

1 DISCIPLINE COMMITTEE DRAFT

2 July 2004 PRELIMINARY DRAFT

3
4 **CANON 4: EXTRA-JUDICIAL CONDUCT: A JUDGE SHALL**
5 **CONDUCT EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE**
6 **RISK OF CONFLICT WITH HIS OR HER JUDICIAL**
7 **OBLIGATIONS¹**

8 **Rule 4.01 Extra-judicial Activities in General. A judge shall**
9 **conduct extra-judicial activities so that they:²**

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

12 **(b) do not cast reasonable doubt on the judge's**
13 **capacity to act with impartiality, integrity and**
14 **independence;⁴**

15 **(c) do not demean the judicial office; and⁵**

16 **(d) otherwise comply with the requirements of this**
17 **Code.**

18 **Commentary:**

19
20 [1] Complete separation of a judge from extra-judicial activities is
21 neither possible nor wise; a judge should not become isolated from
22 the community in which the judge lives.⁶

23
24 [2] Expressions of bias or prejudice by a judge, even outside the
25 judge's judicial activities, cast reasonable doubt on the judge's
26 capacity to act impartially as a judge. Expressions which may do so
27 include jokes or other remarks demeaning individuals on the basis
28 of their race, gender, religion, ethnicity, national origin, disability,
29 age, sexual orientation or socioeconomic status. See Rule 3.03 and
30 accompanying Commentary.⁷

31
32 [3] As a judicial officer and person specially learned in the law, a
33 judge is uniquely in a position to contribute to the improvement of

¹ Canon 4

² Canon 4A

³ Canon 4A(3)

⁴ Canon 4A(1)

⁵ Canon 4A(2)

⁶ Canon 4A commentary

⁷ Canon 4A commentary

1 the law, the legal system, and the administration of justice,
2 including the revision of substantive and procedural law and the
3 improvement of the justice system. Such contributions may take the
4 form of speaking, writing, teaching or participating in other
5 extrajudicial activities. In many instances, these activities may
6 contribute significantly to the promotion of the fair administration of
7 justice and to ensuring the integrity, independence and impartiality
8 of the judiciary. To the extent that time permits, a judge is
9 encouraged to undertake such activities, either independently or
10 through a bar association, judicial conference or other organization.

11

12 **Rule 4.02 Appearances Before Governmental Entities. A judge**
13 **shall not appear at a public hearing before, or otherwise**
14 **consult with, an executive or legislative body or official**
15 **except:⁸**

16 (a) on matters concerning the law*, the legal system or
17 the administration of the judicial system;⁹

18 (b) on other matters that might reasonably merit the
19 attention and comment of the judge because of knowledge or
20 expertise acquired in the course of the judge's judicial duties;
21 or

22 (c) when acting pro se in a matter involving the judge or
23 the judge's personal interests.¹⁰

24

25 **Commentary:**

26

27 [1] Judges possess special expertise on matters of law, the legal
28 system and the administration of justice, and may properly share
29 that expertise with governmental bodies. In addition, judges may
30 acquire information on issues before them that are not law-related
31 but upon which they may be well qualified to comment from their
32 unique vantage point as jurists who have presided over such
33 matters in court. For example, a juvenile court judge may be
34 uniquely situated to comment to a public body on the potential
35 benefits of proposed improvements in the community, such as the
36 creation of new athletic or other recreational opportunities that
37 could lead to a decrease in delinquency among juveniles. Judges
38 must be mindful, however, that their appearance before
39 governmental bodies remains subject to other provisions of this
40 Code, such as Rule 2.11, governing public comment on pending
41 and impending matters, and Rule 4.01(b), prohibiting judges from

⁸ Canon 4C(1) partial

⁹ Canon 4C(1) partial

¹⁰ Canon 4C(1) partial

1 engaging in extra-judicial activities that cast reasonable doubt on
2 the judges' impartiality, integrity and independence.

3
4 [2] In general, it would be an unnecessary and unfair burden to
5 prohibit judges from appearing before governmental bodies on
6 matters that are likely to have special effect upon them as private
7 citizens, for example, zoning proposals that will affect their real
8 property or proposals having to do with the availability of local
9 health services. The judge must exercise care, however, not to lend
10 the prestige of judicial office to advance general causes with
11 respect to which he or she possesses no special judicial
12 competence. See Rules 2.10 and 3.01 and Commentary regarding
13 the obligation to avoid improper influence.¹¹

14
15 **Rule 4.03 Appointments to Governmental Entities. A judge**
16 **shall not accept appointment to a governmental committee or**
17 **commission or other governmental entity if that appointment**
18 **is likely to interfere with the effective operation of the courts**
19 **and if the government entity is concerned with issues of fact**
20 **or policy on matters other than the improvement of the law,***
21 **the legal system or the administration of justice.**

