ~~As an~~ For example of the meaning
10 of the phrase, a judge permitted by ~~Section 4C(3)~~ this Rule to serve
11 on the board of a fraternal institution may be prohibited from such
12 service by ~~Sections 2C or 4A~~ Rules 3.04 or 4.01 if the institution
13 practices invidious discrimination or if service on the board
14 otherwise casts reasonable doubt on the judge's capacity to act
15 impartially as a judge.³³

16 [10] Service by a judge on behalf of a civic, fraternal or charitable
17 organization may be governed by other provisions of Canon 4 in
18 addition to ~~Section 4C~~ Rules 4.02, 4.03 and 4.04. For example, a
19 judge is prohibited by ~~Section 4C~~ Rule 4.08 from serving as a legal
20 advisor to a civic, fraternal or charitable organization.³⁴

21 [11] ~~The changing nature of some organizations and of their~~
22 ~~relationship to the law~~ makes it necessary for a judge regularly to
23 reexamine the activities of each organization with which the judge
24 is affiliated associated to determine if it is proper for the judge to
25 continue the affiliation such association. ~~For example, in many~~
26 ~~jurisdictions charitable hospitals are now more frequently in court~~
27 ~~than in the past. Similarly, the boards of some legal aid~~
28 ~~organizations now make policy decisions that may have political~~
29 ~~significance or imply commitment to causes that may come before~~
30 ~~the courts for adjudication.~~³⁵

31 [12] ~~Section 4C(2) does not govern~~ This Rule, not Rule 4.03
32 governs a judge's service in a nongovernmental position. ~~See~~
33 ~~Section 4C(3) permitting~~ This Rule permits service by a judge with
34 organizations devoted to the improvement of the law, the legal
35 system or the administration of justice and with educational,
36 religious, charitable, fraternal or civic organizations not conducted
37 for profit. ~~For example, Service on the board of a public educational~~
38 ~~institution, unless it were other than a law school, would be~~
39 prohibited under ~~Section 4C(2)~~ Rule 4.03, ~~but whereas~~ service on

³² Canon 4B Commentary

³³ Canon 4C(3) Commentary

³⁴ Canon 4C(3) Commentary

³⁵ Canon 4C(3)(a) Commentary

1 the board of a public law school or any private educational legal
2 institution would generally be permitted under Section 4C(3).³⁶

3 A judge must not be a speaker or guest of honor at an
4 organization's fund-raising event, but mere attendance at such an
5 event is permissible if otherwise consistent with this Code.³⁷

6 **Rule 4.05 Appointments to Fiduciary* Activities Positions.**

7 (a) A judge shall not serve as executor, administrator or
8 other personal representative, trustee, guardian,
9 attorney in fact or other fiduciary,* except for the estate,
10 trust or person of a member of the judge's family,* and
11 then only if such service will not interfere with the
12 proper performance of judicial duties.³⁸

13 (b) A judge shall not serve as a fiduciary* if it is likely
14 that the judge as a fiduciary* will be engaged in
15 proceedings that would ordinarily come before the
16 judge, or if the estate, trust or ward becomes involved in
17 adversary proceedings in the court on which the judge
18 serves or one under its appellate jurisdiction.³⁹

19 (c) The same restrictions on financial activities that
20 apply to a judge personally also apply to the judge while
21 acting in a fiduciary* capacity.⁴⁰

22 **Comments:**

23 [1] The Time for Compliance provision of this Code (Application,
24 Section F) postpones the time for compliance with certain
25 provisions of this Section Rule in some cases.⁴¹

26 [2] The Other restrictions imposed by this Canon may conflict with the
27 judge's obligation as a fiduciary. For example, a judge should resign as
28 trustee if detriment to the trust would result from divestiture of holdings the
29 retention of which would place the judge in violation of Section 4D(4) Rule
30 4.10, or require frequent disqualification.⁴²

31

³⁶ Canon 4C(2) Commentary

³⁷ Canon 4C(3)(b) Commentary

³⁸ Canon 4E(1)

³⁹ Canon 4E(2)

⁴⁰ Canon 4E(3)

⁴¹ Canon 4E Commentary

⁴² Canon 4E Commentary

1 **Rule 4.06 Service as Arbitrator or Mediator. A judge shall not**
2 **act as an arbitrator or mediator or otherwise perform judicial**
3 **functions in a private capacity unless expressly authorized by**
4 **law*.⁴³**

5 **Comments:**

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. Even when
14 performed without charge, dispute resolution services provided by a
15 judge in an extrajudicial capacity may interfere with the proper
16 performance of the judicial office, and is therefore permitted only
17 when authorized by law.

18 [2] ~~Section 4F~~ Rule 4.06 does not prohibit a judge from participating
19 in arbitration, mediation or settlement conferences performed as
20 part of judicial duties. See Rule 2.09, Comment [2] and Rule
21 2.10(a)(4).⁴⁴

22 **Rule 4.07 Practice of Law. A judge shall not practice law.**
23 **Notwithstanding this prohibition, a judge may act pro se and**
24 **may, without compensation, give legal advice to and draft or**
25 **review documents for a member of the judge's family.*⁴⁵**

26 **Comments:**

27 [1] This prohibition refers to the practice of law in a representative
28 capacity and not in a pro se capacity. A judge may act for himself or
29 herself in all legal matters, including matters involving litigation and
30 matters involving appearances before or other dealings with
31 legislative and other governmental bodies. However, in so doing, a
32 judge must not abuse the prestige of office to advance the interests
33 of the judge or the judge's family. ~~See Section 2(B)~~ Rule 3.01.⁴⁶

34 [2] The Code allows a judge to give legal advice to and draft legal
35 documents for members of the judge's family, so long as the judge

⁴³ Canon 4F

⁴⁴ Canon 4F Commentary

⁴⁵ Canon 4G

⁴⁶ Canon 4G Commentary

1 receives no compensation. A judge must not, however, act as an
2 advocate or negotiator for a member of the judge's family in a legal
3 matter.⁴⁷

4 **Rule 4.08 Financial Activities. A judge shall not engage in**
5 **financial and business dealings that:**⁴⁸

6 (a) may reasonably be perceived to exploit the judge's
7 judicial position, or⁴⁹

8 (b) involve the judge in frequent transactions or
9 continuing business relationships with those lawyers or
10 other persons likely to come before the court on which
11 the judge serves.⁵⁰

12 **Comments:**

13 ~~The Time for Compliance provision of this Code (Application,~~
14 ~~Section F) postpones the time for compliance with certain~~
15 ~~provisions of this Section in some cases.~~⁵¹

16 [1] When in a judicial capacity a judge acquires ~~in a judicial capacity~~
17 ~~information, such as material contained in filings with the court,~~ that
18 is not yet generally known, such as material contained in filings with
19 the court, the judge must not use the information for private gain.
20 See ~~Section 2B~~ Rule 3.01; see also ~~Section 3B(14)~~ Rule 3.02.⁵²

21 [2] A judge must avoid financial and business dealings that involve
22 the judge in frequent transactions or continuing business
23 relationships with persons likely to come ~~either~~ before the judge
24 personally or before other judges on the judge's court. In addition, a
25 judge should discourage members of the judge's family from
26 engaging in dealings that would reasonably appear to exploit the
27 judge's judicial position. This rule is necessary to avoid creating an
28 appearance of exploitation of office or favoritism and to minimize
29 the potential for disqualification. With respect to affiliation of
30 relatives of a judge with law firms appearing before the judge, see
31 ~~Commentary~~ Comments to Section 3E(1) Rule 2.12 relating to
32 disqualification.⁵³

⁴⁷ Canon 4G Commentary

⁴⁸ Canon 4D(1)

⁴⁹ Canon 4D(1)(a)

⁵⁰ Canon 4D(1)(b)

⁵¹ Canon 4D(1) Commentary

⁵² Canon 4D(1) Commentary

⁵³ Canon 4D(1) Commentary

1 [3] Participation by a judge in financial and business dealings is
2 subject to the general prohibitions in ~~Section 4A~~ Rule 4.01 against
3 activities that tend to reflect adversely on impartiality, demean the
4 judicial office, or interfere with the proper performance of judicial
5 duties. Such participation is also subject to the general prohibition
6 in Canon ~~2~~ 1 against activities involving impropriety or the
7 appearance of impropriety, and the prohibition in ~~Section 2B~~ Rule
8 3.02 against the misuse of the prestige of judicial office. In addition,
9 a judge must maintain high standards of conduct in all of the
10 judge's activities, as set forth in Canon 1. ~~See Commentary for~~
11 ~~Section 4B regarding use of the phrase "subject to the~~
12 ~~requirements of this Code."~~⁵⁴

13 **Rule 4.09 Remunerative Activities. A judge may, subject**
14 **to the requirements of this Code, hold and manage**
15 **investments of the judge and members of the judge's**
16 **family,* ~~including real estate,~~ and engage in other**
17 **remunerative activity.**⁵⁵

18 **Comments:**

19 [1] This ~~Section~~ Rule provides that, subject to the requirements of
20 this Code, a judge may hold and manage investments owned solely
21 by the judge, investments owned solely by a member or members
22 of the judge's family, and investments owned jointly by the judge
23 and members of the judge's family. The term "investments"
24 includes real estate. See Comments for Rule 4.04 regarding use of
25 the phrase "subject to the requirements of this Code."⁵⁶

26 **Rule 4.10 Management and Divestiture of Investments.**
27 **A judge shall manage the judge's investments and other**
28 **financial interests to minimize the number of cases in**
29 **which the judge is disqualified. As soon as the judge**
30 **can do so without serious financial detriment, the judge**
31 **shall divest himself or herself of investments and other**
32 **financial interests that might require frequent**
33 **disqualification.**⁵⁷

34 **Comments**

35 [1] Judges must not allow their financial activities to interfere
36 with their duty to preside over cases that come before them.

