

1 American Bar Association
2 Model Code of Judicial Conduct

3 June 30, 2005 Draft (“Preliminary Draft”), redlined to
4 reflect changes from draft posted to website in May,
5 2004

6
7 CANON 1

8
9 CONDUCT IN GENERAL: A JUDGE SHALL AVOID
10 IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN
11 ALL THE JUDGE’S ADCTIVITIES, SO AS TO UPHOLD THE
12 INTEGRITY*, IMPARTIALITY*, AND INDEPENDENCE* OF THE
13 JUDICIARY AND SHALL AVOID IMPROPRIETY* AND THE
14 APPEARANCE OF IMPROPRIETY* IN ALL THE JUDGE’S
15 ACTIVITIES

16
17 [REPORTER’S NOTE: THE CANON TITLE HAS BEEN
18 REORGANIZED TO PUT PRIORITY ON THE “THREE I’S” AND
19 TO CHARACTERIZE IMPROPRIETY AND ITS APPEARANCE AS
20 DISTINCT FROM THE THREE I’S.]

21 Rule 1.01 Observing Standards of Judicial Conduct
22 Compliance With This Code. A judge shall observe the high
23 standards of conduct embodied in these Rules so that the
24 integrity, impartiality, and independence of the judiciary, and
25 the public’s confidence therein, are promoted and preserved.¹

26 Commentary Comments:

27 [1] An independent judiciary is indispensable to justice in our
28 society. Judicial compliance with High standards of judicial
29 conduct promote the integrity and, impartiality and independence
30 of the judiciary and foster public confidence in the administration of
31 justice.

32 [2] This Rule articulates the basic proposition that any violation of
33 the rules in this Code is a form of misconduct. (This Comment was
34 not in the 5/04 draft.)

¹ Canon 1A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

[REPORTER'S NOTE: COMMENT 2 WAS DELETED AS UNNECESSARY]

~~[2] Avoiding impropriety and its appearance is an overarching principle of judicial conduct embodied in this Canon itself. Ordinarily, when a judge is disciplined for engaging in conduct that creates an appearance of impropriety, it will be in conjunction with charges that the judge violated some other specific rule under this or another Canon.~~

~~[3] [2] In addition to complying with high standards of judicial conduct, a judge is encouraged to should also participate in activities that promote ethical conduct generally among judges and lawyers, including efforts. 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.~~

[REPORTER'S NOTE: THE COMMISSION DELETED REFERENCE TO ENCOURAGING PRO BONO HERE, WITH PLANS TO REVISIT IT IN CANON 4 COMMENT. THE BROADER ASPIRATION OF ENCOURAGING JUDGES TO PROMOTE ACCESS TO JUSTICE WAS SUBSTITUTED.

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

Comments

~~[4] [1] Deference to the judgments and rulings of courts depends upon public confidence in the integrity, impartiality* and independence, and impartiality* 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. Public confidence in the integrity, impartiality, and independence of the judiciary is maintained by judges acting in a manner free from favoritism, self-interest or bias. Conversely, violation of this Code diminishes public confidence in~~

1 the judiciary and thereby does injury to the system of government
2 under law.²

3 ~~[5] The duty to act in a manner that promotes public confidence in
4 the integrity of the judiciary does not imply that judges have an
5 obligation to refrain from appropriate criticism. To the contrary,
6 judges are in a unique position to identify and address problems
7 affecting the courts, and should be encouraged to bring those
8 matters to light, as a means to promote the effective administration
9 of justice.~~

10
11 **Rule 1.03. A judge shall avoid impropriety* and the**
12 **appearance of impropriety***

13
14 [THE COMMISSION DECIDED TO MAKE IMPROPRIETY AND
15 ITS APPEARANCE A FREE-STANDING, INDEPENDENTLY
16 ENFORCEABLE RULE]

17 **Comments:**

18
19 ~~[6] [1]~~ Public confidence in the judiciary is eroded by irresponsible
20 or improper conduct by judges. The prohibition against acting with
21 impropriety or the appearance of impropriety applies to both the
22 professional and personal conduct of a judge. A judge must expect
23 to be the subject of constant public scrutiny. A judge must therefore
24 accept restrictions on the judge's conduct that might be viewed as
25 burdensome by the ordinary citizen and should do so freely and
26 willingly.

27
28 ~~[7] [2]~~ The test for impropriety ~~occurs when~~ is whether the conduct
29 compromises the ability of the judge to carry out judicial
30 responsibilities with integrity, impartiality, independence and
31 competence. Examples of actual improprieties under this Rule
32 include violations of law, court rules, or other specific provisions of
33 these Rules. The test for an appearance of impropriety is whether
34 An appearance of impropriety occurs when the conduct could
35 would create, in reasonable minds, a perception that the judge's
36 ability to carry out judicial responsibilities with integrity, impartiality,
37 independence and competence is impaired. ~~See also Commentary~~
38 ~~under Section 3.04. (Note: none of the rest of this paragraph~~
39 ~~appeared in the 5/04 draft).~~ Ordinary, when a judge is disciplined
40 for engaging in conduct that creates the appearance of impropriety,
41 it is in conjunction with charges that the judge violates some other

² Canon 1.A. Commentary

1 specific Rule under this or another Canon.³ **In rare circumstances,**
2 **a judge may be sanctioned for a violation of this Rule alone.**
3

4 [REPORTER'S NOTE: THE COMMISSION RESTORED
5 LANGUAGE DEFINING IMPROPRIETY IN TERMS THAT
6 PARALLELED THE APPEARANCE OF IMPROPRIETY, AND
7 CHARACTERIZED THE LANGUAGE AS A TEST]
8

9 **Rule 1.02 1.04 Complying with the Law***. A judge shall respect
10 and comply with the law.*

11 **Comments:**

12 [1] The provisions of this Code focus primarily on judicial
13 compliance with an established set of ethical norms, which, when
14 officially adopted by an entity having regulatory power over the
15 judiciary, are only one of the many types of laws that judges must
16 obey. Judges are no less obligated to observe all valid forms of law
17 than are those who come before them. Thus, a A judge's obligation
18 to respect and comply with all the law extends as well to require
19 includes compliance with statutes and the law, court rules, and the
20 provisions of this Code.⁴
21
22

³ David S. Paull, of the Minnesota Board on Judicial Standards, and Professor Andrew Kaufman both expressed disagreement with this provision. The Team believes that in the vast majority of cases, there should be (and is) at least one other Rule that has been violated when the appearance of impropriety is charged against a judge.

⁴ Canon 2.A. Commentary

1
2

1 American Bar Association
2 Model Code of Judicial Conduct

3 June 30, 2005 draft (“Preliminary Draft”), redlined to
4 reflect changes from draft posted on website May 9,
5 2004.

6 CANON 2

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

11 ~~A.~~ In General

12 Rule 2.01 Giving Precedence to the Duties of Judicial Office. A
13 judge shall not allow other activities ~~The duties of judicial~~
14 ~~office shall to take precedence over all the other activities of~~
15 ~~the judge the duties of judicial office.~~ The duties of judicial
16 office include all the responsibilities of the judge’s office
17 prescribed by law*.²

18 **Comments:**

19 [1] Although ~~While~~ judges engage in a variety of activities, the a
20 defining feature of their judicial role is the interpretation and
21 application of the law. For that reason, those official duties that
22 further the judicial function directly, though adjudication, or
23 indirectly, through the performance of administrative or reporting
24 responsibilities ~~administration or discipline,~~ are of paramount
25 significance. ~~primary importance relative to the judge’s other~~
26 ~~activities.~~

27 ~~B.~~ **Adjudication**

28 Rule 2.02 The ~~Duty~~ **Responsibility** to Decide ~~When~~ **Not**
29 **Disqualified.** A judge shall hear and decide matters assigned
30 to the judge except those in which disqualification is required

¹ Canon 3

² Canon 3A

1 ~~or recusal is appropriate under Canon 2~~ by Rule 2.12,³ or
2 other applicable law*.

3 **Comments:**

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

18 [2] A judge's obligation not to hear or decide matters in which
19 disqualification is required, applies regardless of whether a motion
20 to disqualify has been filed.

21 [3] To ensure that judges remain available to fulfill their judicial
22 duties, a judge must conduct his or her extrajudicial activities to
23 minimize the risk of conflicts that would result in frequent
24 disqualification. See Canon 4.

25 **Rule 2.03 Competence in the Law.** **A judge shall perform the**
26 **duties of judicial office competently. maintain professional**
27 **competence in the law*.**⁴

28 **Comments:**

29 [1] Competence in the performance of judicial duties requires the
30 legal knowledge, skill, thoroughness and preparation reasonably
31 necessary to perform the judge's responsibilities of office. ~~In order~~
32 ~~to uphold the law, a judge must possess the legal knowledge, skills,~~
33 ~~and preparation necessary for the effective administration of justice.~~

34 [2] When applying and ~~upholding~~ interpreting the law in the course
35 of judicial decision-making, a judge may on occasion make a

³ Canon 3B(1)

⁴ Canon 3B(2) - partial

1 mistake of fact or law. An error of this kind does not violate this
2 rule. Willful disregard of the law, however, ~~is another matter and in~~
3 ~~appropriate circumstances~~ may in some circumstances constitute
4 ~~misconduct by the judge~~ a violation of this Rule.

5 [3] Judicial competence may be diminished and compromised when
6 a judge is impaired by drugs, alcohol or other mental ~~and/or~~
7 physical impairments. See Rule 2.19.

8 **Rule 2.04 Impartiality* and Fairness** **A Judge shall uphold and**
9 **apply the law* ~~without regard to the judge's personal views,~~**
10 **and shall decide all cases with impartiality* and fairness.**

11 **Comments:**

12 [1] To ensure impartiality and fairness to all parties, a judge must
13 be objective and ~~free of~~ open-minded, and must not demonstrate
14 favoritism ~~to ensure impartiality to all parties~~ toward anyone.

15 [2] Although ~~While~~ a judge's background and personal philosophy
16 may influence the way in which the judge analyzes, and interprets,
17 ~~and applies the law, the judge's personal views, by themselves,~~
18 ~~should not be controlling. Thus,~~ a legal issue, a judge must uphold
19 interpret and apply the law without regard to whether the judge
20 personally approves or disapproves of the law in question.

21 **Rule 2.05 Bias and Discrimination.**

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

32 (b) A judge shall require* lawyers in proceedings
33 before the judge to refrain from manifesting bias
34 or prejudice based upon race, gender, sex,
35 religion, national origin, ethnicity, disability, age,
36 sexual orientation or socioeconomic status,

⁵ Canon 3B(5)

1 against parties, witnesses, counsel or others.
2 This Rule Section does not preclude legitimate
3 advocacy when these race, sex, religion, national
4 origin, disability, age, sexual orientation or
5 socioeconomic status or other similar factors, are
6 issues in the proceeding.⁶

7 **Comments:**

8 ~~[2]~~ [1] A judge must perform judicial duties impartially and fairly. A
9 judge who manifests bias in a proceeding impairs the fairness of
10 the proceeding and brings the judiciary into disrepute. Even facial
11 expression and body language can convey to parties or lawyers in
12 the proceeding, jurors, the media and others an appearance of
13 bias. A judge must avoid conduct that may be perceived as
14 prejudicial or biased.⁷

15 ~~[3]~~ [2] Examples of manifestations of bias include but are not limited
16 to epithets, slurs, demeaning nicknames, negative stereotyping,
17 attempted humor based on stereotypes, threatening, intimidating or
18 hostile acts, suggesting a connection between race or nationality
19 and crime, and irrelevant references to personal characteristics.
20 This rule does not preclude legitimate references to those factors
21 when relevant to an issue in a proceeding.

