

# AJS Comments on Final Draft Report

Submitted to the ABA Joint Commission to  
Evaluate the Model Code of Judicial Conduct  
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## CANON 3

**PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AFFAIRS TO PRESERVE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY.**

### **RULE 3.01: MISUSING THE PRESTIGE OF JUDICIAL OFFICE**

Except as otherwise allowed by this code, a judge shall not lend misuse the prestige of judicial office to advance the personal interests of the judge or others, or allow others to do so.

### **COMMENT**

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judgeship to gain favorable treatment when stopped by a police officer for a traffic offense. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] 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 judicial position, the judge must not use 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 to write the recommendation on official or personal letterhead, the judge should carefully consider whether use of official letterhead might reasonably be perceived as an attempt to exert pressure by reason of his or her judicial office. The judge should avoid use of the office letterhead if the judge concludes that there is a likelihood of such a perception.~~

[3] 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 ~~[from a sentencing judge or a probation or corrections officer].~~

[4] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional merit of a person being considered for a judgeship.

[5] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or 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.

### **RULE 3.02: TESTIFYING AS A CHARACTER WITNESS**

A judge shall not testify as a character witness, except when properly summoned.

#### **COMMENT**

[1] A judge who, without being subpoenaed, testifies as a character witness misuses the prestige of judicial office to advance the interests of another. See Rule 3.01. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

[2] This prohibition applies to all adjudicative proceedings including disciplinary matters, and includes communication of character information through any method to a sentencing judge or a probation, parole, or corrections officer although a judge may provide to such persons other information for the record in response to a formal request.

### **RULE 3.03: USE OF NONPUBLIC INFORMATION\***

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

#### **COMMENT**

[1] In the course of performing their judicial duties, judges may acquire information of commercial or other value that is 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 3.04: AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

(A) 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. A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows\* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of a group that he or she should not join as a member under this Rule is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization.

#### **COMMENT**

[1] Public manifestation by a judge of the judge's approval of invidious discrimination on any basis gives rise to the appearance of impropriety in violation of Rule 1.01 and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members, and other relevant factors, such as whether the organization stigmatizes excluded persons as inferior and odious or perpetuates and celebrates cultures, historical events, and ethnic or religious beliefs, identities, or traditions ~~is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members,~~ or whether it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.