⁵⁴ Canon 4D(1) Commentary

⁵⁵ Canon 4D(2)

⁵⁶ Canon 4D(2) Commentary

⁵⁷ Canon 4D(4)

1 Although some disqualifications will be unavoidable, judges
2 must reduce unnecessary conflicts of interest that arise
3 when they retain financial interests in organizations and
4 other entities that appear regularly in their courts, by
5 divesting themselves of such interests.

6 [2] Financial interests, within the meaning of this rule, include
7 the interests of others whom the judge serves as a fiduciary
8 under Rule 4.05.

9 **Rule 4.11 For Profit Activities.** A judge shall not serve as an
10 officer, director, manager, general partner, advisor or
11 employee of any **business for-profit** entity except that a judge
12 may, subject to the requirements of this Code, manage and
13 participate in:⁵⁸

14 (a) a **business for-profit** entity closely held by the judge
15 or members of the judge's family,* or⁵⁹

16 (b) a **business for-profit** entity primarily engaged in
17 investment of the financial resources of the judge or
18 members of the judge's family.*⁶⁰

19 **Comments:**

20 ~~Subject to the requirements of this Code, a judge may participate in~~
21 ~~a business that is closely held either by the judge alone, by~~
22 ~~members of the judge's family, or by the judge and members of the~~
23 ~~judge's family.~~

24 [1] Although participation by a judge in a closely-held family for
25 profit business might otherwise be permitted by ~~Section 4D(3)~~ Rule
26 4.11, a judge may be prohibited from participation by other
27 provisions of this Code. Examples of such situations include when,
28 ~~for example,~~ the business entity frequently regularly appears before
29 the judge's court or the participation requires significant time away
30 from judicial duties. Similarly, a judge must avoid participating in a
31 closely-held for-profit family business if the judge's participation
32 would involve misuse of the prestige of judicial office.⁶¹

33 **Rule 4.12 Solicitation and Acceptance of Gifts*.**

⁵⁸ Canon 4D(3)

⁵⁹ Canon 4D(3)(a)

⁶⁰ Canon 4D(3)(b)

⁶¹ Canon 4D(3) Commentary

1 (a) A judge shall not solicit or accept, and shall urge
2 members of the judge's family residing in the judge's
3 household* not to solicit or accept, ~~a gift~~ gifts*, bequest,
4 favor, or loan from anyone except that a judge may
5 accept for.⁶²

6 (1) a gift* incident to a public testimonial;⁶³

7 (2) books, magazines, journals, audio-visual materials
8 tapes and other resource materials supplied by
9 publishers or organizations on a complimentary basis
10 for official use, ~~or~~;⁶⁴

11 (3) an invitation to the judge and the judge's spouse* or
12 guest to attend without charge.⁶⁵

13 (i) a widely attended event*;

14 (ii) a bar-related function; or⁶⁶

15 (iii) ~~an~~ any activity devoted to the improvement of
16 the law,* the legal system or the administration of
17 justice;⁶⁷

18 (4) a gift*, award or benefit incident to the business,
19 profession or other separate activity of a spouse*,
20 domestic partner or other family member of a judge
21 residing in the judge's household*, including gifts*,
22 awards and benefits for the use of both the spouse*,
23 domestic partner or other family member* and the
24 judge (as spouse*, domestic partner or family
25 member*), provided the gift*, award or benefit could not
26 reasonably be perceived as intended to influence the
27 judge in the performance of judicial duties;⁶⁸

28 ~~(c) Ordinary social hospitality~~⁶⁹

29 (5) a gift* from a relative or friend, for a special
30 occasion, such as a wedding, anniversary or birthday, if

⁶² Canon 4D(5)

⁶³ Canon 4D(5)(a)

⁶⁴ Canon 4D(5)(a)

⁶⁵ Canon 4D(5)(a)

⁶⁶ Canon 4D(5)(a)

⁶⁷ Canon 4D(5)(a)

⁶⁸ Canon 4D(5)(b)

⁶⁹ A slightly modified variation of deleted Canon 4D(5)(c) has been moved to the terminology section, where social hospitality is excluded from the definition of gift altogether.

1 the gift* is fairly commensurate with the occasion and the
2 relationship;⁷⁰

3 ~~(6) a gift*, bequest, favor or loan from a relative or close~~
4 ~~personal friend whose appearance or interest in a case~~
5 ~~would in any event require disqualification under~~
6 ~~Section 3E Rule 2.12;~~⁷¹ or

7 ~~(f) a loan from a lending institution in its regular course of~~
8 ~~business on the same terms generally available to persons who are~~
9 ~~not judges.~~⁷²

10 ~~(g) a scholarship or fellowship awarded on the same terms and~~
11 ~~based on the same criteria applied to other applicants;~~⁷³ or

12 (7) any other individual gift*, from any other source
13 bequest, favor or loan, valued at [\$50] or less, or series
14 of gifts* from the same source whose value in the
15 aggregate does not exceed [\$150], ~~only if the donor is~~
16 ~~not.~~⁷⁴

17 (i) a lawyer, party, or other third person
18 who has come or is likely to come or
19 before the judge, or a person or entity
20 whose interests have come or are likely to
21 come before the judge, within the
22 preceding five years, or⁷⁵

23 (ii) a lawyer, party, or third person who is
24 likely to come before the judge, or a
25 person or entity whose interests are likely
26 to come before the judge, in the
27 foreseeable future.

28 (b) ~~and, if its~~ For any gift*, other than a gift* from a
29 member of the judge's family*, that alone or in the
30 aggregate with other gifts* received from the same
31 source in the same calendar year exceeds [\$250.00] in
32 value exceeds \$150.00, the judge reports it must
33 publicly report receipt of the gift in the same manner as

⁷⁰ Canon 4D(5)(d)

⁷¹ Canon 4D(5)(e)

⁷² A slightly modified version of deleted Canon 4D(5)(f) has been moved to the terminology section, where commercial loans are excluded from the definition of gift altogether.

⁷³ A slightly modified Canon 4D(5)(g) has been moved to the terminology section, where scholarships and fellowships are excluded from the definition of gift altogether.

⁷⁴ Canon 4D(5)(h)

⁷⁵ Canon 4D(5)(h)

1 **the judge reports compensation in Section 4H,
2 reimbursement or waiver of charges pursuant to Rule
3 4.15.⁷⁶**

4 **Comments:**

5 [1] This Rule imposes restrictions on the solicitation and
6 acceptance of gifts. The Terminology section defines a “gift” as any
7 gratuity, favor, discount, entertainment, hospitality, loan,
8 forbearance, bequest, or anything of monetary value, but does not
9 include:

10 (a) Ordinary social hospitality that is common among people in
11 the judge’s community, extended for a non-business purpose by
12 an individual, not a corporation, and limited to the provision of
13 modest items, such as food and refreshments;⁷⁷

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

17 (c) a loan loans from a lending institution in its regular course of
18 business banks and other financial institutions on the same
19 terms generally that are available to persons who are not judges
20 based on factors other than judicial status;⁷⁸

21 (d) opportunities and benefits, including favorable rates and
22 commercial discounts, that are available based on factors other
23 than judicial status;

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

27 (f) a scholarship or fellowship scholarships and fellowships
28 awarded on the same terms and based on the same criteria
29 applied to non-judge applicants;⁷⁹

30 (g) reimbursement or waiver of charges for travel-related
31 expenses governed by Rule 4.13;

32 (h) compensation for extra-judicial activities that is governed by
33 Rule 4.14.

