

1 DISCIPLINE COMMITTEE DRAFT

2  
3 **CANON 5 (gak 090804)**

4  
5 **A JUDGE OR JUDICIAL CANDIDATE SHALL REFRAIN FROM**  
6 **INAPPROPRIATE POLITICAL ACTIVITY**

7  
8 **Rule 5.01 Political Activity in General.**

9  
10 **(a) When engaging in political activity, a judge or candidate for judicial**  
11 **office shall:**

- 12 (1) **maintain the dignity appropriate to judicial office;**  
13 (2) **act in a manner consistent with the impartiality,**  
14 **integrity and independence of the judiciary; and**  
15 (3) **encourage members of his or her family acting in**  
16 **support of the judge or candidate to adhere to the**  
17 **same standards of political conduct set forth in this**  
18 **Code and applicable law.**

19  
20 **(b) A judge shall not engage in any political activity except:**

- 21  
22 (1) **as authorized by this Code;**  
23 (2) **on behalf of measures to improve the law, the legal system**  
24 **or the administration of justice; or**  
25 (3) **as expressly authorized by law.<sup>2</sup>**

26  
27 **(c) Except as otherwise provided in this Code, a judge shall not:**

- 28 (1) **act as a leader or hold an office in a political**  
29 **organization;**  
30 (2) **publicly endorse or publicly oppose another candidate for**  
31 **public office;**  
32 (3) **make speeches on behalf of a political organization;**  
33 (4) **attend political gatherings; or**  
34 (5) **solicit funds for, pay an assessment to or make a**  
35 **contribution to a political organization or candidate,**  
36 **or purchase tickets for political party dinners or other**  
37 **functions.<sup>3</sup>**

38  
39 **Commentary:**  
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<sup>1</sup> Canon 5A(3) (expanded to include all judges)

<sup>2</sup> Canon 5D

<sup>3</sup> Canon 5A(1)(a)-(e)

1 [1] A judge or candidate for judicial office retains the right to participate in the political  
2 process as a voter.<sup>4</sup> To ensure that both the judge and the candidate maintain the  
3 appearance and the reality of judicial independence, impartiality and integrity, these  
4 Rules impose certain limitations on other political activities of judges.

5  
6 [2] Whereas membership in a political party alone need not carry with it a suggestion  
7 that a member concurs with any specific political position adopted by the party, a judge's  
8 assumption of a role as a political party leader creates a concern that the judge's loyalty  
9 to the party and a concurrent obligation to support its policies would undermine his or her  
10 impartiality and independence in judicial matters. Service as an officer of a political  
11 organization is therefore prohibited by Rule 5.02.

### 12 13 14 15 **Rule 5.02 Campaign Speech.**

16  
17 **A candidate for judicial office shall not:**

- 18  
19 (a) **with respect to cases, controversies, or issues that are likely to**  
20 **come before the court, make pledges, promises, or**  
21 **commitments that are inconsistent with the impartial**  
22 **performance of the adjudicative and administrative duties of**  
23 **the office; or**  
24  
25 (b) **knowingly misrepresent the identity, qualifications, present**  
26 **position or other fact concerning the candidate or a**  
27 **candidate's an opponent(s).**<sup>5</sup>

### 28 29 **Commentary**

30  
31 [1] ~~Section 5A(3)(d)~~ **Rule 5.02** prohibits a candidate for judicial office from making  
32 statements that commit the candidate regarding cases, controversies or issues likely to  
33 come before the court. As a corollary, a candidate should emphasize in any public  
34 statement the candidate's duty to uphold the law regardless of his or her personal views.  
35 See also **Rule 2.11(a) and (b)** Sections 3B(9) and (10), the general rules on public  
36 comment by judges. **Rule 5.02** ~~Section 5A(3)(d)~~ does not prohibit a candidate from  
37 making pledges and promises respecting improvements in court administration. Nor does  
38 this Rule prohibit an incumbent judge from making private statements to other judges or  
39 court personnel in the performance of judicial duties. This Rule applies to any statement  
40 made in the process of securing judicial office, such as statements to commissions  
41 charged with judicial selection and tenure and legislative bodies confirming  
42 appointments. See also Rule 8.2 of the ABA Model Rules of Professional Conduct.<sup>6</sup>

<sup>4</sup> Canon 5A Commentary, paragraph [1]

<sup>5</sup> Canon 5A(3)(d)