22 ~~[4]~~ [3] A judge must refrain from speech, gestures or other conduct
23 that could reasonably be perceived as harassment and must
24 require the same standard of conduct of others subject to the
25 judge's direction and control.⁸

26 **Rule 2.06 Diligence. A judge shall act diligently in the**
27 **performance of all his or or judicial duties, disposing of all**
28 **judicial matters promptly, efficiently, and fairly.**⁹

29 **Comments:**

30 [1] Prompt disposition of the court's business requires a judge to
31 devote adequate time to judicial duties, to be punctual in attending
32 court, and expeditious in determining matters under submission,

⁶ Canon 3B(6)

⁷ Canon 3B(5) commentary

⁸ Canon 3B(5) commentary

⁹ Canon 3B(8)

1 and to insist that court officials, litigants and their lawyers cooperate
2 with the judge to that end.¹⁰

3 [2] In disposing of matters promptly, efficiently and fairly, a judge
4 must demonstrate due regard for the rights of the parties to be
5 heard and to have issues resolved without unnecessary cost or
6 delay. Containing costs while preserving fundamental rights of
7 parties also protects the interests of witnesses and the general
8 public. A judge should monitor and supervise cases so as to reduce
9 or eliminate dilatory practices, avoidable delays and unnecessary
10 costs. ~~A judge should encourage and seek to facilitate settlement,
11 but should not coerce parties into surrendering the right to have
12 their controversy resolved by the courts.~~

13 **Rule 2.10 2.07 External Influences on Judicial Conduct.**

14 (a) A judge shall not be swayed by partisan
15 interests, public clamor or fear of criticism.¹¹

16 (b) A judge shall not allow family, social, political
17 or other relationships to influence the judge's
18 judicial conduct or judgment.¹²

19 (c) A judge shall not convey or permit other
20 persons to convey the impression that such
21 persons are in a special position to influence the
22 judge.¹³

23 **Comments:**

24 [1] An independent judiciary requires that judges decide cases
25 according to law and facts without regard to whether the law or the
26 litigants are popular or unpopular with the ~~media public, the public~~
27 media, government officials, or the judge's own friends or family.

28 [2] Confidence in the judiciary is eroded if judicial decision-making
29 is perceived to be subject to inappropriate outside influences ~~thus~~
30 ~~giving rise to an appearance of impropriety (see Rule 1.02/03).~~ It is
31 ~~therefore~~ essential to judicial independence ~~and~~ impartiality and
32 maintaining the public's confidence in the justice system that judges
33 do not create ~~no~~ a perception that their ~~decision-making~~ decisions
34 could be colored by such influences.

¹⁰ Canon 3B(8) Commentary (paragraphs reversed in order)

¹¹ Canon 3B(2) second sentence

¹² Canon 2B first sentence

¹³ Canon 2B partial

1

2

Rule 2.07 2.08 Demeanor and Decorum.

3

4

(a) A judge shall require* order and decorum in proceedings before the judge.¹⁴

5

6

7

8

9

10

(b) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge’s direction and control.¹⁵

11

12

13

14

15

(c) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.¹⁶

16

17

Comments:

18

19

20

21

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

22

23

24

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

25

26

27

~~[3] Where not otherwise prohibited by law, judges may take the opportunity to debrief jurors on their jury experience after their jury service is concluded.~~

28

29

30

31

[3] If a judge exercises caution and is not otherwise prohibited by law, a judge may meet with jurors after trial to answer questions about and discuss ways to improve the jury process but should not engage in any substantive discussion of the case. At such a

¹⁴ Canon 3B(3)

¹⁵ Canon 3B(4)

¹⁶ Canon 3B(11)

¹⁷ Canon 3B(4) commentary

¹⁸ Canon 3B(11) commentary

1 meeting, a judge should not, for example, suggest or imply to a jury
2 that he or she agrees or disagrees with the verdict, reveal evidence
3 that had been suppressed or the subject of a motion in limine,
4 discuss the rulings on objections made at trial, or review any
5 proceedings that took place outside the presence of the jury.

6
7 **Rule 2.08 2.09 Ensuring the Right to be Heard.** A judge shall
8 accord to every person who has a legal interest in a
9 proceeding, or that person's lawyer, the right to be heard
10 according to law*.¹⁹

11 **Comments:**

12 [1] Ensuring the right to be heard is an essential component of a
13 fair and impartial system of justice. Substantive rights of litigants
14 can be protected only if procedures protecting the right to be heard
15 are respected.

16 [2] The judge has an important role to play in overseeing the
17 settlement of disputes, but should be careful that efforts to further
18 settlement not undermine a party's right to be heard according to
19 law. A judge may therefore encourage parties to a proceeding and
20 their lawyers to settle matters in dispute but should not act in a
21 manner that coerces a party into settlement.

22 **Rule 2.09 2.10 Ex Parte Communications**

23 **(a) A judge shall not initiate, permit, or consider**
24 **ex parte communications, or consider other**
25 **communications made to the judge outside the**
26 **presence of the parties concerning a pending or**
27 **impending proceeding except as provided in**
28 **sections (1) through (5) below.**²⁰

29 **(1) Where circumstances require, ex**
30 **parte communications for**
31 **scheduling, administrative purposes**
32 **or emergencies that do not deal with**

¹⁹ Canon 3B(7) partial

²⁰ Canon 3B(7) partial

1
2

3
4
5
6
7
8
9

10
11
12
13
14
15
16
17
18
19

20
21
22
23
24
25
26
27
28
29
30
31

32
33
34
35
36
37

substantive matters are authorized;
provided:²¹

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

(ii) the judge makes provision by delegation or otherwise, promptly ~~gives notice~~ to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.²³

(2) A judge may obtain information and opinions from a disinterested expert on the law* in a proceeding before the judge if, before the ~~record is closed~~ information or opinions are solicited, the judge gives notice to the parties of the person to be consulted and the substance of the ~~advice—obtained~~ information or opinions sought, and affords the parties reasonable opportunity to respond.²⁴

(3) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges²⁵ provided that and the judge does not abrogate the

²¹ Canon 3B(7)(a)
²² Canon 3B(7)(a)(i)
²³ Canon 3B(7)(a)(ii)
²⁴ Canon 3B(7)(b)
²⁵ Canon 3B(7)(c)

1 responsibility to personally decide
2 the case and takes all reasonable
3 steps to avoid receiving factual
4 information that is not part of the
5 record.

6 (4) A judge may, with the consent of
7 the parties, confer separately with the
8 parties and their lawyers in an effort
9 to settle matters pending before the
10 judge.²⁶

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

15 (b) A judge shall not independently investigate
16 facts in a case and shall consider only the
17 evidence presented.²⁸

18 (c) A judge shall make reasonable efforts,
19 including the provision of appropriate
20 supervision, to ensure that ~~Section 2.09~~ Rule 2.10
21 is not violated through law clerks or other
22 personnel on the judge's staff.²⁹

23 **Comments:**³⁰

24 [1] To the extent reasonably possible, all parties or their lawyers
25 shall be included in communications with a judge.

26 [2] Whenever the presence of a party or notice to a party is required
27 by ~~Section 2.09~~ Rule 2.10, it is the party's lawyer, or if the party is
28 unrepresented the party, who is to be present or to whom notice is
29 to be given.

30 [3] The proscription against communications concerning a
31 proceeding includes communications with lawyers, law professors,

²⁶ Canon 3B(7)(d)

²⁷ Canon 3B(7)(e)

²⁸ Canon 3B(7) commentary

²⁹ Canon 3B(7) commentary

³⁰ The commentary to this rule is taken entirely from Canon 3B(7) commentary

1 and other persons who are not participants in the proceeding,
2 except to the limited extent permitted by this rule.

3 [4] Certain ex parte communication is approved by ~~Section 2.09~~
4 Rule 2.10 to facilitate scheduling and other administrative purposes
5 and to accommodate emergencies. In general, however, a judge
6 must discourage ex parte communication and allow it only if all the
7 criteria stated in ~~Section 2.09~~ Rule 2.10 are clearly met. A judge
8 must disclose to all parties, in a manner that ensures notice, all ex
9 parte communications described in ~~Sections 2.09(a)~~ Rules
10 2.10(a)(1) and ~~2.09(b)~~ 2.10(a)(2) regarding a proceeding pending
11 or impending before the judge.

12 [5] An appropriate and often desirable method of obtaining the
13 advice of a disinterested expert on legal issues is to invite the
14 expert to file a brief *amicus curiae*.

15 ~~[6] A judge may request a party to submit proposed findings of fact~~
16 ~~and conclusions of law, so long as the other parties are apprised of~~
17 ~~the request and are given an opportunity to respond to the~~
18 ~~proposed findings and conclusions.~~

19 [6] A judge may consult with other judges on pending matters, but
20 must avoid ex parte discussions of a case with other judges who
21 have previously been disqualified from hearing the matter.

22 [7] If communication between the trial judge and the appellate
23 court with respect to a proceeding is permitted, a copy of any
24 written communication or the substance of any oral communication
25 should be provided to all parties.

26 [8] The prohibition against a judge investigating the facts of a case
27 independently or through a member of the judge's staff extends to
28 information available in all mediums including electronic access.

29 Rule 2.11 Judicial Statements on Pending and Future Cases.

30 (a) A judge shall not, ~~while a proceeding is~~
31 ~~pending or impending in any court,~~ make any
32 ~~public~~ public comment that might reasonably be expected
33 to affect the its outcome or impair the its fairness
34 of a matter pending or impending before any
35 court. ~~or make any nonpublic comment that might~~
36 ~~substantially interfere with a fair trial or hearing.~~

1 **(b)** The judge shall require* similar abstention
2 **from public comment** on the part of staff, court
3 officers, and others subject to the judge’s
4 direction and control.³¹

5 **(b) (c)** A judge shall not, with respect to cases,
6 controversies or issues that are likely to come
7 before the court, make pledges, promises or
8 commitments that are inconsistent with the
9 impartial* performance of the adjudicative duties
10 of the judicial office.³²

11 **Comments:**

12 [1] ~~Section~~ Rule 2.11 restrictions on judicial speech are essential to
13 the maintenance of the integrity, ~~independence,~~ and impartiality
14 and independence of the judiciary.³³

15 [2] A pending matter is one that has commenced and continues
16 during any appellate process and until final disposition. An
17 impending proceeding is one that is anticipated but not yet
18 commenced. A ~~proceeding~~ matter is “impending” where there is
19 reason to believe a case may be filed, for example, if a crime is
20 being investigated but no charges have been brought, or if
21 someone has been arrested but not yet charged.³⁴

22 [3] This ~~Section~~ Rule does not prohibit a judge from commenting on
23 proceedings in which the judge is a litigant in a personal capacity;
24 but in cases such as a writ of mandamus where the judge is a
25 litigant in an official capacity, the judge must not comment publicly.
26 The conduct of lawyers relating to trial publicity is governed by
27 [Rule 3.6 of the ABA Model Rules of Professional Conduct]. (Each
28 jurisdiction should substitute an appropriate reference to its rule.)³⁵

29 [4] Provided that the judge meets the requirements of 2.11(a) and
30 (b), this ~~Section~~ Rule does not prohibit judges from making public
31 statements in the course of their official duties ~~or,~~ from explaining
32 the procedures of the court to the public. ~~Nor does it prohibit~~

³¹ Canon 3B(9)

³² Canon 3B(10)

³³ Canon 3B(10) commentary

³⁴ Canon 3B(10) commentary

³⁵ Canon 3B(9) commentary

1 ~~judges~~³⁶ or from responding directly, or through a third party, to
2 allegations in the media or elsewhere concerning the judge's

³⁶ Canon 3B(9) portion of the black letter

1 conduct in a matter, ~~provided that any such response meets the~~
2 ~~requirements of 2.11(a) and (b).~~

3 [5] Subject to the provisions of this Rule, candidates for judicial
4 office may respond to unjust criticism. See Rule 5, Comment [12].