22
23 **Commentary:**

24 [1] Judges must also avoid appointments that are likely to
25 embroil the court in controversial issues or impair the
26 impartiality, integrity and independence of the judiciary.¹² A
27 judge may, however, represent a country, state or locality on
28 ceremonial occasions or in connection with historical,
29 educational or cultural activities.¹³

30
31 **Rule 4.04 Civic or Charitable Activities. A judge may participate in civic or**
32 **charitable activities that do not reflect adversely upon a judge's**
33 **impartiality, integrity and independence, or interfere with the performance**
34 **of judicial duties.¹⁴**

35 a. ¹⁵ **A judge may serve as an officer, director, trustee, or non-legal**
36 **advisor of an organization or governmental entity devoted to the**
37 **improvement of the law,* the legal system or the administration of**
38 **justice or of an educational, religious, charitable, fraternal or civic**
39 **organization not conducted for profit, unless it is likely that the**
40 **organization or governmental entity:¹⁶**

¹¹ Canon 4C(1) commentary

¹² Canon 4C(2) commentary

¹³ Canon 4C(2)

¹⁴ Canon 4C(3) (see rule 4.04(b) for deleted portions of this rule)

¹⁵ Canon 4C(3)(a)

¹⁶ Canon 4C(3)

1
2 **(1) will be engaged in proceedings that would**
3 **ordinarily come before the judge, or¹⁷**
4

5 **(2) will be engaged frequently in adversary**
6 **proceedings in the court of which the judge is a**
7 **member or in any court subject to the appellate**
8 **jurisdiction of the court of which the judge is a**
9 **member.¹⁸**
10

11 **Commentary:**
12

13 [1] A judge should be permitted to participate in civic, fraternal or
14 charitable activities for the benefit of the community of which the
15 judge is a part, provided that such participation does not take
16 inappropriate advantage of the judge's judicial position, otherwise
17 interfere with the performance of the judge's judicial duties or
18 inappropriately involve the judge in the political agenda(s) of the
19 entities described in this Rule that would result in violations of other
20 provisions of this Code.
21

22 [2] A judge participating in civic, fraternal or charitable activities as
23 permitted by this Rule shall not use or permit the use of the prestige
24 of judicial office for fundraising or membership solicitation. The
25 judge shall not personally solicit funds for the organization or
26 personally participate in membership solicitation if the solicitation is
27 primarily a fundraising mechanism or might reasonably be
28 perceived as coercive. Personal solicitation involves written as well
29 as in person solicitation. Solicitation of funds for an organization by
30 a judge involves the danger that the person solicited will feel
31 obligated to respond favorably because the judge/solicitor is in a
32 position of influence or control.¹⁹ A judge may, however, make
33 recommendations to public and private fund-granting organizations
34 on programs and activities concerning the law, the legal system or
35 the administration of justice.

36 [3] Lawyer and judicial organizations with diverse memberships,
37 whose members are balanced in representing all parties in
38 litigation, often include judges in their leadership. Judges may be
39 involved in member recruitment for such organizations even though
40 the dues or fees associated with membership may be used, in part,
41 as fundraising to support the objectives of those organizations.²⁰

¹⁷ 4C(3)(a)(i)

¹⁸ Canon 4C(3)(a)(ii)

¹⁹ Canon 4C(3)(b) commentary partial

²⁰ Canon 4C(3)(b) commentary

1 [4] Judges are an integral part of the legal community and may
2 participate as judges in the activities of organizations within the
3 legal community without inappropriately lending the prestige of
4 office to those activities, even when they serve a fundraising
5 purpose. Therefore, a judge may, for example, accept an invitation
6 to speak at or be recognized or honored at an event hosted by a
7 legal organization, law school, or other entity devoted to improving
8 the law, the legal system or the administration of justice, even if
9 such an event raises funds for the benefit of the sponsoring
10 organization.

11
12 [5] A judge must make reasonable efforts to ensure that the
13 judge's staff, court officials and others subject to the judge's
14 direction and control do not solicit funds on the judge's behalf for
15 any purpose, charitable or otherwise.²¹

16 [6] This Rule does not prohibit a judge's service in a governmental
17 entity associated with the improvement of the law, the legal system
18 or the administration of justice. See Rule 4.03.²²

19 [7] Service by a judge on behalf of a civic, fraternal or charitable
20 organization may be governed by other provisions of Canon 4 in
21 addition to Rules 4.02, 4.03 and 4.04. For example, a judge is
22 prohibited by Rule 4.07 from serving as a legal advisor to a civic,
23 fraternal or charitable organization.²³

24
25 [8] The changing nature of some organizations and of their
26 relationship to the law makes it necessary for a judge regularly to
27 reexamine the activities of each organization with which the judge
28 is associated to determine if it is proper for the judge to continue
29 the affiliation.²⁴