<sup>6</sup> Canon 5A(3)(d) Commentary

1  
2  
3 [2] Rule 5.02 ~~Section 5A(1)(b)~~ does not prohibit a judge or judicial candidate from  
4 privately expressing his or her views on judicial candidates or other candidates for public  
5 office.<sup>7</sup>  
6  
7

8 **Rule 5.03 Response to Personal Attacks.**  
9

10 **Notwithstanding the prohibitions of Rule 5.02, a judge or candidate for judicial**  
11 **office may respond to personal attacks on the candidate's record, provided that as**  
12 **long as the response does not violate ~~Section 5A(3)(d)~~ Rule 5.02 and conforms with**  
13 **the requirements of Rule 2.11 (a) & (b).**<sup>8</sup>  
14

15 **Commentary**  
16

17 [1] When false statements have been publicly made concerning a judicial candidate,  
18 responsive statements correcting such falsehoods may have the salutary effect of  
19 lessening any adverse and unfair impact upon the candidate's candidacy for judicial  
20 office. To the extent possible, however, such responses should be made on behalf of the  
21 judicial candidate by other persons, such as those serving on a candidate's campaign  
22 committee as permitted in Rule 5.07.<sup>9</sup>  
23

24 **Rule 5.04 Political Activity of Candidates Seeking Appointment to Judicial or**  
25 **Other Government Office.**  
26

27 **A candidate for appointment to judicial office or a judge seeking appointment to**  
28 **other governmental office shall not:**

29 **(a) solicit or accept funds, personally or through a committee or otherwise, to**  
30 **support his or her candidacy;**

31 **(b) engage in any political activity to secure the appointment, except that**  
32 **such persons may:**

33 **(1) communicate with the appointing authority, including any**  
34 **selection or nominating commission or other agency designated to**  
35 **screen candidates;**

36 **(2) seek support or endorsement for the appointment from**  
37 **organizations that regularly make recommendations for**  
38 **reappointment or appointment to the office, and from individuals**  
39 **to the extent requested or required by those specified in ~~Section~~**  
40 **5B(2) Rule 5.04; and**

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<sup>7</sup> Canon 5A(1) Commentary, paragraph [4]

<sup>8</sup> Canon 5A(3)(e)

<sup>9</sup> Commentary modeled on Model Rule of Professional Conduct Rule 3.6 (Trial Publicity), Commentary paragraph [7]

1 (3) provide to those specified in Sections ~~5B(2)(a)(i) and (ii)~~ **Rule 5.04**  
2 (b)(1) and (2) information as to his or her qualifications for the  
3 office.

4  
5 **(c) a non-judge candidate for appointment to judicial office may, in addition,**  
6 **unless otherwise prohibited by law,**

7 **(1) retain an office in a political organization;**

8 **(2) attend political gatherings; and**

9 **(3) continue to pay ordinary assessments and ordinary contributions**  
10 **to a political organization or candidate and purchase tickets for**  
11 **political party dinners or other functions.**<sup>10</sup>

12  
13 **Commentary**

14  
15 Section 5B(2) provides a limited exception to the restriction imposed by Rule 5.01  
16 Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the  
17 same judicial office or appointment to another judicial office or other governmental  
18 office may apply for the appointment and seek appropriate support.<sup>11</sup>

19  
20 [1] Although Rule 5.05 permits ~~under Section 5B(2)~~ non-judge candidates seeking  
21 appointment to judicial office ~~are permitted~~ **to engage in certain activities not**  
22 **permitted for candidates who are judges, such as** ~~during candidacy to retaining~~ office  
23 in a political organization, attending ~~ing~~ political gatherings, and paying ~~ing~~ ordinary dues and  
24 assessments, ~~they~~ **non-judge candidates** remain subject to other provisions of this Code  
25 during candidacy. See **Rules 5.03, 5.08 and 5.13** Sections 5B(1), 5B(2)(a), 5E and  
26 Application Section.<sup>12</sup>

27  
28 **Rule 5.05 Political Activity of Candidates Subject to Non-Partisan Public**  
29 **Election.**

30  
31 **Except as prohibited by law, a A-candidate subject to non-partisan public election**  
32 **may, except as prohibited by law:**

33 **(a) speak to gatherings on his or her own behalf;**

34 **(b) appear in print, broadcast, electronic newspaper, television and other**  
35 **media advertisements supporting his or her candidacy;**

