

1 JULY 2004 PRELIMINARY DRAFT

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4 **CANON 3: PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE**  
5 **JUDGE'S PERSONAL AFFAIRS TO PRESERVE THE INTEGRITY,**  
6 **IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY**  
7

8 **3.01 Using the Judicial Office for Private Purposes. A judge**  
9 **shall not allow family, social, political or other relationships to**  
10 **influence the judge's judicial conduct or judgment. A judge**  
11 **shall not lend the prestige of judicial office to advance the**  
12 **private interests of the judge or others; nor shall a judge**  
13 **convey or permit others to convey the impression that they are**  
14 **in a special position to influence the judge. A judge shall not**  
15 **testify voluntarily as a character witness.**<sup>1</sup>

16 **Commentary**

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

23 [2] ~~For example, it~~ It would be improper, for example, for a judge to  
24 allude to his or her judgeship to gain a personal advantage such as  
25 deferential treatment when stopped by a police officer for a traffic  
26 offense. ~~A judge must avoid lending the prestige of judicial office for~~  
27 ~~the advancement of the private interests of others. For example, a~~  
28 ~~judge must not, or to use the judge's his or her~~ judge must not, or to use the judge's his or her judicial position to  
29 gain advantage in a civil suit involving a member of the judge's  
30 family. Similarly, a judge must not use judicial letterhead ~~must not~~  
31 ~~be used for to gain an advantage in conducting a judge's his or her~~  
32 personal business.<sup>3</sup>

33 [3] ~~In contracts for publication of a judge's writings, a judge should~~  
34 ~~retain control over the advertising to avoid exploitation of~~ Special  
35 considerations arise when judges write or contribute to publications,  
36 whether related or unrelated to the law. A judge should not permit  
37 the publisher of such materials to exploit the judge's office. ~~As to~~  
38 ~~the acceptance of awards, see Section 4D(5)(a) and Commentary.~~

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

<sup>2</sup> Canon 2B commentary

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

1 by, for example, praising the judge's judicial accomplishments or,  
2 when the work is unrelated to the law, emphasizing the judge's  
3 position.<sup>4</sup>

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

8 ~~[5] Although a judge should be sensitive to possible abuse of the~~  
9 ~~prestige of office, a judge may provide, based on the judge's~~  
10 ~~personal knowledge, serve as a reference or provide a letter of~~  
11 ~~recommendation.~~<sup>6</sup> A Judge may provide a reference or  
12 recommendation for an individual based upon the judge's personal  
13 knowledge. However, unless the recommendation is based upon  
14 information obtained through the judge's expertise or experience as  
15 a judge, the reference or recommendation should not be  
16 communicated on the judge's judicial letterhead.  
17

18 ~~[6] See also Canon 5 regarding use of a judge's name in political~~  
19 ~~activities. This rule does not apply to a judge's use of his or her~~  
20 ~~name in endorsements of himself or herself, or of other judicial~~  
21 ~~candidates as permitted in Canon 5.~~<sup>7</sup>

22 [7] A judge must not testify voluntarily as a character witness  
23 because to do so may lend the prestige of the judicial office in  
24 support of the party for whom the judge testifies.<sup>8</sup> See rule 4.07.

25 **3.02 Use of Non-Public Information. A judge shall not disclose**  
26 **or use, for any purpose unrelated to judicial duties, nonpublic**  
27 **information\* acquired in a judicial capacity.**<sup>9</sup>

## 28 **Commentary**

29 [1] In the course of performing their judicial duties, judges may  
30 acquire information of commercial or other value that is otherwise  
31 unavailable to the public. Judges must not reveal or exploit such  
32 information for personal gain or for any purpose unrelated to their  
33 judicial duties.