30 [9] 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,
36 unless it were a law school, would be prohibited under Rule 4.03,
37 but service on the board of a public law school or any private legal
38 institution would generally be permitted under this Rule.²⁵

39

²¹ Canon 4C(3)(b) commentary

²² Canon 4C(3)(b) commentary

²³ Canon 4C(3) commentary

²⁴ Canon 4C(3)(a) commentary

²⁵ Canon 4C(2) commentary

1 **Rule 4.05 Appointments to Fiduciary Positions.**

2 (a) A judge shall not serve as executor,
3 administrator or other personal representative,
4 trustee, guardian, attorney in fact or other
5 fiduciary,* except for the estate, trust or person of
6 a member of the judge's family,* and then only if
7 such service will not interfere with the proper
8 performance of judicial duties.²⁶

9 (b) A judge shall not serve as a fiduciary* if it is
10 likely that the judge as a fiduciary will be engaged
11 in proceedings that would ordinarily come before
12 the judge, or if the estate, trust or ward becomes
13 involved in adversary proceedings in the court on
14 which the judge serves or one under its appellate
15 jurisdiction.²⁷

16 (c) The same restrictions on financial activities
17 that apply to a judge personally also apply to the
18 judge while acting in a fiduciary* capacity.²⁸

19 **Commentary:**

20 [1] The Time for Compliance provision of this Code (Application,
21 Section F) postpones the time for compliance with certain
22 provisions of this Rule in some cases.²⁹

23 [2] The restrictions imposed by this Rule may conflict with the judge's
24 obligation as a fiduciary. For example, a judge should resign as trustee if
25 detriment to the trust would result from divestiture of holdings the retention
26 of which would place the judge in violation of Rule 4.11, or require
27 frequent disqualification.
28
29
30

31 **Rule 4.06 Service as Arbitrator or Mediator. A judge shall not**
32 **act as an arbitrator or mediator or otherwise perform judicial**
33 **functions in a private capacity unless expressly authorized by**
34 **law*.³⁰**

35 **Commentary:**

36 [1] Judges regularly participate in arbitration, mediation or
37 settlement conferences, either as part of their regular duties or as
38 specially authorized by court rule or other law. The integrity of the
39

²⁶ Canon 4E(1)

²⁷ Canon 4E(2)

²⁸ Canon 4E(3)

²⁹ Canon 4E commentary

³⁰ Canon 4F

1 judiciary is undermined, however, when judges take financial
2 advantage of their offices by rendering private dispute resolution
3 services for pecuniary gain as an extra-judicial activity. In such
4 circumstances, the prestige of the judicial office would be used to
5 advance the personal financial gain of the judge.
6

7 [2] Rule 4.06 does not prohibit a judge from participating in
8 arbitration, mediation or settlement conferences performed as part
9 of judicial duties.³¹
10

11 **Rule 4.07 Testifying as a Character Witness. A judge shall not**
12 **testify as a character witness, except when properly**
13 **summoned.**³²

14 **Commentary**

15 [1] When a judge testifies as a witness, a lawyer who regularly
16 appears before the judge may be placed in the awkward position of
17 cross-examining the judge. In addition, a judge who testifies
18 voluntarily as a character witness, lends the prestige of judicial
19 office to advance the interests of another. See Rule 3.01. Except in
20 unusual circumstances where the demands of justice require, a
21 judge should discourage a party from requiring the judge to testify
22 as a character witness.³³

23
24 **Rule 4.08 Practice of Law. A judge shall not practice law.**
25 **Notwithstanding this prohibition, a judge may act pro se and**
26 **may, without compensation, give legal advice to and draft or**
27 **review documents for a member of the judge's family.**³⁴
28

29 **Commentary:**

30
31 [1] This prohibition refers to the practice of law in a representative
32 capacity and not in a pro se capacity. A judge may act for himself or
33 herself in all legal matters, including matters involving litigation and
34 matters involving appearances before or other dealings with
35 legislative and other governmental bodies. However, in so doing, a
36 judge must not abuse the prestige of office to advance the interests
37 of the judge or the judge's family. See Rule 3.01.³⁵
38

³¹ Canon 4F commentary

³² Canon 2B partial

³³ Canon 2B commentary

³⁴ Canon 4G

³⁵ Canon 4G commentary

1 [2] This Rule allows a judge to give legal advice to and draft legal
2 documents for members of the judge's family, so long as the judge
3 receives no compensation. A judge must not, however, act as an
4 advocate or negotiator for a member of the judge's family in a legal
5 matter.³⁶
6

7 **Rule 4.09 Financial Activities. A judge shall not engage in**
8 **financial and business dealings that:**³⁷

9 (a) may reasonably be perceived to exploit
10 the judge's judicial position, or³⁸

11 (b) involve the judge in transactions or
12 business relationships with those lawyers
13 or other persons likely to come before the
14 court on which the judge serves.³⁹