5 **Rule 2.12 Disqualification.**

6 ~~**A. General Rule. In addition to disqualifying (a) A**~~
7 ~~**judge shall disqualify himself or herself in any of**~~
8 ~~**the circumstances in paragraphs (B) through (I)**~~
9 ~~**below, a judge shall disqualify himself or herself**~~
10 ~~**in a proceeding in which the judge's impartiality***~~
11 ~~**might reasonably be questioned by a reasonable**~~
12 ~~**person,* including but not limited to**~~
13 ~~**circumstances where:**~~³⁷

14 ~~**B. Personal Bias or Knowledge. A (1) the judge shall**~~
15 ~~**disqualify himself or herself when the judge**~~ has a
16 personal bias or prejudice concerning a party or a
17 party's lawyer, or personal knowledge* of disputed
18 evidentiary facts concerning the proceeding.³⁸

19 ~~**C. Roles in a Proceeding. A (2) the judge shall disqualify**~~
20 ~~**himself or herself when the judge,**~~ the judge's spouse*
21 or domestic partner, a person within the third degree of
22 relationship* to either of them, or the spouse* or
23 domestic partner of such a person is:

24 ~~**1. is (i)**~~ a party to the proceeding, or an officer,
25 director, or trustee of a party;

26 ~~**2. is (ii)**~~ acting as a lawyer in the proceeding; ~~**or**~~

27 ~~**(iii) known* by the judge to be a person who has**~~
28 ~~**more than a de minimis* interest that could be**~~
29 ~~**substantially affected by the proceeding;**~~

30 ~~**3. is (iv)**~~ to the judge's knowledge* likely to be a
31 material witness in the proceeding; ~~**or**~~

32

³⁷ Canon 3E(1)

33 ³⁸ Canon 3E(1)(a)

1 ~~D. Economic and other Personal Interests. A (3) the~~
2 ~~judge shall disqualify himself or herself when the judge~~
3 ~~knows* that:~~ 1. he or she, individually or as a fiduciary*,
4 or the judge's spouse*, domestic partner, or child, or
5 any other member of the judge's family residing in the
6 judge's household*, has an economic interest* in the
7 subject matter in controversy or in a party to the
8 proceeding or has any other more than a de minimis*
9 interest that could be substantially affected by the
10 proceeding; ~~or~~³⁹

11 ~~2. a person within the third degree of relationship to the~~
12 ~~judge or the judge's spouse or domestic partner, or the~~
13 ~~spouse or domestic partner or such a person, has a~~
14 ~~more than de minimis interest that could be~~
15 ~~substantially affected by the proceeding.~~

16
17
18 ~~E. Campaign Contributions. A (4) the judge shall~~
19 ~~disqualify himself or herself when the judge~~ knows* or
20 learns by means of a timely motion that a party or
21 party's lawyer has within the previous [1] year[s] made
22 aggregate* contributions to the judge's campaign in an
23 amount that is greater than [[\$] for an individual or [\$]
24 for an entity] [is reasonable and appropriate for an
25 individual or an entity]].⁴⁰

26
27 ~~F. Public Statements. A (5) the judge shall disqualify~~
28 ~~himself or herself if the judge~~, while a judge or a
29 candidate* for judicial office, has made a public
30 statement that commits, or appears to commit, the judge
31 with respect to an issue in the proceeding or the
32 controversy in the proceeding.~~;~~⁴¹

33
34 ~~G. Prior Affiliations. A (6) the judge shall disqualify~~
35 ~~himself or herself where the judge:~~

36
37 1. (i) served as a lawyer in the matter in
38 controversy, or a lawyer with whom the judge
39 previously practiced law served during such
40 association as a lawyer concerning the matter;⁴²
41

³⁹ Canon 3E(1)(c)

⁴⁰ Canon 3E(1)(e)

⁴¹ Canon 3E(1)(f)

⁴² Canon 3E(1)(b)

1 **2. (ii) within the preceding [three] years, was**
2 **associated in the private practice of law with any**
3 **law firm or lawyer currently representatin any**
4 **party in the controversy;**
5

6 **3. (iii) served in governmental employment and in**
7 **such capacity participated as lawyer, advisor, or**
8 **material witness concerning the proceeding or**
9 **has expressed an opinion concerning the merits**
10 **of the particular case in controversy; or**
11

12 **(iv) served as a material witness concerning the**
13 **matter; or⁴³ within the preceding [three] years,**
14 **was associated in the private practice of law with**
15 **any law firm or lawyer currently representing any**
16 **party in the controversy.**
17

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

21 **~~H. Monitoring Economic Interests.~~ (b) A judge shall keep**
22 **informed about the judge’s personal and fiduciary* economic**
23 **interests*, and make a reasonable effort to keep informed**
24 **about the personal economic interests* of the judge’s spouse***
25 **or domestic partner, and minor children residing in the judge’s**
26 **household.⁴⁴**
27

28 **~~I. Remittal of Disqualification.~~ (c) A judge subject to**
29 **disqualification by the terms of this ~~Section~~ Rule, other than**
30 **paragraph ~~B~~ (a)(1), may disclose on the record the basis of the**
31 **judge’s disqualification and may ask the parties and their**
32 **lawyers to consider, out of the presence of the judge, whether**
33 **to waive disqualification if such waiver is permitted by law*. If**
34 **the parties and lawyers, without participation by the judge,**
35 **agree that the judge should not be disqualified, and it is**
36 **permitted by law*, the judge may participate in the proceeding.**
37 **Such a remittal agreement shall be written and shall be**
38 **incorporated in the record of the proceeding.⁴⁵**

39 **~~(d) “De minimis” denotes an insignificant~~**
40 **~~interest that could not raise reasonable question~~**
41 **~~as to a judge’s impartiality*.~~**

⁴³ Canon 3E(1)(b)

⁴⁴ Canon 3E(2)

⁴⁵ Canon 3F

1 (e) “Economic interest*” denotes ownership of
2 more than a de minimis* legal or equitable
3 interest.

4
5
6 **Comments:**

7 [1] Under this ~~rule~~ Rule, a judge is disqualified whenever the
8 judge’s impartiality might reasonably be questioned, regardless of
9 whether any of the specific provisions of ~~Section~~ Rule 2.12(a)(1)-(6)
10 apply. For example, if a judge were in the process of negotiating for
11 employment with a law firm, the judge would be disqualified from
12 any matters in which that law firm appeared, unless the
13 disqualification was waived by the parties after disclosure by the
14 judge.⁴⁶

15 ~~[3]~~ [2] By decisional law, the rule of necessity may override the rule
16 of disqualification. For example, a judge might be required to
17 participate in judicial review of a judicial salary statute, or might be
18 the only judge available in a matter requiring immediate judicial
19 action, such as a hearing on probable cause or a temporary
20 restraining order. In matters such as these latter two, that require
21 immediate action, the judge must disclose on the record the basis
22 for possible disqualification and use reasonable efforts to transfer
23 the matter to another judge as soon as practicable.⁴⁷

24 ~~[4]~~ [3] A lawyer in a government agency does not ordinarily have an
25 association with other lawyers employed by that agency within the
26 meaning of ~~Section~~ Rule 2.12(a)(2)(6)(i).—A; a judge formerly
27 employed by a government agency, however, shall disqualify
28 himself or herself in a proceeding if the judge’s impartiality might
29 reasonably be questioned because of such association.⁴⁸

30 ~~[5]~~ [4] The fact that a lawyer in a proceeding is affiliated with a law
31 firm with which a relative of the judge is affiliated does not of itself
32 disqualify the judge. If, however, "the judge’s impartiality might
33 reasonably be questioned" under ~~Section~~ Rule 2.12(a) or the
34 relative is known by the judge to have an interest in the law firm
35 that could be "substantially affected by the proceeding" under

⁴⁶ Canon 3E(1) commentary.

⁴⁷ Canon 3E(1) commentary

⁴⁸ Canon 3E(1)(b) commentary

1 ~~Section~~ Rule 2.12(a)(4)(iii)(3) the judge's disqualification may be
2 required.⁴⁹

3 ~~[2]~~ [5] A judge should disclose on the record information that the
4 judge believes the parties or their lawyers might consider relevant
5 to the question of disqualification, even if the judge believes there is
6 no real basis for disqualification.⁵⁰ ~~[6]~~ A remittal procedure provides
7 the parties an opportunity to proceed without delay if they wish to
8 waive the disqualification. ~~To assure that consideration of the~~
9 ~~question of remittal is made independently of the judge, a judge~~
10 ~~must not solicit, seek or hear comment on possible remittal or~~
11 ~~waiver of the disqualification unless the lawyers jointly propose~~
12 ~~remittal after consultation as provided in the rule. A party may act~~
13 ~~through counsel if counsel represents on the record that the party~~
14 ~~has been consulted and consents. As a practical matter, a judge~~
15 ~~may wish to have all parties and their lawyers sign the remittal~~
16 ~~agreement.~~⁵¹

17 ~~[6]~~ "Fiduciary" includes such relationships as executor,
18 administrator, trustee and guardian.

19 ~~[7]~~ An "economic interest" does not extend to such holdings or
20 interests as a judge might have, for example, in mutual or common
21 investment funds, deposits a judge might maintain in financial
22 institutions, mutual savings associations or credit unions, or
23 government securities owned by a judge, unless a proceeding
24 pending or impending before the judge could substantially affect the
25 value of such holdings or interests, or the judge is involved in the
26 management of such entities' holdings. The fact that securities
27 might be held by an educational, charitable, fraternal or civic
28 organization in whose service a judge or the judge's spouse, parent
29 or child may serve as a director, officer, advisor or other participant
30 does not thereby give a judge an economic interest in such an
31 organization for the purposes of this Rule.

32

33

34 **C. Administration**

⁴⁹ Canon 3E(1)(f) commentary

⁵⁰ Canon 3E(1) commentary

⁵¹ Canon 3F commentary

1 **Rule 2.13 Administrative Competence and Diligence.** A judge
2 shall discharge the judge's administrative responsibilities
3 **promptly and** without bias or prejudice maintain professional
4 competence in judicial administration, and **shall** ~~should~~
5 cooperate with other judges and court officials in the
6 administration of court business.⁵²

7 **Comments:**

8 [1] The judge's obligation to perform adjudicative responsibilities
9 diligently, competently, and without bias or prejudice, applies
10 equally to the judge's administrative responsibilities.

11 **Rule 2.14 Supervision of Staff.** A judge shall require* staff,
12 court officials, and others subject to the judge's direction and
13 control to act in a manner consistent with the high standards
14 of conduct expressed in this Code.⁵³

15 **Comments:**

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

22 **Rule 2.15 Supervision of Other Judges.** A judge with
23 supervisory authority for **the judicial performance of other**
24 **judges shall take reasonable measures to assure the prompt,**
25 **efficient and fair disposition of matters before them and the**
26 **proper performance of their other judicial responsibilities.**⁵⁴

27 **Comments:**

28 [1] Public confidence in the courts depends on timely justice ~~not~~
29 ~~being unduly delayed~~. To promote the efficient administration of
30 justice, judges with supervisory authority must take the steps
31 needed to ensure that judges under their supervision administer the
32 workload of their courts expeditiously.

33 **Rule 2.16 Administrative Appointments.**

⁵² Canon 3C(1)

⁵³ Canon 3C(2)

⁵⁴ Canon 3C(3)

1 (a) A judge shall exercise the power of
2 appointment impartially* and on the basis of
3 merit. A judge shall avoid nepotism, favoritism,
4 and unnecessary appointments. A judge shall not
5 approve compensation of appointees beyond the
6 fair value of services rendered.⁵⁵

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,⁵⁶ 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:⁵⁷

14 (1) the position is substantially
15 uncompensated;⁵⁸

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; or⁵⁹

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.⁶⁰

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

⁵⁵ Canon 3C(4)

⁵⁶ 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.