34
35 [2] A judge may accept a public testimonial or a gift incident thereto
36 only if the donor organization is not an organization whose
37 members comprise or frequently represent the same side in
38 litigation, and the testimonial and gift are otherwise in compliance

⁷⁶ Canon 4D(5)(h)

⁷⁷ Canon 4D(5)(c)

⁷⁸ Canon 4D(5)(f)

⁷⁹ Canon 4D(5)(g)

1 with other provisions of this Code. See ~~Sections 4A(4)~~ Rules 4.01
2 and ~~2B 2.07~~.⁸⁰

3 [3] Because a gift, ~~bequest, favor or loan~~ to a member of the
4 judge's family residing in the judge's household might be viewed as
5 intended to influence the judge, a judge must inform those family
6 members of the relevant ethical constraints upon the judge in this
7 regard and discourage those family members from violating them.
8 A judge cannot, however, reasonably be expected to know or
9 control all of the financial or business activities of all family
10 members residing in the judge's household.⁸¹

11 [4] A gift to a judge, or to a member of the judge's family living in
12 the judge's household, that is excessive in value raises questions
13 about the judge's impartiality and the integrity of the judicial office
14 and might require disqualification of the judge ~~where disqualification~~
15 ~~would not otherwise be required. See, however, Section 4D(5)(e).~~⁸²

16 [5] ~~Section 4D(5)(h)~~ Rule 4.12 prohibits judges from accepting gifts,
17 ~~favors, bequests or loans~~ from lawyers or their firms if they have
18 come or are likely to come before the judge; it also prohibits gifts,
19 ~~favors, bequests or loans~~ from clients of lawyers or their firms when
20 the clients' interests have come or are likely to come before the
21 judge. Rule 4.12(a)(7) prohibits a judge from accepting gifts, even
22 of a nominal value, from people or entities who are likely to appear
23 before the judge. The rule requires a judge to consider whether a
24 donor, or the donor's interest, might come before the judge in the
25 foreseeable future.⁸³

26 [6] ~~Section 4D(5)~~ Rule 4.12 does not apply to contributions to a
27 judge's campaign for judicial office, ~~a matter. Such contributions are~~
28 governed by Canon 5 and other Rules of this Code.⁸⁴ Rule 4.12
29 likewise does not apply to the reimbursement or waiver of charges
30 for travel-related expenses, which is governed by Rule 4.13.

31 [7] Acceptance of an invitation to a law-related function is governed
32 by ~~Section 4D(5)(a);~~ Rule 4.12(a)(3) and includes acceptance of an
33 invitation paid for by an individual lawyer or group of lawyers ~~is~~
34

⁸⁰ Canon 4D(5)(a) Commentary

⁸¹ Canon 4D(5) Commentary

⁸² Canon 4D(5)(d) Commentary

⁸³ Canon 4D(5)(h) Commentary

⁸⁴ Canon 4D(5) Commentary

1 governed by Section 4D(5)(h).⁸⁵ The judge's acceptance of such an
2 invitation is subject to the provisions of Rule 4.12(a)(7)(i) and (ii).

3 [8] Regardless of whether Rule 4.12 would permit receipt of a
4 particular gift by a judge or a member of the judge's family residing
5 in the judge's household, other Rules may prohibit the gift. For
6 example, Rule 4.01(b) would apply if the gift would cast reasonable
7 doubt on the judge's capacity to act with integrity, impartiality and
8 independence.

9 H. Compensation, Reimbursement and Reporting.

10 **Rule 4.13 Compensation and Reimbursement or Waiver of**
11 **Charges for Travel-Related Expenses of the Judge or the**
12 **Judge's Spouse* or Guest.**

13 **(a) A judge may receive accept compensation and**
14 **reimbursement of or a waiver of charges from sources**
15 **other than the judge's employing entity for necessary**
16 **travel, food and lodging expenses associated with the**
17 **judge's participation in for the extra-judicial activities**
18 **permitted by this Code, only if the source of such**
19 **payments such acceptance does not cast reasonable**
20 **doubt on the judge's capacity to act with give the**
21 **appearance of influencing the judge's performance of**
22 **judicial duties or otherwise give the appearance of**
23 **impropriety integrity*, impartiality* or independence*.**⁸⁶

24 **(b) Expense reimbursement and waiver of charges shall**
25 **be limited to the actual cost of travel, food and lodging**
26 **reasonably incurred by the judge and, where**
27 **appropriate to the occasion, by the judge's spouse*,**
28 **domestic partner or guest. Any payment in excess of**
29 **such an amount is compensation reimbursement or**
30 **waiver of charges that alone or in the aggregate with**
31 **other expenses reimbursed from the same source in the**
32 **preceding [twelve months] exceeds [\$250] shall be**
33 **reported and made accessible to the public in the same**
34 **manner as required by Rule 4.15.**⁸⁷

35
36 **Comments:**

⁸⁵ Canon 4D(5)(a) Commentary

⁸⁶ Canon 4H1

⁸⁷ Canon 4H1(b)

1 [1] Judicial education in law-related and academic disciplines is in
2 keeping with a judge’s duty to remain competent in the law and is
3 encouraged under the provisions of Canon 4. Attendance at
4 educational activities where the expenses are paid for by persons
5 or entities other than the judge, or a government entity, must
6 nevertheless be evaluated by the judge to determine whether
7 attendance is consistent with the requirements of this Code. For
8 example, Rule 4.01(b) requires that a judge’s extra-judicial activities
9 be conducted so that they do not cast reasonable doubt on the
10 judge’s capacity to act with impartiality, integrity and independence.

11
12 [2] A judge’s decision whether to attend such an expense-paid
13 educational activity should be based on an assessment of all of the
14 circumstances, and the judge must undertake a reasonable inquiry
15 to obtain the information necessary to make an informed judgment.
16 The judge should, for example, consider whether the sponsor or the
17 funding source of the educational activity is currently appearing, or
18 likely to appear, before the judge in a matter, thus requiring
19 disqualification of the judge in the matter. See Rule 2.12 A judge
20 also should not attend educational activities sponsored by
21 organizations with which the judge may not properly be associated,
22 such as organizations referred to in Rule 3.04; to do so would
23 violate Rule 1.01 if the judge’s attendance manifests approval of
24 the organization’s policies. See Rule 3.04, comment [2]. Other
25 factors that may affect whether the judge should or should not
26 attend an educational activity include:

27 (a) Whether the sponsor is an accredited educational
28 institution or bar association rather than a for-profit entity or trade
29 association;

30 (b) Whether the source of the funding is largely from
31 numerous contributors rather than from a single entity and
32 earmarked for programs with specific content;

33 (c) Whether the content is unrelated to the subject matter of
34 litigation before the judge or is related to matters that are, or are
35 likely to come before the judge;

36 (d) Whether the activity is purely educational rather than
37 recreational, and whether expenses of attending are a reasonable
38 amount;

1 (e) Whether information concerning the activity and its
2 funding sources are available upon inquiry.

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

11 **Rule 4.14 Compensation for Extrajudicial Activities.**

12 **(a) A judge may accept compensation for extra-judicial**
13 **activities permitted by this Code, if such acceptance**
14 **does not cast reasonable doubt on the judge's capacity**
15 **to act with integrity*, impartiality* or independence*.**

16 **(b) Compensation shall not exceed a reasonable amount**
17 **nor shall it exceed what a person who is not a judge**
18 **would receive for the same activity.⁸⁸**

19 **Comments:**

20 [1] The Code does not prohibit a judge from accepting honoraria or
21 speaking fees provided that the compensation is reasonable and
22 commensurate with the task performed. A judge should ensure,
23 however, that no conflicts are created by the arrangement. A judge
24 must not ~~exploit or appear to trade on~~ exploit the judicial position for
25 personal advantage. Nor should a judge spend significant time
26 away from court duties to meet speaking or writing commitments for
27 compensation. ~~In addition, the~~ The source of the payment of any
28 such compensation must not raise any question of undue influence
29 or the judge's ability or willingness to be impartial.⁸⁹ See Rule 4.01.

30 **Rule 4.15 Public Reports Reporting of Compensation,**
31 **Reimbursement of Expenses and Waiver of Charges.** A judge
32 shall report the date, place and nature of any activity for which
33 the judge received compensation, **reimbursement of expenses**
34 **or waiver of charges, and the name of the payor or waivor and**
35 **the amount of compensation, reimbursement of expenses, or**
36 **waiver of charges so received. Compensation or income of a**
37 **spouse attributed to the judge by operation of a community**

⁸⁸ Canon 4H1(a)

⁸⁹ Canon 4H(2) Commentary

1 ~~property law is not extra-judicial compensation to the judge.~~
2 ~~The judge’s report shall be made at least annually, except with~~
3 ~~respect to reimbursements and waivers, which shall be~~
4 ~~reported at least quarterly, and shall be filed as a public~~
5 ~~document in the office of the clerk of the court on which the~~
6 ~~judge serves or other office designated by law* and when~~
7 ~~technically feasible, posted on the website of that court or~~
8 ~~office.~~⁹⁰

9 **Comments:**

10 [1] By reporting and publicly disclosing their compensation,
11 reimbursement of expenses or waiver of charges for extrajudicial
12 activities, judges promote transparency and public confidence in
13 the integrity, impartiality and independence of the judiciary.

