

APPENDIX N

DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

2008

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## PREAMBLE

This Code shall constitute the “Canons of Judicial Ethics” referenced in the Delaware Constitution, Article IV, Section 37.

This Code is designed to provide guidance to judges and nominees for judicial office. The Code will also establish standards of conduct for application in proceedings pursuant to Article IV, Section 37 of the Delaware Constitution, which provides, in pertinent part:

“A judicial officer may be censured or removed by virtue of this section for willful misconduct in office, willful and persistent failure to perform his or her duties, the commission after appointment of an offense involving moral turpitude, or other persistent misconduct in violation of the Canons of Judicial Ethics as adopted by the Delaware Supreme Court from time to time.”

It is not intended that disciplinary action would be appropriate for every violation of the Code’s provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Any person subject to this Code may request an advisory opinion on proper judicial conduct with respect to this Code. A judge who has requested and relied upon such an opinion shall be entitled to introduce that opinion in any proceeding in the Court on the Judiciary as evidence that conduct conforming to the opinion is *prima facie* permissible. See Delaware Judicial Ethics Advisory Committee Rules 4(a) and 5(c) and Court on the Judiciary Rule 13(c).

Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in a proceeding.

The Canons are rules of reason. They should be applied in a manner consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

This Code has been reformatted and its provisions renumbered to conform to the format and numbering of the American Bar Association 2007 Model Code of Judicial Conduct. Its text is based on Delaware’s 1974 adaptation of the ABA’s 1972 Model Code of Judicial Conduct, revised in 1993, following the promulgation of the ABA’s 1990 Model Code of Judicial Conduct. The current text is revised only slightly from the Delaware Code of Judicial Conduct adopted in 1993.

## TERMINOLOGY

“**Compensation**” means payment to a judge by another for services rendered but does not include moneys received by a judge from his investments or for services to a family business permitted until Rule 3.11(A) and (B).

“**Contribution**” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

“**Domestic partner**” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

**“Economic interest”** means ownership of a legal or equitable interest however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not an “economic interest” in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not an “economic interest” in securities held by the organization;
- (iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is an “economic interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities is an “economic interest” in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

**“Fiduciary”** includes relationships such as executor, administrator, trustee, or guardian.

**“Impartial”, “impartiality”, and “impartially”** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

**“Impending matter”** is a matter that is imminent or expected to occur in the near future.

**“Impropropriety”** includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality.

**“Independence”** means a judge’s freedom from influence or controls other than those established by law.

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character.

**“Knowingly”, “knowledge”, “known”, and “knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

**“Law”** encompasses court rules as well as statutes, constitutional provisions, and decisional law.

**“Member of the judge’s family”** means persons related to the judge or the judge’s spouse or domestic partner within the third degree of relationship calculated according to the civil law system, and any other relatives with whom the judge or the judge’s spouse or domestic partner maintains a close familial relationship, and the spouse or domestic partner of any of the foregoing.

**“Member of a judge’s family residing in the judge’s household”** means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household.

**“Pending matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office.

**“Third degree of relationship calculated according to the civil law system”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece.

## **APPLICATION**

- A. All judges, including justices of the peace, full-time masters and court commissioners, should comply with this Code.
- B. A retired judge subject to recall who by law is not permitted to practice law, must comply with this Code during any period of recall, except for Rule 3.8 [acting as a fiduciary].

# DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

2008

## CANON 1

**A judge should uphold the integrity, independence and impartiality of the judiciary.**

### **RULE 1.1 Compliance with the Law.**

A judge should respect and comply with the law, including this Code of Judicial Conduct.

#### **Comment:**

*Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they should comply with the law, as well as the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.*

*The Canons are rules of reason. They should be applied in a manner consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.*

*The Code is designed to provide guidance to judges and nominees for judicial office. The Code may also provide standards of conduct for application in proceedings pursuant to Article IV, Section 37 of the Delaware Constitution, although it is not intended that disciplinary action would be appropriate for every violation of its provisions. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.*

### **RULE 1.2 Promoting Confidence in the Judiciary**

(A) A judge should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary and should avoid impropriety and the appearance of impropriety in all activities.

#### **Comment:**

*Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.*

*The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all improper acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful, although not specifically mentioned in the Code.*

*Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial*

*responsibilities with integrity, impartiality and competence is impaired. A judge does not violate this Code merely because a personal or judicial decision of the judge may be erroneous.*

*A judge may initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge should act in a manner consistent with this Code.*

(B) An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and should personally observe those standards, so that the integrity, independence and impartiality of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

**Comment:**

*Many of the proscriptions in the Code are necessarily cast in general terms, and it is not suggested that disciplinary action is appropriate where reasonable judges might be uncertain as to whether or not the conduct is proscribed. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the purpose of the Code would be subverted if the Code were invoked by lawyers for mere tactical advantage in proceeding.*

**RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office.**

(A) A judge should not abuse the prestige of the judicial office to advance the personal or economic interests of the judge or others, and should discourage others from doing so.