⁵⁷ Canon 3C(5)

⁵⁸ Canon 3C(5)(a)

⁵⁹ Canon 3C(5)(b)

⁶⁰ Canon 3C(5)(c)

1 compensation does not relieve the judge of the obligation
2 prescribed by ~~Section~~ Rule 2.16(a).⁶¹

3 **D. Reporting**

4 **Rule 2.17 Judicial Misconduct.** A judge having knowledge* that
5 another judge has committed a violation of this Code, ~~which~~
6 ~~that~~ raises a substantial question as to the ~~other~~ judge's
7 honesty, trustworthiness or fitness as a judge in other
8 respects for office shall inform the appropriate authority*. A
9 judge who receives information indicating a substantial
10 likelihood that another judge has committed a violation of this
11 Code should take appropriate action⁶²

12 **Comments:**

13 [1] As an officer of the judicial system, each judge has a
14 responsibility to participate in efforts to ensure public respect for the
15 system's operation. Ignoring or denying known misconduct among
16 one's fellow judges undermines that responsibility. Taking
17 affirmative action to address known misconduct is therefore a
18 judge's obligation. Appropriate action may include direct
19 communication with the judge who has committed the violation,
20 other direct action if available, and reporting the violation to the
21 appropriate authority, or other agency or body.⁶³

22 **Rule 2.18 Lawyer Misconduct.** A judge having knowledge* that
23 a lawyer has committed a violation of the Rules of
24 Professional Conduct [substitute correct title if the applicable
25 rules of lawyer conduct have a different title], ~~which~~ ~~that~~ raises
26 a substantial question as to the lawyer's honesty,
27 trustworthiness or fitness as a lawyer in other respects shall
28 inform the appropriate authority*. A judge who receives
29 information indicating a substantial likelihood that a lawyer
30 has committed a violation of the Rules of Professional
31 Conduct [substitute correct title if the applicable rules of
32 lawyer conduct have a different title] should take appropriate
33 action.⁶⁴

34 **Comments:**

⁶¹ Canon 3.C.5 commentary

⁶² Canon 3D(1) (order of sentences reversed)

⁶³ Canon 3D commentary

⁶⁴ Canon 3D(2) (order of sentences reversed)

1 [1] Appropriate action may include direct communication with the
2 lawyer who has committed the violation, and reporting the violation
3 to the appropriate authority, or other agency or body.⁶⁵

4 **Rule 2.19 Disability and Impairment. A judge having**
5 **knowledge* that the performance of a lawyer or another judge**
6 **is impaired by drugs, alcohol, or other mental, emotional**
7 **and/or physical condition shall take appropriate action, which**
8 **may include a confidential referral to a lawyer or judicial**
9 **assistance program.**

10 **Comments:**

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

20 [2] “Appropriate action” means action intended and reasonably
21 likely to help the judge or lawyer in question to correct the problem.

22 **Rule 2.20 Immunity for Discharge of Duties . Acts of a judge, in**
23 **responding to judicial misconduct, lawyer misconduct, or**
24 **disability and impairment under Rules 2.17, 2.18, and 2.19 are**
25 **part of a judge’s judicial duties and shall be absolutely**
26 **privileged, and no civil action predicated thereon may be**
27 **instituted against the judge.**⁶⁶

28 **Comments:**

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

34

⁶⁵ Canon 3D commentary

⁶⁶ Canon 3D(3)

June 30, 2005 Draft (“Preliminary Draft”), redlined to reflect changes from draft posted to website July 2004

CANON 3

CANON 3: PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AFFAIRS TO PRESERVE THE INTEGRITY*, IMPARTIALITY* AND INDEPENDENCE* OF THE JUDICIARY

Rule 3.01 Influence of Personal Interests on Judicial Conduct.
A judge shall not allow his or her financial, political or other personal interests or relationships to influence his or her judicial conduct or judgment.

Rule 3.01 3.02 Misusing the Prestige of Judicial Office

Using the Judicial Office for Private Purposes. A judge shall not lend the prestige of judicial office, or allow others to do so, to advance the ~~personal~~ private interests of the judge or others.

Commentary

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

[2] ~~It is would be improper, for example, for a judge to allude to use or attempt to use his or her judgeship position to gain a personal advantage such as or deferential treatment when stopped by a police officer for a traffic offense, or to use his or her judicial position to gain advantage in a civil suit involving a member of the judge’s family of any kind. For example, Similarly,~~ a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.²

[3] Special considerations arise when judges write or contribute to publications, whether related or unrelated to the law. A judge should not permit ~~the publisher~~ anyone associated with the publication of such materials to exploit the judge’s office ~~by, for example, praising~~ in a manner that violates these Canons, Rules or

¹ Canon 2B commentary

² Canon 2B commentary

other applicable law. In contracts for publication of a judge's writings, the judge should retain sufficient control over the advertising to avoid exploitation of the judge's office. Prohibited conduct includes, but is not limited to, allowing the publisher to praise the judge's judicial accomplishments or, when the work is unrelated to the law, emphasizing to emphasize the judge's position.³

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

[5] A judge may provide a reference or a recommendation for an individual based upon the judge's personal knowledge. ~~However, unless the recommendation is based upon information obtained through the judge's expertise or experience as a judge, the reference or recommendation should not be communicated on the judge's judicial letterhead. When a judge is personally aware of facts or circumstances that would contribute to an accurate assessment of the individual under consideration, a judge may properly communicate that knowledge, and his or her opinions based thereon, to those responsible for making decisions concerning the applicant. The judge's awareness may be based, for example, on personal knowledge of the individual or special knowledge derived from some relationship, such as that with a law clerk or long-time family friend. In any case, in considering whether it is appropriate to write the recommendation on official or personal letterhead, the judge should carefully consider whether the recommendation or endorsement might reasonably be perceived as exerting pressure by reason of his or her judicial office, and should avoid any action that could be so understood.~~

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

³ Canon 2B commentary

⁴ Canon 2B commentary

⁵ Canon 2B commentary

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

Rule ~~3.02~~ 3.03 Use of Non-Public Information*. A judge shall not intentionally disclose or use, for any purpose unrelated to judicial duties, nonpublic information* acquired in a judicial capacity for any purpose unrelated to judicial duties.⁶

Commentary

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

Rule ~~3.03~~ 3.04 Affiliation with Discriminatory Organizations. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex gender, religion, national origin, ethnicity, or sexual orientation, and shall not use the benefits or facilities of such an organization to any significant extent.⁷

Commentary⁸

[1] ~~Membership of a judge~~ A judge's membership in an organization that practices invidious discrimination ~~gives rise to~~ creates the perceptions that the judge's impartiality is impaired. Whether an organization's practices are invidiously discriminatory is often a complex question. In general, an ~~An~~ organization is ~~generally said~~ to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, ~~sex~~ gender, national origin, ethnicity or sexual orientation of those individuals who would otherwise be admitted, and the exclusion is not reasonably related to a legitimate purpose. Rule ~~3.03~~ 3.04 does not prohibit a judge's membership in any ~~United States military organization, an organization dedicated to the preservation of religious, ethnic or legitimate cultural values of common interest to its members, or one that is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.~~

⁶ Canon 3B(12)

⁷ Canon 2C

⁸ Commentary is taken from Canon 2C commentary, note that the sentence order does not exactly comply with the 1990 Model Code.

[2] Public manifestation by a judge of the judge's approval of invidious discrimination on any basis constitutes the appearance of impropriety ~~under Canon 4~~ in violation of Rule 1.01 and diminishes public confidence in the integrity and impartiality of the judiciary. ~~It is a violation of Rule 1.01 Canon 4.~~ Although Rule ~~3.03~~ 3.04 relates only to organizations invidiously discriminating on the basis of race, ~~sex~~ gender, religion, national origin, ethnicity, or sexual orientation, However, a judge's membership in or significant use of the benefits or facilities of organizations practicing invidious discrimination on any other basis prohibited by applicable law also creates the appearance of impropriety in violation of Rule 1.01.

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

[4] When a judge learns that an organization to which the judge belongs engages in invidious discrimination ~~that would preclude membership under Rule 3.03 or under Canon 1 and Rule 1.01,~~ the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, ~~but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to~~ must resign immediately from the organization.

Rule 3.05. Testifying as a Character Witness. A judge shall not testify as a character witness, except when properly summoned.⁹

Comments

[1] When a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. In addition, a judge who testifies voluntarily as a character witness lends the prestige of judicial office to advance the interests of another. See Rule 3.01. Except in

⁹ Canon 2B partial

unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.¹⁰

¹⁰ Canon 2B commentary

1 June 30, 2005 draft ("Preliminary Draft"), redlined to reflect
2 changes from draft posted to web site July 19, 2004 (Rules
3 4.01 – 4.12) and October 5, 2004 (Rules 4.13 – 4.16)

4
5 **CANON 4: EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL**
6 **CONDUCT THE JUDGE'S EXTRA-JUDICIAL ACTIVITIES TO**
7 **MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL**
8 **OBLIGATIONS¹**

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

11 (a) do not interfere with the proper performance of
12 judicial duties;³

13 (b) do not cast reasonable doubt on the judge's
14 capacity to act with impartiality, integrity^{*},
15 impartiality^{*} and independence^{*}; and⁴

16 ~~(c) do not demean the judicial office; and~~

17 ~~(d) (c) comply with the requirements of this Code.~~

18 **Comments:**

19 ~~[1] Complete separation of a judge from extra-judicial activities is~~
20 ~~neither possible nor wise; a judge should not become isolated from~~
21 ~~the community in which the judge lives.~~

22 [1] Judges are encouraged to engage in appropriate extra-judicial
23 activities so as not to become isolated from their communities, and
24 to further the public's understanding of how courts and the judicial
25 system affect their lives.

26 [2] Expressions of bias or prejudice by a judge, ~~even outside the~~
27 ~~judge's judicial activities~~ at any time, may cast reasonable doubt on
28 the judge's ~~capacity~~ ability to act impartially as a judge.

29 ~~Expressions which may do so~~ Such expressions include jokes or
30 and other remarks demeaning individuals on the basis of ~~their~~ race,
31 ~~sex~~ gender, religion, ethnicity, national origin, disability, age, sexual

¹ Canon 4

² Canon 4A

³ Canon 4A(3)

⁴ Canon 4A(1)

1 orientation or socioeconomic status. See Rule ~~3.03~~ 3.04 and
2 accompanying ~~Commentary~~ Comments.⁵

3 [3] As a judicial officer ~~and person~~ specially learned in the law, a
4 judge is in ~~the a~~ a unique position to contribute to the improvement of
5 the law, the legal system, and the administration of justice,
6 including revision of substantive and procedural law and
7 improvement of the justice system. Such contributions may take the
8 form of speaking, writing, teaching or participating in other
9 extrajudicial activities. In many instances, these activities may
10 contribute significantly to the promotion of the fair administration of
11 justice and to ensuring the integrity, impartiality and independence
12 ~~and impartiality~~ of the judiciary. To the extent that time permits, a
13 judge is encouraged to undertake such activities, either
14 independently or through a bar association, judicial conference or
15 other organization. Judges may participate in efforts to promote the
16 fair administration of justice, the independence of the judiciary and
17 the integrity of the legal profession, both within and outside their
18 jurisdictions. For example, judges may have occasion to express
19 opposition to the persecution of lawyers and judges in other
20 countries because of their professional activities.⁶

21 [4] As a private individual, a judge may also wish to engage in
22 writing, speaking, teaching, or being otherwise active in regard to
23 non-legal subjects. To the extent that such activity is not in conflict
24 with any of the judges' duties under this Code, it is permitted by this
25 Rule.

26 **Rule 4.02 Appearances Before Governmental Bodies. A judge**
27 **shall not appear at a public hearing before, or otherwise**
28 **consult with, an executive or legislative body or official**
29 **except:**⁷

30 **(a) on matters concerning the law*, the legal system or**
31 **the administration of justice;**⁸

32 **(b) on other matters that might reasonably merit the**
33 **attention and comment of the judge because of**

⁵ Canon 4A commentary

⁶ Canon 4B commentary

⁷ Canon 4C(1) partial

⁸ Canon 4C(1) partial

1 **knowledge* or expertise acquired in the course of the**
2 **judge’s judicial duties; or**

3 **(c) when acting pro se in a matter involving the judge or**
4 **the judge’s interests.⁹**

5 **Comments:**

6 [1] Judges possess special expertise on matters of law, the legal
7 system, and the administration of justice, and may properly share
8 that expertise with governmental bodies. In addition, judges may
9 acquire information on issues before them that are not law-related
10 but upon which they may be well qualified to comment from their
11 unique vantage point as jurists ~~who have presided over such~~
12 ~~matters in court.~~ For example, a juvenile court judge may be
13 uniquely situated to comment to a public body on the potential
14 benefits of proposed community improvements ~~in the community,~~
15 ~~such as the creation of new athletic or other recreational~~
16 ~~opportunities~~ that could lead to a decrease in delinquency among
17 juveniles. Judges must be mindful, however, that their appearance
18 before governmental bodies remains subject to other provisions of
19 this Code, such as Rule 2.11, governing public comment on
20 pending and impending matters, Rule 3.02, prohibiting judges from
21 lending the prestige of office to advance the interests of themselves
22 or others, and Rule 4.01(b), prohibiting judges from engaging in
23 extra-judicial activities that cast reasonable doubt on the judge’s
24 ~~impartiality,~~ integrity, impartiality and independence.