14
15 ~~Canon 6, new in the 1972 Code, reflected concerns about conflicts of interest~~
16 ~~and appearances of impropriety arising from compensation for off-the-bench~~
17 ~~activities. Since 1972, however, reporting requirements that are much more~~
18 ~~comprehensive with respect to what must be reported and with whom reports~~
19 ~~must be filed have been adopted by many jurisdictions. The Committee believes~~
20 ~~that although reports of compensation for extra-judicial activities should be~~
21 ~~required, reporting requirements preferably should be developed to suit the~~
22 ~~respective jurisdictions, not simply adopted as set forth in a national model code~~
23 ~~of judicial conduct. Because of the Committee’s concern that deletion of this~~
24 ~~Canon might lead to the misconception that reporting compensation for extra-~~
25 ~~judicial activities is no longer important, the substance of Canon 6 is carried~~
26 ~~forward as Section 4H in this Code for adoption in those jurisdictions that do not~~
27 ~~have other reporting requirements. In jurisdictions that have separately~~
28 ~~established reporting requirements, Section 4H(2) (Public Reporting) may be~~
29 ~~deleted and the caption for Section 4H modified appropriately.~~⁹¹

30 ~~See Section 4D(5) regarding reporting of gifts, bequests and~~
31 ~~loans.~~⁹²

32 ~~I. Disclosure of a judge’s income, debts, investments or other~~
33 ~~assets is required only to the extent provided in this Canon and in~~
34 ~~Sections 3E and 3F, or as otherwise required by law.~~⁹³

35 ~~Section 3E requires a judge to disqualify himself or herself in any~~
36 ~~proceeding in which the judge has an economic interest. See~~
37 ~~“economic interest” as explained in the Terminology Section.~~

⁹⁰ Canon 4H(2)

⁹¹ Canon 4G Commentary

⁹² Canon 4H Commentary

⁹³ Canon 4I

1 Section 4D requires a judge to refrain from engaging in business
2 and from financial activities that might interfere with the impartial
3 performance of judicial duties; Section 4H requires a judge to report
4 all compensation the judge received for activities outside judicial
5 office. A judge has the rights of any other citizen, including the right
6 to privacy of the judge's financial affairs, except to the extent that
7 limitations established by law are required to safeguard the proper
8 performance of the judge's duties.⁹⁴

⁹⁴ Canon 4I Commentary

1 **June 30, 2005 Draft (“Preliminary Draft”), redlined to reflect changes**
2 **From current ABA Model Code**

3
4 **CANON 5**

5
6 **Canon 5^{1 2}**

7
8 **A JUDGE OR JUDICIAL CANDIDATE FOR JUDICIAL OFFICE SHALL**
9 **REFRAIN FROM INAPPROPRIATE POLITICAL ACTIVITY THAT IS**
10 **INCONSISTENT WITH THE INTEGRITY, INDEPENDENCE, AND**
11 **IMPARTIALITY OF THE JUDICIARY.**

12
13
14 **Rule 5.01. Restrictions on Political Activities of Judges and Candidates for Judicial**
15 **Office.**

16
17 **Except as permitted by Rule 5.02 (partisan public elections), Rule 5.03 (non-partisan**
18 **public elections), Rule 5.04 (retention elections), and Rule 5.05 (appointment to**
19 **judicial office), a judge or a candidate for judicial office shall not, directly or**
20 **indirectly: All Judges and Candidates except as authorized in Sections 5B(2), 5C(1)**
21 **and 5C(3), a judge or candidate for election or appointment to judicial office shall**
22 **not.**³
23

¹ Introductory Note to Canon 5: There is wide variation in the methods of judicial selection used, both among jurisdictions and within the jurisdictions themselves. In a given state, judges may be selected by one method initially, retained by a different method, and selected by still another method to fill interim vacancies.

According to figures compiled in 1987 by the National Center for State Courts, 32 states and the District of Columbia use a merit selection method (in which an executive such as a governor appoints a judge from a group of nominees selected by a judicial nominating commission) to select judges in the state either initially or to fill an interim vacancy. Of those 33 jurisdictions, a merit selection method is used in 18 jurisdictions to choose judges of courts of last resort, in 13 jurisdictions to choose judges of intermediate appellate courts, in 12 jurisdictions to choose judges of general jurisdiction courts and in 5 jurisdictions to choose judges of limited jurisdiction courts.

Methods of judicial selection other than merit selection include nonpartisan election (10 states use it for initial selection at all court levels, another 10 states use it for initial selection for at least one court level) and partisan election (8 states use it for initial selection at all court levels, another 7 use it for initial selection for at least one level.) In a small minority of the states, judicial selection methods include executive or legislative appointment (without nomination of a group of potential appointees by a judicial nominating commission) and court selection. In addition, the federal judicial system utilizes an executive appointment method. See State Court Organization 1987 (National Center for State Courts, 1988).

² Amended August 6, 1997, American Bar Association House of Delegates, San Francisco, California, per Report No. 112; August 10, 1999, American Bar Association House of Delegates, Atlanta, Georgia, per Report No. 123; and August 12, 2003, American Bar Association House of Delegates, San Francisco, California, per Report No. 105B.

³ Canon 5A(1)

- 1 (a) act as a leader or hold an office in a political organization;⁴
2
3 (b) make speeches on behalf of a political organization;⁵
4
5 (c) publicly endorse or ~~publicly~~ oppose ~~a another~~ candidate for any
6 public office;⁶
7
8 (d) solicit funds for, pay an assessment to, or make a contribution to a
9 political organization or ~~a candidate or purchase tickets for political~~
10 ~~party dinners or other functions~~ for public office;⁷
11
12 ~~(d) attend political gatherings;~~⁸
13
14 (e) purchase tickets for dinners or other events sponsored by a political
15 organization or a candidate for public office, unless the tickets are for
16 the JUDGE or candidate's personal use and the cost of the tickets does
17 not appear to exceed significantly the value of the goods and services
18 to be received by the judge or candidate at the dinner or other event;
19
20 (f) publicly identify oneself as a candidate of a political organization;
21
22 (g) seek or use endorsements from a political organization;
23
24 (h) personally solicit or personally accept campaign contributions;⁹
25
26 (i) use or permit the use of campaign contributions for the private
27 benefit of the candidate or others;¹⁰
28
29 (j) knowingly*make any false or misleading statement regarding any
30 candidate for judicial office misrepresent the identity, qualifications,
31 present position or other fact concerning the candidate or an
32 opponent;¹¹
33
34 (k) make any comment that might reasonably be expected to affect the
35 outcome or impair the fairness of a proceeding while it is pending or
36 impending in any court;

⁴ Canon 5A(1)(a)

⁵ Canon 5A(1)(c)

⁶ Canon 5A(1)(b)

⁷ Canon 5A(1)(e)

⁸ Canon 5A(1)(d)

⁹ Canon 5C(2) partial black letter rule

¹⁰ Canon 5C(2) partial black letter rule

¹¹ Canon 5A(3)(d)(ii)

- 1
2 (l) **manifest bias or prejudice based upon a person’s race, gender**
3 **religion, national origin, ethnicity, disability, age, sexual orientation,**
4 **or socioeconomic status; or**
5
6 (m) **with respect to cases, controversies, or issues that are likely to come**
7 **before the court, make pledges, promises or commitments that are**
8 **inconsistent with the impartial*performance of the adjudicative**
9 **duties of the office.¹²**

10
11 **Commentary: Comments:**

12
13 ~~Where false information concerning a judicial candidate is made public, a judge or~~
14 ~~another judicial candidate having knowledge of the facts is not prohibited by Section~~
15 ~~5A(1) from making the facts public.¹³~~

16
17 ~~Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining~~
18 ~~during candidacy a public office such as county prosecutor, which is not “an office in a~~
19 ~~political organization.”¹⁴~~

20
21
22 **General Considerations**

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

33
34 [2] A successful candidate for judicial office may be subject to discipline under this
35 Code for violation of any of the Rules set forth in Canon 5, even if the candidate was not
36 a judge during the period of candidacy. An unsuccessful candidate who was a lawyer
37 may be subject to discipline instead under the [name of jurisdiction] Rules of
38 Professional Conduct, Rule [8.2(b)]. When a non-judge becomes a candidate for judicial
39 office, Rule 5.01 is immediately applicable to his or her conduct.¹⁵

12 Canon 5A(3)(d)(i)

13 Canon 5A commentary

14 Canon 5A commentary

15 Reference to deleted Canon 5E

1
2 [3] Many of the restrictions imposed by Rule 5.01 apply only with respect to “political
3 organizations.” Engagement with other organizations might be improper under a
4 different Rule, however. For example, if an organization frequently litigates in the
5 courts, or has matters pending or impending in the court on which the judge sits, one or
6 more of the following Rules might apply: Rule 2.11 (Judicial Statements on Pending and
7 Future Cases), Rule 2.12 (Disqualification), and Rule 4.04 (Civic or Charitable
8 Activities).