36 **(c) distribute pamphlets and other promotional campaign literature**  
37 **supporting his or her candidacy; and**

38 **(d) publicly endorse or oppose other candidates for the same judicial**  
39 **office for which in a public election in which the judge or judicial the**  
40 **candidate is seeking election.**<sup>13</sup>

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<sup>10</sup> Canon 5B

<sup>11</sup> Canon 5B(2) Commentary, paragraph [1]

<sup>12</sup> Canon 5B(2) Commentary, paragraph [2]

<sup>13</sup> Canon 5C(1) (only (b))

1 **Rule 5.06 Political Activity of Judges and Candidates Subject to Partisan Public**  
2 **Elections.**

3  
4 **Except as prohibited by law, a A judge or a candidate subject to partisan public**  
5 **election may, except as prohibited by law:**

6 (a) when a candidate for election:

- 7 (1) purchase tickets for and attend political gatherings  
8 (2) identify himself or herself as a member of a political party;  
9 and  
10 (3) contribute to a political organization;  
11 (4) speak to gatherings on his or her own behalf;  
12 (5) appear in newspaper, television and other media  
13 advertisements supporting his or her candidacy;  
14 (6) distribute pamphlets and other promotional campaign  
15 literature supporting his or her candidacy; and  
16 (7) publicly endorse or publicly oppose other candidates for the  
17 same judicial office in a public election in which the judge or  
18 judicial candidate is seeking election.<sup>14</sup>  
19

20 **Rule 5.07 Candidacy for non-judicial elective office.**

21  
22 **A judge shall resign from judicial office upon becoming a candidate for a non-**  
23 **judicial office either in a primary or in a general election, except that the judge may**  
24 **continue to hold judicial office while being a candidate for election to or serving as a**  
25 **delegate in a state constitutional convention if the judge is otherwise permitted by**  
26 **law to do so.**<sup>15</sup>  
27

28 **Rule 5.08 Soliciting Support for Judicial Campaigns.**

29  
30 **Except as permitted under Rule 5.05(b), a A candidate shall not personally solicit or**  
31 **accept campaign contributions or personally solicit publicly stated support. A**  
32 **candidate may, however, establish committees of responsible persons to conduct**  
33 **campaigns for the candidate through media advertisements, brochures, mailings,**  
34 **candidate forums and other means not prohibited by law. Such committees may**  
35 **solicit and accept reasonable campaign contributions, manage the expenditure of**  
36 **funds for the candidate's campaign and obtain public statements of support for his**  
37 **or her candidacy. Such committees are not prohibited from soliciting and accepting**  
38 **reasonable campaign contributions and public support from lawyers. A candidate's**  
39 **committees may solicit contributions and public support for the candidate's**  
40 **campaign no earlier than [one year] before an election and no later than [90] days**  
41 **after the last election in which the candidate participates during the election year. A**

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<sup>14</sup> Canon 5C

<sup>15</sup> Canon 5A(2)

1 candidate shall not use or permit the use of campaign contributions for the private  
2 benefit of the candidate or others.<sup>16</sup>

3  
4 **Commentary**

5  
6 [1] There is a legitimate concern about a judge's impartiality when parties whose  
7 interests may come before a judge, or the lawyers who represent such parties, are known  
8 to have made contributions to the election campaigns of judicial candidates. This is  
9 among the reasons that merit selections of judges is a preferable manner in which to  
10 select the judiciary. Notwithstanding that preference, ~~Section 5C(2)~~ **Rule 5.09** recognizes  
11 that in many jurisdictions judicial candidates must raise funds to support their candidacies  
12 for election to judicial office. It therefore permits a candidate, other than a candidate for  
13 appointment, to establish campaign committees to solicit and accept public support and  
14 reasonable financial contributions. In order the guard against the possibility that conflicts  
15 of interest will arise, the candidate must instruct his or her campaign committees at the  
16 start of the campaign to solicit or accept only contributions that are reasonable and  
17 appropriate under the circumstances. Though not prohibited, campaign contributions of  
18 which a judge has knowledge, made by lawyers or others who appear before the judge,  
19 may, by virtue of their size or source, raise questions about a judge's impartiality and be  
20 cause for disqualification as provided under **Rule 2.12** ~~Section 3E~~.