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

34 [3] See Rules ~~2.10~~ 2.07 and 3.01 and ~~Commentary~~ Comments
35 regarding the obligation to avoid improper influence.¹⁰

36 **Rule 4.03 Appointments to Governmental Bodies. A judge**

⁹ Canon 4C(1) partial

¹⁰ Canon 4C(1) commentary

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

8 **Comments:**

9 [1] A judge must assess the appropriateness of accepting extra
10 judicial assignments in light of the demands on judicial resources
11 created by crowded dockets, and should not accept governmental
12 appointments that are likely to interfere with the effective operation
13 of the courts. Judges must also avoid appointments that are likely
14 to embroil the court in controversial issues or impair the impartiality,
15 integrity and independence of the judiciary both in terms of judicial
16 availability and in terms of the requirements of impartiality of the
17 judiciary. Thus, a judge should not serve on a governmental
18 commission that requires an excessive time commitment, or is
19 embroiled in controversial subject matter, or whose members are
20 limited to advocating for one side in a policy debate. A judge may,
21 however, represent a country, state or locality on ceremonial
22 occasions in connection with historical, educational or cultural
23 activities.¹¹

24 **Rule 4.04 Civic or Charitable Activities.** A judge may
25 participate in civic or charitable activities that do not reflect
26 adversely upon a judge's impartiality, integrity*, impartiality*
27 and independence*, or interfere with the performance of
28 judicial duties, subject to the following limitations and the
29 other requirements of this Code.¹²

30
31 **a. A.** With respect to any activities in which a judge
32 participates on behalf of a civic or charitable
33 organization:¹³

34
35 **(1) A judge shall not:**

36
37 **i. (a) use or permit the use of the prestige of**
38 **judicial office for fundraising or membership**
39 **solicitation;¹⁴**

¹¹ Canon 4C(2) commentary

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

¹³ Canon 4C(3)(b)

¹⁴ Canon 4C(3)(b)(iv)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40

- i. personally solicit funds for the organization¹⁵ on an other than de minimis* basis;
- ii. personally participate in membership solicitation if the solicitation is primarily a fundraising mechanism, or if it might reasonably be perceived as coercive.¹⁶

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

- i. personally solicit funds from ~~other~~ members of the judge's family*, or judges over whom the judge does not exercise supervisory or appellate authority;¹⁷
- ii. assist the organization in fundraising and participate in the management and investment of the organization's funds;¹⁸
- iii. appear at, participate in, and permit the judge's title to be used in connection with an event of an organization devoted to the improvement of law*, the legal system, or the administration of justice, even though the event may serve a fundraising purpose;
- iv. make recommendations to public and private fund-granting organizations on programs and activities concerning the law*, the legal system or the administration of justice.¹⁹

b. ²⁰ A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental entity devoted to the improvement of the law,* the legal system or the administration of justice or of an educational, religious, charitable,

¹⁵ Canon 4C(3)(b)(i) partial
¹⁶ Canon 4C(3)(b)(iii)
¹⁷ Canon 4C(3)(b)(i) partial
¹⁸ Canon 4C(3)(b)(i) partial
¹⁹ Canon 4C(3)(b)(ii)
²⁰ Canon 4C(3)(a)

1 fraternal or civic organization not conducted for
2 profit, unless it is likely that the organization or
3 governmental entity:²¹
4

5 (1) will be engaged in proceedings that would
6 ordinarily come before the judge, or²²
7

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

14 **Comments:**
15

16 [1] A judge should be permitted to participate in civic, fraternal or
17 charitable activities for the benefit of the community of which the
18 judge is a part, provided that such participation does not take
19 inappropriate advantage of the judge's judicial position, or
20 otherwise interfere with the performance of the judge's judicial
21 duties. See Rule 5.01(a).
22

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

28 ~~[2]~~ [3] Solicitation of funds for an organization involves the danger
29 that the person solicited will feel obligated to respond favorably to
30 the solicitor if the solicitor is in a position of influence or control.²⁴
31 For that reason, a judge is not permitted to solicit funds in person in
32 writing or by telephone, on an other than de minimis basis, unless
33 the person being solicited is another judge over whom the judge
34 exercises no appellate or supervisory control. Similarly, a judge is
35 not permitted to personally ~~to~~ solicit memberships in an
36 organization if the solicitation is primarily a fundraising mechanism.
37 A judge may, however, participate in fundraising activities by
38 performing tasks other than soliciting or accepting donations at
39 fundraising events, without the attendant risk of coercion that
40 makes personal solicitation of funds problematic.
41

²¹ Canon 4C(3)

²² 4C(3)(a)(i)

²³ Canon 4C(3)(a)(ii)

²⁴ Canon 4C(3)(b) commentary partial

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

5 ~~[3]~~ [5] Solicitation of membership poses potential problems similar
6 to those associated with the solicitation of funds. For that reason, a
7 judge must not personally solicit membership or endorse or
8 encourage membership efforts for civic or charitable organizations
9 if the solicitation could reasonably be perceived as coercive. For
10 example, a judge must not solicit memberships from other judges
11 over whom the judge exercises supervisory or appellate authority,
12 or from persons or those affiliated with persons who are likely ever
13 to appear before the court on which the judge serves.

14 ~~[4]~~ [6] Notwithstanding the foregoing limitations, no comparable risk
15 of coercion arises when a judge who is an officer of such an
16 organization sends a general membership solicitation mailing over
17 the judge's signature. In addition, lawyer and judicial organizations
18 with diverse memberships, whose ~~members are~~ membership is
19 balanced in representing all parties in litigation, often include judges
20 in their leadership. Judges may be involved in member recruitment
21 for such organizations even though the dues or fees associated
22 with membership may be used, in part, as fundraising to support
23 the objectives of those organizations.²⁵

24 ~~[5]~~ [7] Judges are an integral part of the legal community and may
25 participate as judges in the activities of organizations within the
26 legal community without inappropriately lending the prestige of
27 office to those activities, even when they serve a fundraising
28 purpose. Therefore, a judge may, for example, accept an invitation
29 to speak at or be recognized or honored at an event hosted by a
30 legal organization, law school, or other entity devoted to improving
31 the law, the legal system or the administration of justice, even if
32 such an event raises funds for the benefit of the sponsoring
33 organization.

34 ~~[6]~~ [8] Use of an ~~organization~~ organization's letterhead for
35 fundraising or membership solicitation does not violate Rule 4.04
36 provided that the letterhead lists only the judge's name, and office

²⁵ Canon 4C(3)(b) commentary

1 or other position in the organization, and, if comparable
2 designations are listed for other persons, the judge's judicial
3 designation. In addition, a judge must ~~also~~ make reasonable efforts
4 to ensure that the judge's staff, court officials and others subject to
5 the judge's direction and control do not solicit funds on the judge's
6 behalf for any purpose, charitable or otherwise.²⁶

7 ~~[7]~~ [9] This Rule does not prohibit a ~~judge's service~~ judge from
8 serving in a governmental position associated with the
9 improvement of the law, the legal system or the administration of
10 justice; see Rule 4.03.²⁷

11 ~~[8]~~ [10] In this and other Rules in Canon 4, the phrase "subject to
12 the requirements of this Code" is used to remind judges that the
13 use of permissive language in various Rules of the Code does not
14 relieve a judge from the other requirements of the Code that apply
15 to the specific conduct.²⁸ ~~As an~~ For example of the meaning of the
16 ~~phrase~~, a judge permitted by this Rule to serve on the board of a
17 fraternal institution may be prohibited from such service by Rules
18 ~~3.03~~ 3.04 or 4.01 if the institution practices invidious discrimination
19 or if service on the board otherwise casts reasonable doubt on the
20 judge's capacity to act impartially as a judge.²⁹

21 ~~[9]~~ [11] Service by a judge on behalf of a civic, fraternal or
22 charitable organization may be governed by other provisions of
23 Canon 4 in addition to Rules 4.02, 4.03 and 4.04. For example, a
24 judge is prohibited by Rule ~~4.07~~ 4.08 from serving as a legal
25 advisor to a civic, fraternal or charitable organization.³⁰

26 ~~[10]~~ [12] The changing nature of some organizations makes it
27 necessary for a judge regularly to reexamine the activities of each
28 organization with which the judge is associated to determine if it is
29 proper for the judge to continue ~~the affiliation~~ such association.³¹

30 ~~[11]~~ [13] This Rule, not Rule 4.03, governs a judge's service in a
31 nongovernmental position. This Rule permits service by a judge
32 with organizations devoted to the improvement of the law, the legal
33 system or the administration of justice and with educational,
34 religious, charitable, fraternal or civic organizations not conducted
35 for profit. Service on the board of a public educational institution,

²⁶ Canon 4C(3)(b) commentary

²⁷ Canon 4C(3)(b) commentary

²⁸ Canon 4B commentary

²⁹ Canon 4C(3) commentary

³⁰ Canon 4C(3) commentary

³¹ Canon 4C(3)(a) commentary

1 ~~unless it were other than~~ a law school, would be prohibited under
2 Rule 4.03, ~~but~~ whereas service on the board of a public law school
3 or any private legal institution would generally be permitted ~~under~~
4 ~~this Rule.~~³²

5

6 **Rule 4.05 Appointments to Fiduciary* 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.**³³

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.**³⁴

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.**³⁵

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 Rule in some cases.³⁶

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 Rule 4.11 4.10, or
30 require frequent disqualification.
31

³² Canon 4C(2) commentary

³³ Canon 4E(1)

³⁴ Canon 4E(2)

³⁵ Canon 4E(3)

³⁶ 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*.³⁷**

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, providing dispute resolution services
15 provided by a judge in an extrajudicial capacity may interfere with
16 the proper performance of the judicial office, and is therefore
17 permitted only when authorized by law.

18 [2] Rule 4.06 does not prohibit a judge from participating in
19 arbitration, mediation or settlement conferences performed as part
20 of judicial duties. See Rule 2.09, Comment [2] and Rule
21 2.10(a)(4).³⁸

22 ~~**4.07 Testifying as a Character Witness. A judge shall not**~~
23 ~~**testify as a character witness, except when properly**~~
24 ~~**summoned.**~~

25 ~~**Commentary:**~~

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

³⁷ Canon 4F

³⁸ Canon 4F commentary

1 as a character witness.