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

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

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

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

<sup>8</sup> Canon 2B commentary

<sup>9</sup> Canon 3B(12)

1 **3.03 Affiliation with Discriminatory Organizations. A judge**  
2 **shall not hold membership in any organization that practices**  
3 **invidious discrimination on the basis of race, sex, religion or,**  
4 **national origin, ethnicity, or sexual orientation, and shall not**  
5 **use the facilities of such an organization to any significant**  
6 **extent.**<sup>10</sup>

7 **Commentary**<sup>11</sup>

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

23 ~~[1] Membership of a judge in an organization that practices~~  
24 ~~invidious discrimination gives rise to perceptions that the judge's~~  
25 ~~impartiality is impaired. Section 2 refers to the current practices of~~  
26 ~~the organization. Whether an organization practices invidious~~  
27 ~~discrimination is often a complex question to which judges should~~  
28 ~~be sensitive. The answer cannot be determined from a mere~~  
29 ~~examination of an organization's current membership rolls but~~  
30 ~~rather depends on how the organization selects members and other~~  
31 ~~relevant factors, such as that the organization is dedicated to the~~  
32 ~~preservation of religious, ethnic or cultural values of legitimate~~  
33 ~~common interest to its members, or that it is in fact and effect an~~  
34 ~~intimate, purely private organization whose membership limitations~~  
35 ~~could not be constitutionally prohibited. Absent such factors, an~~  
36 ~~organization is generally said to discriminate invidiously if it~~  
37 ~~arbitrarily excludes from membership on the basis of race, religion,~~  
38 ~~sex or, national origin, persons who would otherwise be admitted to~~  
39 ~~membership. See *New York State Club Ass'n. Inc. v. City of New*~~

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<sup>10</sup> Canon 2C

<sup>11</sup> Commentary is taken from Canon 2C commentary, note that the sentence order does not exactly comply with the 1990 Model Code.

1 ~~York, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of~~  
2 ~~Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S.~~  
3 ~~Ct. 1940 (1987), 95 L. Ed. 2d 474; Roberts v. United States~~  
4 ~~Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984).~~

5 [2] ~~Moreover, public~~ Public manifestation by a judge of the judge's  
6 ~~knowing~~ approval of invidious discrimination on any basis gives the  
7 appearance of impropriety under ~~Canon 2~~ Canon 1 and diminishes  
8 public confidence in the integrity and impartiality of the judiciary, in  
9 violation of Rule ~~2A 1.01~~. Although ~~Section 2C~~ Rule 3.03 relates  
10 only to ~~membership in organizations that invidiously discriminate~~  
11 discriminating on the basis of race, sex, religion ~~or,~~ national origin,  
12 ethnicity, or sexual orientation, a judge's membership in or  
13 significant use of an organization that engages in any  
14 discriminatory membership practices organizations practicing  
15 invidious discrimination on any other basis prohibited by the  
16 applicable law of the jurisdiction ~~also violates Canon 2 and Section~~  
17 ~~2A and gives~~ creates the appearance of impropriety.

18 [3] Whether a judge's use of the facilities of a discriminatory  
19 organization is significant depends on whether the frequency or  
20 nature of that use is sufficient to create the impression that the  
21 judge approves of the organization and its practices. Accordingly, a  
22 judge must not ~~In addition, it would be a violation of Canon 2 and~~  
23 ~~Section 2A for a judge to arrange a meeting at a club that the judge~~  
24 ~~knows practices invidious discrimination on the basis of race, sex,~~  
25 ~~religion or,~~ national origin, ethnicity or sexual orientation in its  
26 membership or other policies, ~~or for the judge to regularly attend~~  
27 events at or regularly use other facilities of such a club.

28 [4] When a judge a person who is a judge on the date this Code  
29 ~~becomes effective~~ [in the jurisdiction in which the person is a  
30 judge]<sup>†</sup> learns that an organization to which the judge belongs  
31 engages in invidious discrimination that would preclude  
32 membership under Rule ~~2C 3.03~~ or under ~~Canon 2~~ Canon 1 and  
33 Rule ~~2A 1.01~~, the judge is permitted, in lieu of resigning, to make  
34 immediate efforts to have the organization discontinue its  
35 invidiously discriminatory practices, but is required to suspend  
36 participation in any other activities of the organization. If the  
37 organization fails to discontinue its invidiously discriminatory  
38 practices as promptly as possible (and in all events within a year of  
39 the judge's first learning of the practices), the judge is required to  
40 resign immediately from the organization.  
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2 4/redline\_canon3\_071904