21  
22 [2] Campaign committees established under ~~Section 5C(2)~~ **Rule 5.08** should manage  
23 campaign finances responsibly, avoiding deficits that might necessitate post-election  
24 fundraising, to the extent possible. Such committees must at all times comply with  
25 applicable statutory provisions governing their conduct.

26  
27 [3] ~~Section 5C(2)~~ **Rule 5.08** does not prohibit a candidate from initiating an evaluation by  
28 a judicial selection commission or bar association, or, subject to the requirements of this  
29 Code, from responding to a request for information from any organization.<sup>17</sup>

30  
31  
32 **Rule 5.09 Limitations on Contributions.**

33  
34 **A candidate shall instruct his or her campaign committee(s) at the start of the**  
35 **campaign not to accept campaign contributions that exceed, in the aggregate, [\$ ]**  
36 **for an individual or [\$ ] from an entity. This limitation is in addition to the**  
37 **limitations provided in ~~Section 5C(2)~~ Rule 5.08, relating to the timing and use of**  
38 **campaign contributions.**<sup>18</sup>

39  
40  
41 **Rule 5.10 Disclosure of Contributions.**

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<sup>16</sup> Canon 5C(2)

<sup>17</sup> Canon 5C(2) Commentary

<sup>18</sup> Canon 5C(3)

1 In addition to complying with all applicable statutory requirements for disclosure of  
2 campaign contributions, campaign committees established by a candidate shall file  
3 with [name of appropriate regulatory authority] a report stating the name, address,  
4 occupation and employer of each person who has made campaign contributions to  
5 the committee whose value in the aggregate value exceeding [\$ ]. The report must  
6 be filed within [ ] days following the election.<sup>19</sup>

7  
8  
9 **Rule 5.11 Listing of Candidates' Names.**

10  
11 Except as prohibited by law, a candidate for judicial office in a public election may  
12 permit the candidate's name:

- 13 (a) to be listed on election materials along with the names of other  
14 candidates for elective public office; and  
15 (b) to appear in promotions of a slate of candidates or a political party  
16 the ticket.<sup>20</sup>

17  
18  
19 **Rule 5.12 Responsibility for Action of Others Taken on a Candidate's Behalf.**

20  
21 **With the exception of permitting campaign activities that undertaken on a**  
22 **candidate's behalf by members of a judge's campaign committee as permitted in**  
23 **Rules 5.08 and 5.09, a candidate for judicial office:**

- 24 (a) shall prohibit employees and officials who serve at the candidate's  
25 pleasure, and shall discourage other employees and officials subject to the  
26 candidate's direction and control, from doing on the candidate's behalf  
27 what the candidate is prohibited to do under these Rules or other law ~~the~~  
28 ~~Sections of this Canon;~~ and  
29 (b) shall not authorize or knowingly permit any other person to do for the  
30 candidate what the candidate is prohibited from doing under these Rules  
31 or other law ~~the Sections of this Canon.~~<sup>21</sup>

32  
33 ~~5D. Incumbent Judges. A judge shall not engage in any political activity except (i) as~~  
34 ~~authorized under any other Section of the Code, (ii) on behalf of measures to improve the~~  
35 ~~law, the legal system or the administration of justice, or (iii) as expressly authorized by~~  
36 ~~law.~~

37  
38 **Commentary**

39  
40 ~~Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of~~  
41 ~~administrative functions from engaging in planning and other official activities with~~  
42 ~~members of the executive and legislative branches of government. With respect to a~~

<sup>19</sup> Canon 5C(4)

<sup>20</sup> Canon 5C(5)

<sup>21</sup> Canon 5A(3)(b and c)

1 judge's activity on behalf of measures to improve the law, the legal system and the  
2 administration of justice, see Commentary to Section 4B and Section 4C(1) and its  
3 Commentary.

4  
5 **5.12 Applicability.**

6  
7 **Rules 5.01 through 5.12 apply ~~Canon 5~~ generally applies to all incumbent judges**  
8 **and judicial candidates. A successful candidate, whether or not an incumbent, is**  
9 **subject to judicial discipline for his or her campaign conduct; an unsuccessful**  
10 **candidate who is a lawyer is subject to lawyer discipline for his or her campaign**  
11 **conduct. A lawyer who is a candidate for judicial office is subject to Rule [8.2(b)] of**  
12 **the [ABA Model] [name of jurisdiction] Rules of Professional Conduct.<sup>22</sup>**

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15  
16  

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<sup>22</sup> Canon 5E