2 **Rule 4.08 4.07 Practice of Law. A judge shall not practice law.**
3 **Notwithstanding this prohibition, a judge may act pro se and**
4 **may, without compensation, give legal advice to and draft or**
5 **review documents for a member of the judge's family.*³⁹**

6 **Comments:**

7 [1] This prohibition refers to the practice of law in a representative
8 capacity and not in a pro se capacity. A judge may act for himself or
9 herself in all legal matters, including matters involving litigation and
10 matters involving appearances before or other dealings with
11 legislative and other governmental bodies. However, in so doing, a
12 judge must not abuse the prestige of office to advance the interests
13 of the judge or the judge's family. See Rule 3.01.⁴⁰

14 [2] The Code allows a judge to give legal advice to and draft legal
15 documents for members of the judge's family, so long as the judge
16 receives no compensation. A judge must not, however, act as an
17 advocate or negotiator for a member of the judge's family in a legal
18 matter.⁴¹

19 **Rule 4.09 4.08 Financial Activities. A judge shall not engage in**
20 **financial and business dealings that:⁴²**

21 **(a) may reasonably be perceived to exploit the judge's**
22 **judicial position, or⁴³**

23 **(b) involve the judge in frequent transactions or**
24 **continuing business relationships with those lawyers or**
25 **other persons likely to come before the court on which**
26 **the judge serves.⁴⁴**

27 **Comments:**

28 [1] When in a judicial capacity a judge acquires information ~~in a~~
29 ~~judicial capacity, such as material contained in filings with the court~~
30 that is not yet generally known, such as material contained in filings

³⁹ Canon 4G

⁴⁰ Canon 4G commentary

⁴¹ Canon 4G commentary

⁴² Canon 4D(1)

⁴³ Canon 4D(1)(a)

⁴⁴ Canon 4D(1)(b)

1 with the court, the judge must not use the information for private
2 gain. See Rule 3.01; see also Rule 3.02.⁴⁵

3 [2] A judge must avoid financial and business dealings that involve
4 the judge in frequent transactions or continuing business
5 relationships with persons likely to come ~~either~~ before the judge
6 personally or before other judges on the judge's court. In addition, a
7 judge should discourage members of the judge's family from
8 engaging in dealings that would reasonably appear to exploit the
9 judge's judicial position. This rule is necessary to avoid creating an
10 appearance of exploitation of office or favoritism and to minimize
11 the potential for disqualification. With respect to affiliation of
12 relatives of a judge with law firms appearing before the judge, see
13 ~~Commentary~~ Comments to Rule 2.12 relating to disqualification.⁴⁶

14 [3] Participation by a judge in financial and business dealings is
15 subject to the general prohibitions in Rule 4.01 against activities
16 that tend to reflect adversely on impartiality, demean the judicial
17 office, or interfere with the proper performance of judicial duties.
18 Such participation is also subject to the general prohibition in
19 Canon 1 against activities involving impropriety or the appearance
20 of impropriety, and the prohibition in Rule ~~3.04~~ 3.02 against the
21 misuse of the prestige of judicial office. In addition, a judge must
22 maintain high standards of conduct in all of the judge's activities, as
23 set forth in Canon 1.⁴⁷

24 **~~Rule 4.10~~ 4.09 Remunerative Activities. A judge may,**
25 **subject to the requirements of this Code, hold and**
26 **manage investments of the judge and members of the**
27 **judge's family,* ~~including real estate,~~ and engage in**
28 **other remunerative activity.**⁴⁸

29 **Comments:**

30 [1] This Rule provides that, subject to the requirements of this
31 Code, a judge may hold and manage investments owned solely by
32 the judge, investments owned solely by a member or members of
33 the judge's family, and investments owned jointly by the judge and
34 members of the judge's family. The term "investments" includes

⁴⁵ Canon 4D(1) commentary

⁴⁶ Canon 4D(1) commentary

⁴⁷ Canon 4D(1) commentary

⁴⁸ Canon 4D(2)

1 real estate. See Commentary Comments for Rule 4.04 regarding
2 use of the phrase "subject to the requirements of this Code."⁴⁹

3 **Rule 4.11 4.10 Management and Divestiture of**
4 **Investments. A judge shall manage the judge's**
5 **investments and other financial interests to minimize**
6 **the number of cases in which the judge is disqualified.**
7 **As soon as the judge can do so without serious**
8 **financial detriment, the judge shall divest himself or**
9 **herself of investments and other financial interests that**
10 **might require frequent disqualification.**⁵⁰

11 **Comments**

12 [1] Judges ~~should~~ must not allow their financial activities to
13 interfere with their duty to preside over cases that come
14 before them. Although some disqualifications will be
15 unavoidable, judges must reduce unnecessary conflicts of
16 interest that arise when they retain financial interests in
17 organizations and other entities that appear regularly in their
18 courts, by divesting themselves of such interests.

19 [2] Financial interests, within the meaning of this rule, include
20 the interests of others whom the judge serves as a fiduciary
21 under Rule 4.05.

22 **Rule 4.12 4.11 Business For Profit Activities. A judge shall**
23 **not serve as an officer, director, manager, general partner,**
24 **advisor or employee of any business for-profit entity except**
25 **that a judge may, subject to the requirements of this Code,**
26 **manage and participate in:**⁵¹

27 **(a) a business for-profit entity closely held by the judge**
28 **or members of the judge's family,* or**⁵²

29 **(b) a business for-profit entity primarily engaged in**
30 **investment of the financial resources of the judge or**
31 **members of the judge's family.**⁵³

32 **Comments:**

⁴⁹ Canon 4D(2) commentary

⁵⁰ Canon 4D(4)

⁵¹ Canon 4D(3)

⁵² Canon 4D(3)(a)

⁵³ Canon 4D(3)(b)

1 [1] Although participation by a judge in a closely-held family for
2 profit business might otherwise be permitted by Rule ~~4.12~~ 4.11, a
3 judge may be prohibited from participation by other provisions of
4 this Code. Examples of such situations include when, ~~for example,~~
5 the business entity ~~frequently~~ regularly appears before the judge's
6 court or the participation requires significant time away from judicial
7 duties. Similarly, a judge must avoid participating in a closely-held
8 for-profit family business if the judge's participation would involve
9 misuse of the prestige of judicial office.⁵⁴

10 **Rule ~~4.13~~ 4.12 Solicitation and Acceptance of Gifts*.**

11 **(a) A judge shall not solicit or accept and shall urge**
12 **members of the judge's family residing in the judge's**
13 **household* not to solicit or accept ~~a gift~~ gifts,* from**
14 **anyone except that a judge may accept:⁵⁵**

15 **(1) a gift* incident to a public testimonial;**

16 **(2) books, magazines, journals, audio-visual materials**
17 **and other resource materials supplied by publishers or**
18 **organizations on a complimentary basis for official use;**

19 **(3) an invitation to the judge and the judge's spouse* or**
20 **guest to attend without charge;**

21 **(i) a widely attended event* ~~or~~;**

22 **(ii) a bar-related function; or**

23 **(iii) any activity devoted to the improvement of the**
24 **law,* the legal system or the administration of**
25 **justice;⁵⁶**

26 **(4) a gift*, award or benefit incident to the business,**
27 **profession or other separate activity of a spouse*,**
28 **domestic partner or other family member of a judge**
29 **residing in the judge's household*, including gifts*,**
30 **awards and benefits for the use of both the spouse*,**
31 **domestic partner or other family member* and the**
32 **judge (as spouse*, domestic partner or family**
33 **member*), provided the gift*, award or benefit could not**
34 **reasonably be perceived as intended to influence the**

⁵⁴ Canon 4D(3) commentary

⁵⁵ Canon 4D(5)

⁵⁶ Canon 4.D.(5)(a).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

judge in the performance of judicial duties;⁵⁷

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

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

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

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

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

(b) For any gift*, other than a gift* from a member of the judge’s family*, that alone or in the aggregate with other gifts* received from the same source in the same calendar year exceeds [\$250.00] in value, the judge must publicly report receipt of the gift in the same manner as the judge reports compensation, reimbursement or waiver of charges pursuant to Rule 4-16 4.15.⁶¹

Comments:

[1] This Rule imposes restrictions on the solicitation and acceptance of gifts. The Terminology section defines a “gift” as any gratuity, favor, discount, entertainment, hospitality, loan,

⁵⁷ Canon 4.D.(5)(b).
⁵⁸ Canon 4.D.(5)(d).
⁵⁹ Canon 4.D.(5)(e).
⁶⁰ Canon 4D(5)(h) partial
⁶¹ Canon 4D(5)(h) partial

1 forbearance, bequest, or anything of monetary value, but does not
2 include:

3 (a) Ordinary social hospitality that is common among people in
4 the judge's community, extended for a non-business purpose by
5 an individual, not a corporation, and limited to the provision of
6 modest items, such as food and refreshments.⁶²

7 (b) items with little intrinsic value intended solely for
8 presentation, such as plaques, certificates, trophies and greeting
9 cards;

10 (c) loans from banks and other financial institutions on terms
11 that are available based on factors other than judicial status.⁶³

12 (d) opportunities and benefits, including favorable rates and
13 commercial discounts, that are available based on factors other
14 than judicial status;

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

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

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

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

24
25 [4] [2] A judge may accept a public testimonial or a gift incident
26 thereto only if the donor organization is not an organization whose
27 members comprise or frequently represent the same side in
28 litigation, and the testimonial and gift are otherwise in compliance
29 with other provisions of this Code. See Rules 4.01 and ~~2.09~~ 2.07.⁶⁴

30 [2] [3] Because a gift to a member of the judge's family residing in
31 the judge's household might be viewed as intended to influence the
32 judge, a judge must inform those family members of the relevant
33 ethical constraints upon the judge in this regard and discourage
34 those family members from violating them. A judge cannot,
35 however, reasonably be expected to know or control all of the
36 financial or business activities of all family members residing in the
37 judge's household.⁶⁵

⁶² Canon 4D(5)(c)

⁶³ Canon 4D(5)(f)

⁶⁴ Canon 4D(5)(a) Commentary.

⁶⁵ Canon 4.D.(5).

1 ~~[3]~~ [4] A gift to a judge, or to a member of the judge's family living in
2 the judge's household, that is excessive in value raises questions
3 about the judge's impartiality and the integrity of the judicial office,
4 and might require disqualification of the judge ~~where disqualification~~
5 ~~would not otherwise be required.~~⁶⁶

6 ~~[4]~~ [5] Rule 4.13 4.12 prohibits judges from accepting gifts from
7 lawyers or their firms if they have come or are likely to come before
8 the judge; it also prohibits gifts from clients of lawyers or their firms
9 when the clients' interests have come or are likely to come before
10 the judge. Rule 4.13 4.12(a)(7) prohibits a judge from accepting
11 gifts, even of a nominal value, from people or entities who are ~~or~~
12 ~~will be substantively involved in a matter~~ likely to appear before the
13 judge. The ~~Rule~~ rule requires a judge to consider whether a donor,
14 or the donor's interest, might come before the judge in the
15 foreseeable future.⁶⁷

16 ~~[5]~~ [6] Rule 4.13 4.12 does not apply to contributions to a judge's
17 campaign for judicial office, ~~a matter~~. Such contributions are
18 governed by Canon 5 and other Rules of this Code.⁶⁸ Rule 4.13
19 4.12 likewise does not apply to the reimbursement or waiver of
20 charges for travel-related expenses, which is governed by ~~4.14~~
21 Rule 4.13. ~~See the Terminology section for the definition of "gift"~~
22 ~~and its exclusions.~~

23
24 ~~[6]~~ [7] Acceptance of an invitation to a law-related function is
25 governed by Rule 4.13(a)(1); 4.12(a)(3) and includes acceptance of
26 an invitation paid for by an individual lawyer or group of lawyers is
27 ~~governed by Rule 4.13(a)(5).~~⁶⁹ The judge's acceptance of such an
28 invitation is subject to the provisions of Rule 4.12(a)(7)(i) and (ii).

29 ~~[8]~~ Regardless of whether Rule 4.13 ~~directly prohibits~~ 4.12 would
30 permit receipt of a particular gift by a judge or a member of the
31 judge's family residing in the judge's household, other Rules may
32 prohibit the gift. For example, Rule 4.01(b) would apply if the gift
33 would cast reasonable doubt on the judge's capacity to act with
34 ~~impartiality~~, integrity, impartiality and independence.

35 **Rule 4.14 4.13 Reimbursement or Waiver of Charges for**
36 **Travel-Related Expenses of the Judge or the Judge's Spouse***
37 **or Guest.**

⁶⁶ Canon 4.D.(5)(d) commentary.

⁶⁷ Canon 4.D.(5)(h) commentary.

⁶⁸ Canon 4.D.(5) commentary.

⁶⁹ Canon 4.D.(5)(a) commentary.