9
10 **Direct Participation in Political, Fund-Raising, and Campaign Activities of Political**
11 **Organizations and Candidates**

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

18
19 [5] Rules 5.01(b) and 5.01(c) prohibit judges and candidates for judicial office from
20 making speeches on behalf of political organizations or publicly endorsing or opposing
21 candidates for public office. These provisions do not prohibit candidates from
22 campaigning on their own behalf, however, or from endorsing or opposing candidates for
23 a position on the same court for which they are running. See Rules 5.02(d) and 5.02(e),
24 Rules 5.03(b) and 5.03(d), and Rules 5.04(b) and 5.04(d). A candidate does not publicly
25 endorse another candidate for public office by having that candidate’s name on the same
26 ticket.¹⁶

27
28 [6] ~~Section 5A(1)(b)~~ Rule 5.01(c) does not prohibit a judges or judicial candidates for
29 judicial office from privately expressing their his or her views on judicial candidates for
30 any public office or other candidates for public office.¹⁷

31
32 [7] A Sitting judges and or candidates for judicial office retain the right to participate in
33 the political process as a voters,¹⁸ in both primary and general elections. Participation in
34 a caucus-type election procedure does not constitute public support for or endorsement of
35 a political organization or candidate, and therefore is not prohibited by Rules 5.01(b) or
36 5.01(c).

37
38 [8] Political organizations and candidates running for public office often use ticketed
39 events as a method of fund-raising. Judges and candidates for judicial office may
40 generally attend dinners and other public events sponsored by political organizations or

¹⁶ Canon 5A commentary

¹⁷ Canon 5A commentary

¹⁸ Canon 5A commentary

1 candidates running for public office, but are prohibited by Rule 5.01(e) from purchasing
2 tickets to such events to the extent that the purchase includes a fund-raising aspect.

3
4 **Soliciting or Accepting Campaign Contributions and Other Public Support**

5
6 [9] Candidates for judicial office are prohibited from identifying themselves as
7 candidates of a particular political organization and from seeking or using political
8 organization endorsements, except when running in a partisan public election; see Rules
9 5.02(a) and 5.02(b).

10
11 [10] Although candidates for judicial office are prohibited from personally soliciting or
12 personally accepting campaign contributions for their own campaigns, see Rule 5.01(h),
13 candidates running in partisan, non-partisan or retention elections are permitted to form
14 campaign committees for the purpose of soliciting and accepting contributions, subject to
15 the regulations contained in Rule 5.06 and [insert applicable provisions of law].

16
17 [11] Candidates for judicial office are permitted to solicit public support and to seek or
18 use endorsements from individuals or organizations (other than political organizations).
19 See Rule 5.01(g).

20
21 **Statements and Comments Made During a Campaign for Judicial Office**

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

31
32 [13] Although candidates for judicial office are permitted to respond directly to unfair or
33 unjust allegations made against them during a campaign, it is often preferable for
34 someone else, such as a bar association or a bar association committee, to utilize
35 established mechanisms to make the response.

36
37 **Pledges, Promises or Commitments Inconsistent with Impartial Performance of the**
38 **Adjudicative Duties of Judicial Office**

39
40 [14] A judge's obligation to avoid prejudgment is well established. Under the First
41 Amendment and in light of the voters' right to have information about an elective
42 candidate's views, judicial ethics rules may not prohibit judicial candidates from
43 announcing their views on disputed legal and political issues. Rule 5.01(m), which
44 applied the relevant prohibitions of Rule 2.11 to all candidates for judicial office, does

1 not proscribe a candidate's public expression of personal views on disputed issues. To
2 ensure that voters understand a judge's duty to uphold the Constitution and laws of [name
3 of state jurisdiction] where the law differs from the candidate's personal belief, however,
4 candidates are encouraged to emphasize their duty to uphold the law regardless of their
5 personal views.

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

18
19 ~~Section 5A(3)(d) prohibits a candidate for judicial office from making statements that~~
20 ~~commit the candidate regarding cases, controversies or issues likely to come before the~~
21 ~~court. As a corollary, a candidate should emphasize in any public statement the~~
22 ~~candidate's duty to uphold the law regardless of his or her personal views. See also~~
23 ~~Sections 3B(9) and (10), the general rules on public comment by judges. Section~~
24 ~~5A(3)(d) does not prohibit a candidate from making pledges or promises respecting~~
25 ~~improvements in court administration. Nor does this section prohibit an incumbent judge~~
26 ~~from making private statements to other judges or court personnel in the performance of~~
27 ~~judicial duties. This Section applies to any statement made in the process of securing~~
28 ~~judicial office, such as statements to commissions charged with judicial selection and~~
29 ~~tenure and legislative bodies confirming appointment. See also Rule 8.2 of the ABA~~
30 ~~Model Rules of Professional Conduct.¹⁹~~

31
32 [16] Candidates for judicial office often receive questionnaires or requests for interviews
33 from the media and from issue advocacy or other community organizations, seeking to
34 learn their views on disputed or controversial legal or political issues. Rule 5.01(m) does
35 not generally prohibit candidates from responding to this kind of inquiry, but candidates
36 should proceed with caution if they choose to respond. Depending on the wording of the
37 questions and the format provided for answering, a candidate's responses might
38 constitute pledges, promises or commitments to perform the adjudicative duties of office
39 other than in an impartial way. In order to avoid violating Rule 5.01(m), therefore,
40 candidates who choose to respond should make clear their commitment to keeping an
41 open mind while on the bench, regardless of their own personal views.

¹⁹ Canon 5A commentary

1 [17] Section 5A(3)(d) Rule 5.01(m) does not prohibit a candidate for judicial official
2 from making public statements concerning pledges or promises respecting improvements
3 in court to the legal system or to the administration of justice.²⁰
4

5 **Indirect Participation in Political and Campaign Activity**
6

7 [18] A candidate for judicial office should encourage members of the candidate's family
8 to adhere to the same standards of political conduct in support of the candidate as apply
9 to the candidate; should discourage employees and other court personnel from doing on
10 the candidate's behalf what the candidate is prohibited from doing under the Rules of this
11 Canon; and should not authorize or knowingly permit any other person to do for the
12 candidate what the candidate is prohibited from doing under the Rules of this Canon.
13 However, members of a candidate's duly-created campaign committee are permitted to
14 engage in solicitation and other fund-raising activities that would not be permitted to the
15 candidate himself or herself.
16

17 **A candidate for judicial office:**

- 18 ~~(a) — shall maintain the dignity appropriate to judicial office and act in a~~
19 ~~manner consistent with the impartiality*, integrity and independence~~
20 ~~of the judiciary, and shall encourage members of the candidate's~~
21 ~~family* to adhere to the same standards of political conduct in~~
22 ~~support of the candidate as apply to the candidate;~~²¹
23

24 **Commentary:**
25

26 ~~Although a judicial candidate must encourage members of his or her family to adhere to~~
27 ~~the same standards of political conduct in support of the candidate that apply to the~~
28 ~~candidate, family members are free to participate in other political activity.~~²²
29

- 30 ~~(b) shall prohibit employees and officials who serve at the pleasure of the~~
31 ~~candidate*, and shall discourage other employees and officials subject~~
32 ~~to the candidate's direction and control from doing on the candidate's~~
33 ~~behalf what the candidate is prohibited from doing under the Sections~~
34 ~~of this Canon;~~²³
35

- 36 ~~(c) — except to the extent permitted by Section 5C(2), shall not authorize or~~
37 ~~knowingly* permit any other person to do for the candidate* what the~~
38 ~~candidate is prohibited from doing under the Sections of this Canon;~~²⁴
39

...