15 **Commentary:**

16
17 [1] When a judge acquires information in a judicial capacity, such
18 as material contained in filings with the court, that is not yet
19 generally known, the judge must not use the information for private
20 gain. See Rule 3.01; see also Rule 3.02.⁴⁰
21

22 [2] A judge must avoid financial and business dealings that involve
23 the judge in transactions or business relationships with persons
24 likely to come either before the judge personally or before other
25 judges on the judge's court. In addition, a judge should discourage
26 members of the judge's family from engaging in dealings that would
27 reasonably appear to exploit the judge's judicial position. This rule
28 is necessary to avoid creating an appearance of exploitation of
29 office or favoritism and to minimize the potential for disqualification.
30 With respect to affiliation of relatives of a judge with law firms
31 appearing before the judge, see Commentary to Rule 2.12 relating
32 to disqualification.⁴¹
33

34 [3] Participation by a judge in financial and business dealings is
35 subject to the general prohibitions in Rule 4.01 against activities
36 that tend to reflect adversely on impartiality, demean the judicial
37 office, or interfere with the proper performance of judicial duties.
38 Such participation is also subject to the general prohibition in
39 Canon 1 and Rule 1.01 against activities involving impropriety or

³⁶ Canon 4G commentary

³⁷ Canon 4D(1)

³⁸ Canon 4D(1)(a)

³⁹ Canon 4D(1)(b)

⁴⁰ Canon 4D(1) commentary

⁴¹ Canon 4D(1) commentary

1 the appearance of impropriety and the prohibition in Rule 3.01
2 against the misuse of the prestige of judicial office. In addition, a
3 judge must maintain high standards of conduct in all of the judge's
4 activities, as set forth in Canon 1.⁴²

5

6 **Rule 4.10 Remunerative Activities. A judge may, subject**
7 **to the requirements of this Code, hold and manage his**
8 **or her investments and those of members of the judge's**
9 **family* and engage in other remunerative activity.**⁴³

10 **Commentary:**

11

12 [1] This Rule provides that, subject to the requirements of this
13 Code, a judge may hold and manage investments owned solely by
14 the judge, investments owned solely by a member or members of
15 the judge's family, and investments owned jointly by the judge and
16 members of the judge's family. The term "investments"
17 encompasses real estate.

18

19 **Rule 4.11 Management and Divestiture of Investments.**
20 **A judge shall manage the judge's investments and other**
21 **financial interests to minimize the number of cases in**
22 **which the judge is disqualified. As soon as the judge**
23 **can do so without serious financial detriment, the judge**
24 **shall divest himself or herself of investments and other**
25 **financial interests that might require frequent**
26 **disqualification.**⁴⁴

27 **Commentary**

28 [1] Judges shall not allow their financial activities to interfere
29 with their duty to preside over cases that come before them.
30 Although some disqualifications will be unavoidable, judges
31 must reduce unnecessary conflicts of interest that arise
32 when they retain financial interests in organizations and
33 other entities that appear regularly in their courts, by
34 divesting themselves of such interests.

35 [2] Financial interests, within the meaning of this Rule,
36 include the interests of others whom the judge serves as a
37 fiduciary under Rule 4.05.

⁴² Canon 4D(1) commentary

⁴³ Canon 4D(2)

⁴⁴ Canon 4D(4)

1 **Rule 4.12 Business Activities. A judge shall not serve**
2 **as an officer, director, manager, general partner, advisor**
3 **or employee of any for-profit entity except that a judge**
4 **may, subject to the requirements of this Code, manage**
5 **and participate in:**⁴⁵

6 **(a) a for-profit entity closely held by the judge or**
7 **members of the judge's family,* or**⁴⁶

8 **(b) a for-profit entity primarily engaged in**
9 **investment of the financial resources of the judge**
10 **or members of the judge's family.**⁴⁷

11 **Commentary:**

12
13 [1] Although participation by a judge in a closely-held family for-
14 profit business might otherwise be permitted by Rule 4.12, a judge
15 may be prohibited from participation by other provisions of this
16 Code when, for example, the business entity regularly appears
17 before the judge's court or the participation requires significant time
18 away from judicial duties. Similarly, a judge must avoid participating
19 in a closely-held family business if the judge's participation would
20 involve misuse of the prestige of judicial office.⁴⁸

21 **4.13, 4.14 and 4.15, pertaining to gifts,**
22 **compensation, reimbursement, reporting**
23 **and disclosure will be distributed at a later**
24 **date under separate cover**

25

26 I:/users/libcpr/ethics/jud-comm/code revision 2003-2004/drafts

⁴⁵ Canon 4D(3)

⁴⁶ Canon 4D(3)(a)

⁴⁷ Canon 4D(3)(b)

⁴⁸ Canon 4D(3) commentary