

1 **DISCIPLINE COMMITTEE DRAFT**

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3 **JULY 2004 PRELIMINARY DRAFT**

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6 **CANON 3: PERSONAL CONDUCT: A JUDGE SHALL CONDUCT THE**
7 **JUDGE'S PERSONAL AFFAIRS TO PRESERVE THE INTEGRITY,**
8 **IMPARTIALITY AND INDEPENDENCE OF THE JUDICIARY**
9

10 **Rule 3.01 Using the Judicial Office for Personal Purposes. A**
11 **judge shall not allow his or her financial, political or other**
12 **personal interests or relationships to influence his or her**
13 **judicial conduct or judgment, nor shall a judge lend the**
14 **prestige of judicial office, or allow others to do so, to advance**
15 **the personal interests of the judge or others.**

16 **Commentary**

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

23 [2] It would be improper for a judge to use or attempt to use his or
24 her office to gain personal advantage or deferential treatment of
25 any kind. Similarly, a judge must not use judicial letterhead to gain
26 an advantage in conducting his or her personal business.²

27 [3] Special considerations arise when judges write or contribute to
28 publications, whether related or unrelated to the law. A judge
29 should not permit anyone associated with the publication of such
30 materials to exploit the judge's office in a manner that violates
31 these Canons, Rules or other applicable law. Such prohibited
32 conduct includes, but is not limited to, allowing the publisher to
33 praise the judge's judicial accomplishments or, when the work is
34 unrelated to the law, to emphasize the judge's position.³

35 [4] Judges may participate in the process of judicial selection by
36 cooperating with appointing authorities and screening committees,
37 and by responding to those official inquiries concerning the
38 professional merit of a person being considered for a judgeship.⁴

¹ Canon 2B commentary

² Canon 2B commentary

³ Canon 2B commentary

⁴ Canon 2B commentary

1 [5] A judge may provide a reference or recommendation for an
2 individual based upon the judge's personal knowledge. However,
3 unless the recommendation is based upon information obtained
4 through the judge's expertise or experience as a judge, the
5 reference or recommendation should not be communicated on the
6 judge's judicial letterhead.
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8 [6] This rule does not apply to a judge's use of his or her name in
9 endorsements of himself or herself, or of other judicial candidates
10 as permitted in Canon 5.⁵

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

14 **Commentary**

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

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

27 **Commentary**⁸

28 [1] A judge's membership in an organization that practices invidious
29 discrimination gives rise to perceptions that the judge's impartiality
30 is impaired. Whether an organization's practices are invidiously
31 discriminatory is often a complex question. An organization is
32 generally said to discriminate invidiously if it arbitrarily excludes
33 from membership on the basis of race, religion, gender, national
34 origin, ethnicity or sexual orientation those individuals who would
35 otherwise be admitted. Rule 3.03 does not prohibit a judge's
36 membership in any United States military organization, an
37 organization dedicated to the preservation of religious, ethnic or
38 legitimate cultural values of common interest to its members, or one

⁵ Canon 2B commentary

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.

1 that is in fact and effect an intimate, purely private organization
2 whose membership limitations could not be constitutionally
3 prohibited.

4 [2] Public manifestation by a judge of the judge's approval of
5 invidious discrimination on any basis constitutes the appearance of
6 impropriety in violation of Rule 1.01 and diminishes public
7 confidence in the integrity and impartiality of the judiciary in
8 violation of Canon 1. Rule 3.03 relates only to organizations
9 invidiously discriminating on the basis of race, gender, religion,
10 national origin, ethnicity, or sexual orientation. However, a judge's
11 membership in or significant use of the benefits or facilities of
12 organizations practicing invidious discrimination on any other basis
13 prohibited by applicable law also creates the appearance of
14 impropriety in violation of Rule 1.01.

15 [3] Whether a judge's use of the benefits and facilities of a
16 discriminatory organization is significant depends on whether the
17 frequency or nature of that use is sufficient to create the impression
18 that the judge approves of the organization and its practices.
19 Accordingly, a judge must not arrange a meeting, regularly attend
20 events at, or regularly use other benefits and facilities of such an
21 organization that the judge knows practices invidious discrimination
22 on the basis of race, gender, religion, national origin, ethnicity or
23 sexual orientation in its membership or other policies.

24 [4] When a judge learns that an organization to which the judge
25 belongs engages in invidious discrimination that would preclude
26 membership under Rule 3.03 or under Canon 1 and Rule 1.01, the
27 judge is permitted, in lieu of resigning, to make immediate efforts to
28 have the organization discontinue its invidiously discriminatory
29 practices, but is required to suspend participation in any other
30 activities of the organization. If the organization fails to discontinue
31 its invidiously discriminatory practices as promptly as possible (and
32 in all events within a year of the judge's first learning of the
33 practices), the judge is required to resign immediately from the
34 organization.
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