1 (a) A judge may receive accept reimbursement for of or
2 ~~accept~~ a waiver of charges from sources other than the
3 judge's employing entity for the ~~expenses of~~ necessary
4 travel, food and lodging expenses associated with the
5 judge's participation in extra-judicial activities permitted
6 by this Code, only if such ~~receipt or~~ acceptance does
7 not cast reasonable doubt on the judge's capacity to act
8 with impartiality*, integrity*, or independence*. ⁷⁰

9 (b) Expense reimbursement and waiver of charges shall
10 be limited to the actual cost of travel, food and lodging
11 reasonably incurred by the judge and, where
12 appropriate to the occasion, by the judge's spouse*,
13 domestic partner or guest. Any reimbursement or waiver
14 of charges that alone or in the aggregate with other
15 ~~costs~~ expenses reimbursed from the same source in the
16 same ~~calendar year~~ preceding [twelve months] exceeds
17 ~~\$100~~ [\$250] shall be ~~publicly disclosed~~ reported and the
18 ~~information relating to such reimbursement and/or~~
19 ~~waiver of charges shall be reported as required by Rule~~
20 ~~4.16 and made accessible to the general public at least~~
21 quarterly in the same manner as required by Rule 4.15. ⁷¹

22
23
24 **Comments:**

25 [1] Judicial education in law-related and academic disciplines is in
26 keeping with a judge's duty to remain competent in the law and is
27 encouraged under the provisions of Canon 4. Attendance at
28 educational ~~seminars~~ activities where the expenses are
29 ~~underwritten~~ paid for by individuals persons or entities other than
30 the judge, the ~~judicial system~~, or a government entity, ~~should~~ must
31 nevertheless be evaluated by the judge to determine whether
32 attendance is consistent with the ~~judge's obligations under the~~
33 ~~Canons, particularly the duty to preserve~~ requirements of this Code.
34 For example, Rule 4.01(b) requires that a judge's extra-judicial
35 activities be conducted so that they do not cast reasonable doubt
36 on the judge's capacity to act with impartiality, integrity and
37 independence, ~~and the appearance of impartiality and~~
38 independence.

⁷⁰ Canon 4.H.1.

⁷¹ Canon 4.H.1(b).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

~~[2] A variety of factors may affect the propriety of attendance at such seminars, including the educational nature of the seminar, the sources of funding, the identity of the seminar sponsor, and the reasonableness of the expenses paid or reimbursed. A judge's decision whether to attend such an expense-paid educational activity should be based on an assessment of all of the circumstances, and the judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment. The judge should, for example, consider whether the sponsor or the funding source of the seminar educational activity is currently appearing, or likely to appear, before the judge in a matter, thus requiring disqualification of the judge in the matter. ~~In addition, the judge should determine whether attendance may create a conflict of interest, may result in disqualification or recusal in matters coming before the judge, may give rise to the judge's independence being questioned, or may interfere with the judge's performance of his or her judicial duties. A judge's decision whether to attend should be based on an assessment of all the circumstances and the judge should undertake a reasonable inquiry to obtain the information necessary to make an informed judgment. See Rule 2.12. A judge also should not attend educational activities sponsored by organizations with which the judge may not properly be associated, such as organizations referred to in Rule 3.04; to do so would violate Rule 1.01 if the judge's attendance manifests approval of the organization's policies. See Rule 3.04, comment [2]. Other factors that may affect whether the judge should or should not attend an educational activity include:~~~~

- (a) Whether the sponsor is an accredited educational institution or bar association rather than a for-profit entity or trade association;
- (b) Whether the source of the funding is largely from numerous contributors rather than from a single entity and earmarked for programs with specific content;
- (c) Whether the content is unrelated to the subject matter of

1 litigation before the judge or is related to matters that are, or are
2 likely to come before the judge;

3 (d) Whether the activity is purely educational rather than
4 recreational, and whether expenses of attending are a reasonable
5 amount;

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

8 [3] Consistent with Rules 4.13 ~~4.12~~(b) and 4.16 ~~4.15~~, a judge
9 ~~should~~ must take reasonable steps to ensure that information
10 concerning ~~his or her~~ the judge's participation in ~~seminars~~
11 educational activities and other events, as well as reasonable
12 information regarding the nature and circumstances of such events,
13 are available to the public. A judge should therefore promptly and
14 publicly disclose participation in extra-judicial events at which the
15 judge's expenses are paid for by ~~sources~~ entities other than the
16 ~~judge's employing governmental~~ judge or a government entity.

17 **Rule 4.15 ~~4.14~~ Compensation for Extrajudicial Activities.**

18 **(a) A judge may ~~receive~~ accept compensation for the**
19 **extra-judicial activities permitted by this Code, if such**
20 **~~receipt or acceptance~~ does not cast reasonable doubt**
21 **on the judge's capacity to act with integrity,**
22 **impartiality*, integrity*, or independence*.**⁷²

23 **(b) Compensation shall not exceed a reasonable amount**
24 **nor shall it exceed what a person who is not a judge**
25 **would receive for the same activity.**⁷³

26 **Comments:**

27 [1] The Code does not prohibit a judge from accepting honoraria or
28 speaking fees provided that the compensation is reasonable and
29 commensurate with the task performed. A judge should ensure,
30 however, that no conflicts are created by the arrangement. A judge
31 must not exploit or appear to ~~trade on~~ exploit the judicial position for
32 personal advantage. ~~Neither~~ Nor should a judge spend significant
33 time away from court duties to meet speaking or writing
34 commitments for compensation. ~~In addition, the~~ The source of the
35 payment of any such compensation must not raise any question of

⁷² Canon 4.H.1.

⁷³ Canon 4.H.1(a).

1 undue influence or the judge's ability or willingness to be
2 impartial.⁷⁴See Rule 4.01.

3 **Rule 4.16 4.15 Reporting of Compensation, Reimbursement of**
4 **Expenses and Waiver of Charges. A judge shall report the**
5 **date, place and nature of any activity for which the judge**
6 **received compensation, reimbursement of expenses or waiver**
7 **of charges, the name of the payor or waivor and the amount of**
8 **compensation, reimbursement of expenses, or waiver of**
9 **charges waived so received. ~~Compensation or income of a~~**
10 **~~spouse attributed to the judge by operation of a community~~**
11 **~~property law is not extra-judicial compensation to the judge.~~**
12 **The judge's report shall be made at least annually, except with**
13 **respect to reimbursements and waivers, which shall be**
14 **reported at least quarterly, and shall be filed as a public**
15 **document in the office of the clerk of the court on which the**
16 **judge serves or other office designated by law,* and when**
17 **technically feasible, posted on the website of that court or**
18 **office.**⁷⁵

19 **Comments:**

20 [1] By reporting and publicly disclosing their compensation,
21 reimbursement of expenses or waiver of charges for extrajudicial
22 activities, judges promote transparency and public confidence in
23 the integrity, independence and impartiality of the judiciary.
24

25

26

27

⁷⁴ Canon 4.H.(2) commentary.

⁷⁵ Canon 4H(2)

June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5

CANON 5

Canon 5

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

Rule 5.01. Restrictions on Political Activities of Judges and CANDIDATES for Judicial Office.

Except as permitted by Rule 5.02 (partisan PUBLIC ELECTIONS), Rule 5.03 (non-partisan PUBLIC ELECTIONS), Rule 5.04 (retention elections), and Rule 5.05 (appointment to judicial office), a judge or a CANDIDATE for judicial office shall not, directly or indirectly:

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

¹ The term "political organization" will be defined in the Terminology section as follows: "A political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office, except for a candidate for judicial office's own campaign committee, as authorized by Rule 5.06."

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

- 1 (i) **use or permit the use of campaign contributions for the private**
2 **benefit of the CANDIDATE or others;**
3
4 (j) **KNOWINGLY make any false or misleading statement regarding any**
5 **CANDIDATE for judicial office;**
6
7 (k) **make any comment that might reasonably be expected to affect the**
8 **outcome or impair the fairness of a proceeding while it is pending or**
9 **impending in any court; or**
10
11 (l) **manifest bias or prejudice based upon a person’s race, gender**
12 **religion, national origin, ethnicity, disability, age, sexual orientation,**
13 **or socioeconomic status;**
14
15 (m) **with respect to cases, controversies, or issues that are likely to come**
16 **before the court, make pledges, promises or commitments that are**
17 **inconsistent with the IMPARTIAL performance of the adjudicative**
18 **duties of the office.**
19

20 **Comments:**

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 certain restrictions on the
30 political and campaign activities of all sitting judges and all candidates for judicial office.
31 In all events, a candidate for judicial office should maintain the dignity appropriate to
32 judicial 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. ~~For the same violations, a~~An unsuccessful
37 candidate who was a lawyer may be subject to discipline instead under the [name of
38 jurisdiction] Rules of Professional Conduct, Rule [8.2(b)]. When a non-judge becomes a
39 candidate for judicial office, Rule 5.01 ~~attaches is~~ immediately applicable to his or her
40 conduct.
41

42 [3] Many of the restrictions imposed by Rule 5.01 apply only with respect to “political
43 organizations.” Engagement with other organizations might be improper under a
44 different Rule, however. For example, if an organization frequently litigates in the
45 courts, or has matters pending or impending in the court on which the judge sits, one or

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1 more of the following Rules might apply: Rule 2.11 (Judicial Statements on Pending and
2 Future Cases), Rule 2.12 (Disqualification), and Rule 4.04 (Civic or Charitable
3 Activities).
4

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1 ***Direct Participation in Political, Fund-Raising, and Campaign Activities of Political***
2 ***Organizations and Candidates***
3

4 [4] Public confidence in the independence and impartiality of the judiciary is eroded if
5 judges or candidates for judicial office are perceived to be subject to political influence.
6 Accordingly, sitting judges as well as all candidates for judicial office are prohibited by
7 Rule 5.01(a) from assuming a leadership role in a political organization. Judges or
8 candidates may register to vote as a member of a political party.
9

10 [5] Rules 5.01(b) and 5.01(c) prohibit judges and candidates for judicial office from
11 making speeches on behalf of political organizations or publicly endorsing or opposing
12 candidates for public office. These provisions do not prohibit candidates from
13 campaigning on their own behalf, however, or from endorsing or opposing candidates for
14 a position on the same court for which they are running. See Rules 5.02(d) and 5.02(e),
15 Rules 5.03(b) and 5.03(d), and Rules 5.04(b) and 5.04(d).
16

17 [6] Rule 5.01(c) does not prohibit judges or candidates for judicial office from privately
18 expressing their views on candidates for any public office.
19

20 [7] Sitting judges and candidates for judicial office retain the right to participate in the
21 political process as voters, in both primary and general elections. Participation in a
22 caucus-type election procedure does not constitute public support for or endorsement of a
23 political organization or candidate, and therefore is not prohibited by Rules 5.01(b) or
24 5.01(c).
25

26 [8] Political organizations and candidates running for public office often use ticket~~ed~~
27 ~~events -sales for dinners or other public events~~ as ~~a~~ methods for of fund-raising. Judges
28 and candidates for judicial office may generally attend dinners and other public events
29 sponsored by political organizations or candidates running for public office, but are
30 prohibited by Rule 5.01(e) from purchasing tickets to such events to the extent that the
31 purchase includes a fund-raising aspect.
32

33 ***Soliciting or Accepting Campaign Contributions and Other Public Support***
34

35 [9] Candidates for judicial office are prohibited from identifying themselves as
36 candidates of a particular political organization and from seeking or using political
37 organization endorsements, except when running in a partisan public election; see Rules
38 5.02(a) and 5.02(b).
39

40 [10] Although candidates for judicial office are prohibited from personally soliciting or
41 personally accepting campaign contributions for their own campaigns, see Rule 5.01(h),
42 candidates running in partisan, non-partisan or retention elections are permitted to form
43 campaign committees for the purpose of soliciting and accepting contributions, subject to
44 the regulations contained in Rule 5.06 and [insert applicable provisions of law].
45

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1 [11] Candidates for judicial office are permitted to solicit public support and to seek or
2 use endorsements from individuals or organizations (other than political organizations).
3 See Rule 5.01(g).
4