²⁰ Canon 5A commentary

²¹ Canon 5A(3)(a)

²² Canon 5A commentary

²³ Canon 5A(3)(b)

²⁴ Canon 5A(3)(c)

1 ~~(e) may respond to personal attacks or attacks on the candidate's record as~~
2 ~~long as the response does not violate Section 5A(3)(d).~~²⁵
3

4 **Rule 5.02. Permitted Political Activities of Candidates for Judicial Office in**
5 **Partisan Public Elections.**
6

7 **Notwithstanding any restrictions set forth in Rule 5.01, candidates for judicial office**
8 **in a partisan public election may:**
9

- 10 (a) **publicly identify himself or herself as a member of a political party**
11 **themselves as candidates of a political organization;**²⁶
12
13 (b) **seek or use endorsements from any individual or organization,**
14 **including a political organization;**
15
16 (c) **establish a campaign committee pursuant to the provisions of Rule**
17 **5.06;**
18
19 (d) **communicate with the public by speaking on their own behalf, or**
20 **through any media, including, but not limited to, advertisements,**
21 **websites, or campaign literature;**
22
23 (e) **publicly endorse or publicly oppose other candidates for the same**
24 **judicial office in a public election in which the judge or judicial**
25 **candidate is a position on the same court for which they are running.**²⁷
26

27 **C. Judges and Candidates Subject to Public Election**
28

29 ~~(1) A judge or a candidate* subject to public election* may, except as prohibited~~
30 ~~by law*:~~

31 ~~(a) at any time~~

32 ~~(i) purchase tickets for and attend political gatherings;~~²⁸

33 ~~...~~

34 ~~(iii) contribute to a political organization*;~~²⁹

35 ~~(b) when a candidate for election~~

36 ~~(i) speak to gatherings on his or her own behalf;~~³⁰

37 ~~(ii) appear in newspaper, television and other media advertisements~~
38 ~~supporting his or her candidacy;~~³¹

²⁵ Canon 5A(3)(e)

²⁶ Canon 5C(1)(a)(iii)

²⁷ Canon 5C(1)(b)(iv)

²⁸ Canon 5C(1)(a)(i)

²⁹ Canon 5C(1)(a)(iii)

³⁰ Canon 5C(1)(b)(i)

1 (iii) ~~distribute pamphlets and other promotional campaign literature~~
2 ~~supporting his or her candidacy; and~~³²
3

4 ...

4 **Commentary: Comments:**

5
6 Section 5C(1) permits judges subject to election at any time to be involved in limited
7 political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar
8 this activity.³³
9

10 [1] In partisan public elections for a judicial office, candidates may be nominated by,
11 affiliated with, or otherwise publicly identified or associated with a particular political
12 organization. Typically, this association is maintained throughout the period of the
13 public campaign, and includes use of political party or similar designations on campaign
14 literature and on the ballot.

15
16 [2] Rule 5.02 permits partisan public election candidates, including sitting judges who
17 have become candidates, to engage in some political activities that would otherwise be
18 prohibited by Rule 5.01. Nevertheless, candidates must be mindful of the prohibition of
19 Rule 5.01(m) relating to the making of promises, pledges and commitments.
20

21 [3] For purposes of Rule 5.02(e), candidates are considered to be running for a position
22 on the same court if they are competing for a single judgeship or if several judgeships on
23 the same court are to be filled as a result of the election.
24

25
26 **5.03. Permitted Political Activities of Candidates for Judicial Office in Non-**
27 **Partisan Public Elections.**
28

29 **Notwithstanding any restrictions set forth in Rule 5.01, candidates for judicial office**
30 **in a non-partisan public election may:**
31

32 **(a) seek or use endorsements from any individual or organization, other**
33 **than a political organization;**
34

35 **(b) establish a campaign committee pursuant to the provisions of Rule**
36 **5.06;**
37

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

³¹ Canon 5C(1)(b)(ii)

³² Canon 5C(1)(b)(iii)

³³ Canon 5C commentary

1
2 **(d) publicly endorse or publicly oppose other candidates for a position on**
3 **the same court for which they are running.**
4
5

6 **Comments:**
7

8 [1] In non-partisan public elections for judicial office, candidates may not accept
9 nominations by a particular political organization. Most of the restrictions on political
10 activities set forth in Rule 5.01 continue to apply to candidates for judicial office running
11 in non-partisan elections.
12

13 [2] Rule 5.03(a) would operate to prohibit a non-partisan candidate from filling out a
14 questionnaire if he or she knows or has reason to know that the purpose of the
15 questionnaire is for a political organization to decide whom to endorse in a non-partisan
16 judicial election.
17

18 [3] Although candidates in non-partisan public elections for judicial office are prohibited
19 from running on a ticket or slate associated with a political organization, individual
20 candidates may group themselves into slates or other alliances in order to conduct their
21 campaigns more effectively. For purposes of Rule 5.03(d), candidates who have grouped
22 themselves together in this fashion are considered to be running for a position on the
23 same court if they are competing for a single judgeship, or if several judgeships on the
24 same court are to be filled as a result of the election.
25

26
27 **5.04. Permitted Political Activities of Candidates for Judicial Office in Retention**
28 **Elections.**
29

30 **Notwithstanding any restrictions set forth in Rule 5.01, candidates for judicial office**
31 **in a retention election may:**
32

33 **(a) seek or use endorsements from any individual or organization, other**
34 **than a political organization;**
35

36 **(b) establish a campaign committee pursuant to the provisions of Rule**
37 **5.06;**
38

39 **(c) communicate with the public by speaking on their own behalf, or**
40 **through any media, including, but not limited to, advertisements,**
41 **websites, or campaign literature;**
42

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

1
2 **Comments:**
3

4 [1] Candidates for judicial office who are subject to retention election are sometimes
5 publicly supported or opposed by individuals or organizations, including political
6 organizations. Retention election candidates are not permitted to seek endorsements from
7 political organizations, however, or to use such endorsements to further their campaigns.
8

9 [2] Candidates running in retention elections are by definition sitting as judges during the
10 period of their candidacies. Moreover, opposition to a candidate for retention sometimes
11 focuses on particular decisions that the candidate has made as a judge, or even on cases
12 that are pending before the judge during the campaign period. In the course of their
13 campaigns, therefore, retention election candidates should be especially mindful of their
14 obligations not to make comments that might affect the outcome or impair the fairness of
15 a proceeding and not to make pledges, promises or commitments that are inconsistent
16 with the impartial performance of the adjudicative duties of the office. See Rules 5.01(k)
17 and 5.01(m).
18
19

20 **Rule 5.05. Permitted Activities of Candidates for Appointive Judicial Office.**
21 **Candidates Seeking Appointment to Judicial or Other Governmental Office.**
22

23 **Notwithstanding any restrictions set forth in Rule 5.01, CANDIDATES for**
24 **appointment to judicial office may:**
25

- 26 ~~(1) A candidate* for appointment to judicial office or a judge seeking other~~
27 ~~governmental office shall not solicit or accept funds, personally or through a~~
28 ~~committee or otherwise, to support his or her candidacy.³⁴~~
29 ~~(2) A candidate for appointment to judicial office or a judge seeking other~~
30 ~~governmental office shall not engage in any political activity to secure the~~
31 ~~appointment except that:³⁵~~
32 ~~a. such persons may:~~
33 ~~(a) communicate with the appointing or confirming authority, including any~~
34 ~~selection, screening, or nominating commission or similar other agency~~
35 ~~designated to screen candidates;³⁶~~
36
37 ~~(b) seek support or use endorsements for the appointment from any~~
38 ~~individual or organizations that regularly make recommendations for~~
39 ~~reappointment or appointment to the office, and from individuals to the~~

³⁴ Canon 5B(1)

³⁵ Canon 5B(2)

³⁶ Canon 5B(2)(a)(i)

1 ~~extent requested or required by those specified in Section 5B(2)(a); and,~~
2 ~~other than a political organization.~~³⁷
3

4 ~~(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii)~~
5 ~~information as to his or her qualifications for the office;~~³⁸
6 ~~(b) a non-judge candidate* for appointment to judicial office may, in addition,~~
7 ~~unless otherwise prohibited by law*:~~
8 ~~(i) retain an office in a political organization*;~~³⁹
9 ~~(ii) attend political gatherings, and~~⁴⁰
10 ~~(iii) continue to pay ordinary assessments and ordinary contributions to a~~
11 ~~political organization or candidate and purchase tickets for political party dinners~~
12 ~~or other functions.~~⁴¹
13
14

15 **Commentary: Comments:**

16
17 Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1)
18 and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial
19 office or appointment to another judicial office or other governmental office may apply
20 for the appointment and seeking appropriate support.
21

22 Although under Section 5B(2) non judge candidates seeking appointment to judicial
23 office are permitted during candidacy to retain office in a political organization, attend
24 political gatherings and pay ordinary dues and assessments, they remain subject to other
25 provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and
26 Application Section.
27

28 [1] Candidates for appointive judicial office have no need to raise or spend campaign
29 funds. Accordingly, they are not only prohibited from personally soliciting or personally
30 accepting such funds, see Rule 5.01(h), but they are also prohibited from establishing
31 campaign committees for this purpose.
32

33 [2] When seeking support or endorsement from others, or when communicating directly
34 with an appointing or confirming authority, candidates for appointive judicial office must
35 not make any pledges, promises or commitments that are inconsistent with the impartial
36 performance of the adjudicative duties of the office. See Rule 5.01, Comments [15] and
37 [16].
38

39 **Rule 5.06. Campaign Committees.**

³⁷ Canon 5B(2)(a)(ii)

³⁸ Canon 5B(2)(a)(iii)

³⁹ Canon 5B(2)(b)(i)

⁴⁰ Canon 5B(2)(b)(ii)

⁴¹ Canon 5B(2)(b)(iii)

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- (a) ~~A candidate* shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A Candidates for judicial office subject to public elections may however, establish campaign committees of responsible persons to conduct campaigns for the candidate, through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate’s campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. ... subject to the regulations contained in this Rule. The candidate is responsible for ensuring that the committee complies with these regulations, and with other applicable law.⁴²~~
- (b) ~~A candidate shall instruct his or her campaign committee(s) at the start of the campaign not to accept campaign contributions for any election that Campaign committees may solicit and accept reasonable campaign contributions, not to exceed, in the aggregate, [\$ ___] from any individual or [\$ ___] from any entity or organization. Such committees may also manage the campaign, including the expenditure of funds. This limitation is in addition to the limitations provided in Section 5C(2).~~^{43 44}
- (c) ~~A candidate’s campaign committees may shall not solicit or accept contributions and public support for the a candidate’s current campaign no earlier more than [one year] prior to a scheduled before an election, and no later nor more than [90] days after the last election in which the candidate participated participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.~~⁴⁵
- (d) ~~In addition to complying with all applicable statutory requirements for disclosure of campaign contributions, a campaign committees established by a candidate for judicial office shall file with [name of~~

⁴² Canon 5C(2)

⁴³ Canon 5C(3)

⁴⁴ Jurisdictions wishing to adopt campaign contribution limits that are lower than generally applicable campaign finance regulations provide should adopt this provision, inserting appropriate dollar amounts where brackets appear.

⁴⁵ Canon 5C(2) last two sentences

1 appropriate regulatory authority]⁴⁶ a report stating the name,
2 address, occupation and employer of each person who has made
3 campaign contributions to the committee whose in an aggregate value
4 in the aggregate⁴⁷ exceeding [\$ __]⁴⁷. The report must be filed within
5 [__]⁴⁸ days following an the election, or within such other period as
6 is required by LAW.⁴⁹
7

8 ~~(5) Except as prohibited by law*, a candidate* for judicial office in a public~~
9 ~~election* may permit the candidate's name: (a) to be listed on election~~
10 ~~materials along with the names of other candidates for elective public office,~~
11 ~~and (b) to appear in promotions of the ticket.~~⁵⁰
12

13 **Commentary: Comments:**

14
15 There is legitimate concern about a judge's impartiality when parties whose interests may
16 come before a judge, or the lawyers who represent such parties, are known to have made
17 contributions to the election campaigns of judicial candidates. This is among the reasons
18 that merit selection of judges is a preferable manner in which to select the judiciary.
19 Notwithstanding that preference, Section 5C(2) recognizes that in many jurisdictions
20 judicial candidates must raise funds to support their candidacies for election to judicial
21 office. It therefore permits a candidate, other than a candidate for appointment, to
22 establish campaign committees to solicit and accept public support and reasonable
23 financial contributions. In order to guard against the possibility that conflicts of interest
24 will arise, the candidate must instruct his or her campaign committees at the start of the
25 campaign to solicit and accept only contributions that are reasonable and appropriate
26 under the circumstances. Though not prohibited, campaign contributions of which a
27 judge has knowledge, made by lawyers or others who appear before the judge may, by
28 virtue of their size and source, raise questions about a judge's impartiality and be cause
29 for disqualification as provided under Section 3E.
30 Campaign committees established under Section 5C(2) should manage campaign
31 finances responsibly, avoiding deficits that might necessitate post election fund raising,
32 to the extent possible. Such committees must at all times comply with applicable
33 statutory provisions governing their conduct.

⁴⁶ Each jurisdiction should identify an appropriate depository for the information required under this provision, giving consideration to the public's need for convenient and timely access to the information. Electronic filing is to be preferred.

⁴⁷ Jurisdictions wishing to adopt campaign contribution disclosure levels lower than those set in generally applicable campaign finance regulations should adopt this provision, inserting appropriate dollar amounts where brackets appear.

⁴⁸ A time period chosen by the adopting jurisdiction should appear in the bracketed space.

⁴⁹ Canon 5C(4)

⁵⁰ Canon 5C(5)

1 Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial
2 selection commission or bar association, or subject to the requirements of this Code, from
3 responding to a request for information from any organization.⁵¹
4

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

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

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

24
25 Section 5C(5) provides a limited exception to the restrictions imposed by Section
26 5A(1).⁵²
27

28 **Rule 5.07. Activity of Judges Who Become Candidates for Non-Judicial Office.**
29

30 (a) ~~A judge shall resign from judicial office~~ Upon becoming a candidate
31 ~~for a non-judicial elective office, a judge shall resign from judicial~~
32 ~~office, either in a primary or general election except that the JUDGE~~
33 ~~may continue to hold judicial office while being a candidate for~~
34 ~~election to, or serving as a delegate in, a state constitutional~~
35 ~~convention if the JUDGE is otherwise permitted by LAW to do so.~~⁵³
36

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

⁵¹ Canon 5C(2) commentary

⁵² Canon 5C(5) commentary

⁵³ Canon 5A(2)

1
2 **Commentary: Comments:**
3

4 [1] In most, if not all, campaigns for non-judicial elective public office
5 candidates make pledges, promises or commitments as to positions they would
6 take and ways they would act if elected to office. Although appropriate in non-
7 judicial campaigns, this manner of campaigning is inconsistent with the role of a
8 judge, who must remain fair and impartial to all who come before him or her. The
9 combination of the potential for abuse of the judicial office on one hand, and the
10 political promises that the judge would be compelled to make in the course of
11 campaigning for non-judicial elective office on the other, dictates that a judge
12 who wishes to run for such office must resign upon becoming a candidate. A
13 judge who wishes to become a candidate for a non-judicial appointive, rather than
14 elective, office, where no election campaign will be conducted, need not resign
15 from judicial office in order to be considered for appointment.
16

17 ~~**D. Incumbent Judges. A judge shall not engage in any political activity except (i) as**~~
18 ~~**authorized under any other Section of this Code, (ii) on behalf of measures to**~~
19 ~~**improve the law*, the legal system or the administration of justice, or (iii) as**~~
20 ~~**expressly authorized by law.**~~⁵⁴
21

22 **Commentary:**
23

24 Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of
25 administrative functions from engaging in planning and other official activities with
26 members of the executive and legislative branches of government. With respect to a
27 judge's activity on behalf of measures to improve the law, the legal system and the
28 administration of justice, see Commentary to Section 4B and Section 4C(1) and its
29 Commentary.
30

31 ~~**E. Applicability. Canon 5 generally applies to all incumbent judges and judicial**~~
32 ~~**candidates*. A successful candidate, whether or not an incumbent, is subject to**~~
33 ~~**judicial discipline for his or her campaign conduct; an unsuccessful candidate who**~~
34 ~~**is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer**~~
35 ~~**who is a candidate for judicial office is subject to [Rule 8.2(b) of the ABA Model**~~
36 ~~**Rules of Professional Conduct]. (An adopting jurisdiction should substitute a**~~
37 ~~**reference to its applicable rule.)**~~

⁵⁴ Canon 5D

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~~APPLICATION OF THE CODE OF JUDICIAL CONDUCT~~

1
2
3 This Section identifies the persons to whom this Code applies and prescribes generally
4 when and how it applies. In summary, the Coded provisions apply to full-time judges
5 and to four additional categories of judges, each of which may be described as less-than-
6 full-time. Each of these four categories is necessarily defined in general terms because
7 each type of judicial service may be structured somewhat differently in various
8 jurisdictions. The determination of which specific Code provisions apply to a particular
9 judicial officer depend upon the facts of the particular judicial service.

10
11 **I. Applicability of this Code.**

12
13 **Anyone, whether or not a lawyer, who is an officer of a judicial system and**
14 **who performs judicial functions, including an officer such as a justice of the**
15 **peace, magistrate, court commissioner, special master, hearing officer,**
16 **administrative law judge,¹¹ or referee, is a judge within the meaning of this**
17 **Code.**

18
19 **The provisions of this Code apply to all All judges ~~shall comply with this~~**
20 **Code except as provided below in Sections A-D.**

21
22 **Comments:**

23
24 [1] The Rules in this Code have been formulated to address the ethical obligations of any
25 individual who serves a “judicial” function, and are premised upon the supposition that a
26 uniform system of ethical principles is applicable to the judicial process generally.