5 ***Statements and Comments Made During a Campaign for Judicial Office***
6

7 [12] Candidates for judicial office are sometimes the subject of unfair or unjust
8 allegations made by an opposing candidate, a third party, or the media. For example,
9 false or misleading statements might be made regarding the identity, present position,
10 experience, qualifications, or judicial rulings of a candidate. In other situations, false or
11 unjust allegations may be made that bear upon a candidate's integrity or fitness for
12 judicial office. To mitigate the effects of these attacks, and to avoid escalation of the
13 situation, a candidate for judicial office is permitted to make a measured and dignified
14 public response, but only if the response itself does not ~~itself~~ violate Rule 5.01(j).
15

16 [13] Although candidates for judicial office are permitted to respond directly to unfair or
17 unjust allegations made against them during a campaign, it is often preferable for
18 someone else, such as a bar association or a bar association committee, to utilize
19 established mechanisms to make the response.
20

21 ***Pledges, Promises or Commitments Inconsistent with Impartial Performance of the***
22 ***Adjudicative Duties of Judicial Office***
23

24 [14] A judge's obligation to avoid prejudice is well established. Under the First
25 Amendment and in light of the voters' right to have information about an elective
26 candidate's views, judicial ethics rules may not prohibit judicial candidates from
27 announcing their views on disputed legal and political issues. Rule 5.01(m), which
28 applied the relevant prohibitions of Rule 2.11 to all candidates for judicial office, does
29 not proscribe a candidate's public expression of personal views on disputed issues. To
30 ensure that voters understand a judge's duty to uphold the Constitution and laws of [name
31 of state jurisdiction] where the law differs from the candidate's personal belief, however,
32 candidates are encouraged to emphasize their duty to uphold the law regardless of their
33 personal views.
34

35 [15] Some speech restrictions are indispensable to maintaining the integrity, impartiality
36 and independence of the judiciary. The state has a compelling interest in enforcing these
37 ~~limited~~ restrictions. Thus, under this Rule it remains improper for a judicial candidate to
38 make pledges, promises or commitments regarding pending or impending cases, specific
39 classes of cases, specific litigants or classes of litigants, or specific propositions of law,
40 that would reasonably lead to the conclusion that the candidate has prejudged a decision
41 or ruling in cases that would fall within the scope of the pledge, promise or commitment.
42 To fall within the proscription of this Rule the statement by the candidate must pertain to
43 matters likely to come before the court on which the candidate would serve, if elected.
44 Statements by a candidate that would have this effect are inconsistent with the obligation
45 of all judges to perform impartially the adjudicative duties of office.

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1
2 [16] Candidates for judicial office often receive questionnaires or requests for interviews
3 from the media and from issue advocacy or other community organizations, seeking to
4 learn their views on disputed or controversial legal or political issues. Rule 5.01(m) does
5 not generally prohibit candidates from responding to this kind of inquiry, but candidates
6 should proceed with caution if they choose to respond. Depending on the wording of the
7 questions and the format provided for answering, a candidate's responses might
8 constitute pledges, promises or commitments to perform the adjudicative duties of office
9 other than in an impartial way. In order to avoid violating Rule 5.01(m), therefore,
10 candidates who choose to respond should make clear their commitment to keeping an
11 open mind while on the bench, regardless of their own personal views.
12

13 [17] Rule 5.01(m) does not prohibit a candidate for judicial official from making public
14 statements concerning improvements to the legal system or to the administration of
15 justice.
16

17 ***Indirect Participation in Political and Campaign Activity***
18

19 [18] A candidate for judicial office should encourage members of the candidate's family
20 to adhere to the same standards of political conduct in support of the candidate as apply
21 to the candidate; should discourage employees and other court personnel from doing on
22 the candidate's behalf what the candidate is prohibited from doing under the Rules of this
23 Canon; and should not authorize or knowingly permit any other person, ~~other than~~
24 ~~members of the candidate's campaign committee~~, to do for the candidate what the
25 candidate is prohibited from doing under the Rules of this Canon. However, members of a
26 candidate's duly-created campaign committee are permitted to engage in solicitation and
27 other fund-raising activities that would not be permitted to the candidate himself or
28 herself.
29
30

31 **Rule 5.02. Permitted Political Activities of CANDIDATES for Judicial Office in**
32 **Partisan PUBLIC ELECTIONS.**
33

34 **Notwithstanding any restrictions set forth in Rule 5.01, CANDIDATES for judicial**
35 **office in a partisan PUBLIC ELECTION may:**
36

- 37 (a) **publicly identify themselves as CANDIDATES of a POLITICAL**
38 **ORGANIZATION;**
39
40 (b) **seek or use endorsements from any individual or organization,**
41 **including a POLITICAL ORGANIZATION;**
42
43 (c) **establish a campaign committee pursuant to the provisions of Rule**
44 **5.06;**
45

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

- 1 (d) **communicate with the public by speaking on their own behalf, or**
2 **through any media, including, but not limited to, advertisements,**
3 **websites, or campaign literature;**
4
5 (e) **publicly endorse or publicly oppose other CANDIDATES for a position**
6 **on the same court for which they are running.**
7

8 **Comments:**
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**
30 **office 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;**
41
42 (d) **publicly endorse or publicly oppose other CANDIDATES for a position**
43 **on the same court for which they are running.**
44

45 **Comments:**

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1
2 [1] In non-partisan public elections for judicial office, candidates may not accept
3 nominations by a particular political organization. Most of the restrictions on political
4 activities set forth in Rule 5.01 continue to apply to candidates for judicial office running
5 in non-partisan elections.

6
7 [2] Rule 5.03(a) would operate to prohibit a non-partisan candidate from filling out a
8 questionnaire if he or she knows or has reason to know that the purpose of the
9 questionnaire is for a political organization to decide whom to endorse in a non-partisan
10 judicial election.

11
12 [3] Although candidates in non-partisan public elections for judicial office are prohibited
13 from running on a ticket or slate associated with a political organization, individual
14 candidates may group themselves into slates or other alliances in order to conduct their
15 campaigns more effectively. For purposes of Rule 5.03(d), candidates who have grouped
16 themselves together in this fashion are considered to be running for a position on the
17 same court if they are competing for a single judgeship, or if several judgeships on the
18 same court are to be filled as a result of the election.

19
20
21 **5.04. Permitted Political Activities of CANDIDATES for Judicial Office in Retention**
22 **Elections.**

23
24 **Notwithstanding any restrictions set forth in Rule 5.01, CANDIDATES for judicial**
25 **office in a retention election may:**

- 26
27 (a) **seek or use endorsements from any individual or organization, other**
28 **than a POLITICAL ORGANIZATION;**
29
30 (b) **establish a campaign committee pursuant to the provisions of Rule**
31 **5.06;**
32
33 (c) **communicate with the public by speaking on their own behalf, or**
34 **through any media, including, but not limited to, advertisements,**
35 **websites, or campaign literature [OR Alt. (c)];**
36
37 (d) **publicly endorse or publicly oppose other CANDIDATES for a position**
38 **on the same court for which they are running.**
39

40 **Comments:**

41
42 [1] Candidates for judicial office who are subject to retention election are sometimes
43 publicly supported or opposed by individuals or organizations, including political
44 organizations. Retention election candidates are not permitted to seek endorsements from
45 political organizations, however, or to use such endorsements to further their campaigns.

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1
2 [2] Candidates running in retention elections are by definition sitting as judges during the
3 period of their candidacies. Moreover, opposition to a candidate for retention sometimes
4 focuses on particular decisions that the candidate has made as a judge, or even on cases
5 that are pending before the judge during the campaign period. In the course of their
6 campaigns, therefore, retention election candidates should be especially mindful of their
7 obligations not to make comments that might affect the outcome or impair the fairness of
8 a proceeding and not to make pledges, promises or commitments that are inconsistent
9 with the impartial performance of the adjudicative duties of the office. See Rules 5.01(k)
10 and 5.01(m).

11
12
13 **Rule 5.05. Permitted Activities of CANDIDATES for Appointive Judicial Office.**

14
15 **Notwithstanding any restrictions set forth in Rule 5.01, CANDIDATES for**
16 **appointment to judicial office may:**

- 17
18 (a) **communicate with the appointing or confirming authority, including any**
19 **selection, screening, or nominating commission or similar agency;**
20
21 (b) **seek or use endorsements for the appointment from any individual or**
22 **organization, other than a political organization.**

23
24 **Comments:**

25
26 [1] Candidates for appointive judicial office have no need to raise or spend campaign
27 funds. Accordingly, they are not only prohibited from personally soliciting or personally
28 accepting such funds, see Rule 5.01(h), but they are also prohibited from establishing
29 campaign committees for this purpose.

30
31 [2] When seeking support or endorsement from others, or when communicating directly
32 with an appointing or confirming authority, candidates for appointive judicial office must
33 not make any pledges, promises or commitments that are inconsistent with the impartial
34 performance of the adjudicative duties of the office. See Rule 5.01, Comments [15] and
35 [16].

36
37 **Rule 5.06. Campaign Committees.**

- 38
39 (a) **CANDIDATES for judicial office subject to PUBLIC ELECTIONS may**
40 **establish campaign committees to conduct campaigns for the**
41 **CANDIDATE, subject to the regulations contained in this Rule. The**
42 **CANDIDATE is responsible for ensuring that the committee complies**
43 **with these regulations, and with other applicable LAW.**
44

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

- 1 **(b) Campaign committees may solicit and accept reasonable campaign**
2 **contributions, not to exceed, in the aggregate, [\$ ___] from any**
3 **individual or [\$ ___] from any entity or organization. Such**
4 **committees may also manage the campaign, including the expenditure**
5 **of funds.**
- 6
- 7 **(c) A campaign committee shall not solicit or accept contributions for a**
8 **CANDIDATE’S current campaign more than [one year] prior to a**
9 **scheduled election, nor more than [90] days after the last election in**
10 **which the CANDIDATE participated.**
- 11
- 12 **(d) In addition to complying with all applicable statutory requirements**
13 **for disclosure of campaign contributions, a campaign committee**
14 **established by a CANDIDATE for judicial office shall file with [name of**
15 **appropriate regulatory authority] a report stating the name, address,**
16 **occupation and employer of each person who has made campaign**
17 **contributions to the committee in an aggregate value exceeding [\$ ___].**
18 **The report must be filed within [___] days following an election, or**
19 **within such other period as is required by LAW.**
- 20

21 **Comments:**

22

23 [1] Candidates for judicial office are prohibited from personally raising campaign funds.
24 See Rule 5.01(h). Nonetheless, Rule 5.06 recognizes that in many jurisdictions
25 candidates for judicial office must raise campaign funds to support their candidacies, and
26 therefore permits candidates, other than candidates for appointive judicial office, to
27 establish campaign committees to solicit and accept reasonable financial contributions.

28

29 [2] Campaign committees established by candidates for judicial office not only solicit
30 and accept campaign contributions, but manage the expenditure of campaign funds and
31 generally conduct the campaign. Candidates, however, are ultimately responsible for the
32 actions of their campaign committees, including compliance with this Code and with the
33 requirements of election law and other applicable law.

34

35 [3] At the start of a campaign, candidates must instruct their campaign committees to
36 solicit or accept only such contributions as are reasonable in amount, appropriate under
37 the circumstances, and in conformity with governing law. Although lawyers and others
38 who might appear before a successful candidate for judicial office are permitted to make
39 campaign contributions, candidates should instruct their campaign committees to be
40 especially cautious with respect to such contributions, lest they create grounds for
41 disqualification. Compare Rule 2.12.

42

43

44

45 **Rule 5.07. Activity of Judges Who Become CANDIDATES for Non-Judicial Office.**

**June 30, 2005 Preliminary Draft redlined to 2nd web posting
Canon 5**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- (a) Upon becoming a CANDIDATE for a non-judicial elective office, a judge shall resign from judicial office, except that the judge may continue to hold judicial office while being a CANDIDATE for election to, or serving as a delegate in, a state constitutional convention if the judge is otherwise permitted by LAW to do so.**

- (b) Upon becoming a CANDIDATE for a non-judicial appointive office, a judge is not required to resign from judicial office and is permitted to engage in the activities permitted for CANDIDATES for appointive judicial office by Rule 5.05.**

Comments:

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