27
28 [2] In recent years, however, many jurisdictions have created what are sometimes called
29 ‘problem solving’ courts in which judges are authorized by local rules to act in non-
30 traditional ways. For example, judges may be authorized or even encouraged to
31 communicate directly with social workers, probation officers and others outside the
32 context of the usual judicial role as an independent decision maker of issues of fact and
33 law. Where local rules have been developed that specifically authorize conduct not
34 otherwise permitted under these Rules, a judge’s activity in compliance with such local
35 rules does not constitute a disciplinary violation. Nevertheless, judges serving on

¹¹ Enforceability of this Code as it applies to administrative law judges is determined by each adopting jurisdiction. Administrative law judges are often affiliated with the executive branch of government rather than the judicial branch. Accordingly, each adopting jurisdiction should consider the unique 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.

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

3
4
5 **A. Retired Judge Judges Subject to Recall.**

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

9
10 (1) **except while serving as a judge, with ~~Section 4F~~ Rule 4.06 (Service as**
11 **Arbitrator or Mediator); and**

12
13 (2) **at any time with ~~Section 4E~~ Rule 4.05 (Appointments to Fiduciary**
14 **Positions).**

15
16 **Comments:**

17
18 [1] ~~The four categories of judicial service in other than a fulltime capacity are~~
19 ~~necessarily defined in general terms because of the widely varying forms of judicial~~
20 ~~service. For the purposes of this Section Rule, as long as a retired judge is subject to~~
21 ~~recall the judge is considered to "perform judicial functions." The determination of which~~
22 ~~category and, accordingly, which specific Code provisions apply to an individual judicial~~
23 ~~officer, depend upon the facts of the particular judicial service.~~

24
25 **B. Continuing Part-time Judge.**

26
27 **A judge who serves repeatedly on a part-time basis by election or under a**
28 **continuing appointment, including a retired judge subject to recall who is permitted**
29 **to practice law ("continuing part-time judge"):**

30
31 (1) **is not required to comply**

32
33 (a) **except while serving as a judge, with ~~Section 3B(9)~~ Rule 2.11(a)**
34 **& (b) (Judicial Statements on Pending & Future Cases); and**

35
36 (b) **at any time with ~~Sections 4C(2), 4D(3), 4E(1), 4F, 4G, 4H,~~**
37 **5A(a), 5B(2) and 5D Rules 4.03 (Appointments to**
38 **Governmental Bodies), 4.05 (Appointments to Fiduciary**
39 **Positions), 4.06 (Service as Arbitrator or Mediator), 4.07**
40 **(Practice of Law), 4.11 (For Profit Activities), 4.13**
41 **(Reimbursement or Waiver of Charges for Travel-Related**
42 **Expenses of the Judge or the Judge's Spouse or Guest), 4.15**
43 **(Reporting of Compensation, Reimbursement of Expenses and**
44 **Waiver of Charges), 5.02 (Permitted Political Activities of**
45 **Candidates for Judicial Office in Partisan Public Elections),**

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5.03 (Permitted Political Activities of Candidates for Judicial Office in Non-Partisan Public Elections), 5.04 (Permitted Political Activities of Candidates for Judicial Office in Retention Elections), 5.05 (Permitted Activities of Candidates for Appointive Judicial Office), 5.06 (Campaign Committees), 5.07 (Activity of Candidates for Judicial Office Subject to Retention Elections); and

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

Comments:

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

C. Periodic Part-time Judge.

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

- (1) is not required to comply
- (a) **except while serving as a judge, with ~~Section 3B(9)~~ Rule 2.11 (Judicial Statements on Pending and Future Cases);**
- (b) **at any time, with ~~Sections 4C(2), 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D~~ Rules 4.03 (Appointments to Governmental Bodies), 4.04 (Civic or Charitable Activities), 4.05 (Appointments to Fiduciary Positions), 4.06 (Service as Arbitrator or Mediator), 4.07 (Practice of Law), 4.08 (Financial Activities), 4.10 (Management and Divestiture of Investments), 4.11 (For Profit Activities), 4.12 (Solicitation and Acceptance of Gifts), 4.15 (Reporting of Compensation, Reimbursement of Expenses and Waiver of Charges), 5.01 (Restrictions on Political Activities of Judges and Candidates for Judicial Office), and 5.05**

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**(Permitted Activities of Candidates for Appointive Judicial
Office), and**

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3
4 (2) shall not practice law in the court on which the judge serves or in any
5 court subject to the appellate jurisdiction of the court on which the
6 judge serves, and shall not act as a lawyer in a proceeding in which
7 the judge has served as a judge or in any other proceeding related
8 thereto.
9

10 **Comments:**

11
12 [1] When a person who has been a periodic part-time judge is no longer a periodic part-
13 time judge (no longer accepts appointments), that person may act as a lawyer in a
14 proceeding in which he or she has served as a judge or in any other proceeding related
15 thereto only with the express consent of all parties pursuant to [Rule 1.12(a) of the ABA
16 Model Rules of Professional Conduct]. (An adopting jurisdiction should substitute a
17 reference to its applicable rule).
18

19 **D. Pro Tempore Part-time Judge.**

20
21 **A pro tempore part-time judge: who serves or expects to serve once or only**
22 **sporadically on a part-time basis under a separate appointment for each period of**
23 **service or for each case heard**
24

- 25 (1) is not required to comply
- 26
- 27 (a) except while serving as a judge, with ~~Sections 2A, 2B, 3B(9)~~
28 **and 4C(1) Rules 1.01 (A Judge Shall Avoid Impropriety and**
29 **the Appearance of Impropriety in All the Judge's Activities, so**
30 **as to Uphold the Integrity, Impartiality, and Independence of**
31 **the Judiciary), 2.07 (External Influences on Judicial Conduct),**
32 **2.11 (Judicial Statements on Pending and Future Cases), and**
33 **4.02 (Appearances Before Governmental Bodies), or**
34
- 35 (b) at any time with ~~Sections 2C, 4C(2), 4C(3)(a), 4C(3)(b),~~
36 **4D(1)(b), 4D(3), 4D(4), 4D(5), 4D, 4F, 4G, 4H, 5A(1), 5A(2),**
37 **5B(2) and 5D Rules 3.04 (Affiliation with Discriminatory**
38 **Organizations), 4.03 (Appointments to Governmental Bodies),**
39 **4.04 (Civic or Charitable Activities), 4.05 (Appointments to**
40 **Fiduciary Positions), 4.06 (Service as Arbitrator or Mediator),**
41 **4.07 (Practice of Law), 4.08 (Financial Activities), 4.10**
42 **(Management and Divestiture of Investments), 4.12**
43 **(Solicitation and Acceptance of Gifts), 4.11 (For Profit**
44 **Activities), 4.15 (Reporting of Compensation, Reimbursement**
45 **of Expenses and Waiver of Charges), 5.01 (Restrictions on**

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**Political Activities of Judges and Candidates for Judicial
Office), and 5.05 (Permitted Activities of Candidates for
Appointive Judicial Office).**

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5 (2) **A person who has been a pro tempore part-time judge shall not act as**
6 **a lawyer in a proceeding in which the judge has served as a judge or**
7 **in any other proceeding related thereto except as otherwise permitted**
8 **by [Rule 1.12(a) of the ABA Model Rules of Professional Conduct].**
9 **(An adopting jurisdiction should substitute a reference to its**
10 **applicable rule.)**

11
12 **II. Time for Compliance.**

13
14 **A person to whom this Code becomes applicable shall comply immediately**
15 **with all provisions of this Code except Sections ~~4D(2), 4D(3) and 4E~~ Rules**
16 **4.05 (Appointments to Fiduciary Positions), 4.09 (Remunerative Activities),**
17 **4.11 (For Profit Activities), and He or she shall comply with these Sections**
18 **Rules as soon as reasonably possible and shall do so but in any no event later**
19 **than within the period of one year after the Code became applicable to him**
20 **or her.**

21
22 **Comments:**

23
24 [1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding
25 the prohibitions in ~~Section 4E~~ Rule 4.05, continue to serve as fiduciary but only for that
26 period of time necessary to avoid serious adverse consequences to the beneficiary of the
27 fiduciary relationship and in no event longer than one year. Similarly, if engaged at the
28 time of judicial selection in a business activity, a new judge may, notwithstanding the
29 prohibitions in ~~Section 4D(3)~~ Rule 4.11, continue in that activity for a reasonable period
30 but in no event longer than one year.

31
32 NOTE REGARDING JUDICIAL ETHICS COMMITTEES

33
34 Because of the need to encourage the establishment of judicial ethics committees in
35 jurisdictions that do not have such committees either as free-standing entities or in
36 combination with lawyer ethics committees, the following Appendix is provided. It is
37 offered not as a model but simply as an example of provisions that a jurisdiction might
38 adopt.