(B) A judge should not convey and should discourage others from conveying the impression that they are in a special position to influence the judge.

**Comment:**

*A judge should avoid lending the prestige of judicial office for the advancement of the private interests of the judge or others. For example, a judge should not use the judge's judicial position to gain advantage in litigation involving a friend or member of the judge's family.*

**CANON 2**

**A judge should perform the duties of judicial office impartially, competently and diligently.**

**RULE 2.1 Giving Precedence to the Duties of Judicial Office.**

The judicial duties of a judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law.

**RULE 2.2 Impartiality and Fairness**

A judge should be faithful to the law and maintain professional competence in it.

**RULE 2.3 Bias, Prejudice and Impropriety**

(A) A judge should perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge should avoid impropriety and the appearance of impropriety in all activities.

**Comment:**

*A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.*

*Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge should avoid conduct that may reasonably be perceived as prejudiced or biased.*

*Although a judge should be sensitive to possible abuse of the prestige of the office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation and may use judicial stationery to do so.*

**RULE 2.4 External Influences on Judicial Conduct.**

- (A) A judge should be unswayed by partisan interests, public clamor, or fear of criticism.
- (B) A judge should not allow family, social, or other relationships to influence judicial conduct or judgment.
- (C) A judge should not convey or permit others to convey the impression that they are in a special position to influence the judge.

**RULE 2.5 Competence, Diligence, and Cooperation.**

- (A) A judge should perform the duties of the office impartially and diligently.

**Comment:**

*Prompt disposition of the court's business requires a judge to devote adequate time to the judge's duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end.*

- (B) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

**Comment:**

*The duty to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities including the discharge of the judge's adjudicative and administrative responsibilities.*

- (C) A judge should dispose promptly of the business of the court.

**Comment:**

*In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. 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. Courts can be efficient and business-like while being patient and deliberate.*



**Rule 2.6 Ensuring the Right to be Heard.**

- (A) A judge should accord to every person who is legally interested in a proceeding, or to the person's lawyer, full right to be heard according to law.
- (B) A judge may encourage parties to a proceeding and their lawyers to settle their matters in dispute but should not act in a manner that coerces any party into settlement.

**Comment:**

*A judge should encourage and seek to facilitate settlement, but parties should not be coerced into surrendering the right to have their controversy resolved by the courts.*

**RULE 2.7 Responsibility to Decide.**

- (A) A judge should hear and decide matters assigned, unless disqualified.
- (B) A judge should not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

**RULE 2.8 Decorum, Demeanor, and Communication with Jurors.**

- (A) A judge should require order and decorum in proceedings before the court.
- (B) A judge should be patient, dignified, respectful and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and should require similar conduct of the judge's staff, court officials, and others subject to the judge's direction and control, including lawyers to the extent consistent with their role in the adversary process.

**Comment:**

*The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias towards another on the basis of personal characteristics like race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.*

*In court proceedings, judges or former judges participating as litigants or counsel should not be called by their current or former titles or treated with greater familiarity or deference than other participants.*

**RULE 2.9 Ex Parte Communications.**

- (A) A judge, except as authorized by law, should neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding.

**Comment:**

*The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude considering and ruling upon emergency applications where circumstances require. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. It is not intended to preclude communications between a judge and lawyers, or parties if unrepresented by counsel, concerning matters which are purely procedural, such as those which pertain to scheduling, and which in no way bear on the merits of the proceeding. However, such communications should, as soon as practicable, be fully disclosed by the judge to all lawyers, or parties if unrepresented by counsel, involved in the*

*proceeding. A judge should make reasonable efforts to ensure that this provision is not violated through law clerks or other staff personnel.*

*Except in the course of the judge's official duties, a judge should not initiate a communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons information in response to a formal request.*

- (B) A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

**Comment:**

*An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.*

- (C) A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

**RULE 2.10 Judicial Statements on Pending and Impending Cases.**

- (A) A judge should abstain from public comment on the merits of a pending or impending proceeding in any court, and should require similar abstention on the part of personnel subject to the judge's direction and control.

**Comment:**

*The admonition against public comment about the merits of a pending or impending action continues until completion of the appellate process. If the public comment involves a case from the judge's own court, particular care should be taken that the comment does not denigrate public confidence in the integrity and impartiality of the judiciary in violation of Rule 1.2.*

*"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by the Rules of Professional Responsibility.*

- (B) This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures, or to a scholarly presentation made for purposes of legal education.

**Comment:**

*The provision does not restrict comments about proceedings in which the judge is a litigant in a personal capacity, but in mandamus proceedings when the judge is a litigant in an official capacity, the judge should not comment beyond the record.*

- (C) A judge should prohibit broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions, except as authorized by a court rule or administrative directive which has been either promulgated or approved by the Delaware Supreme Court.

**Comment:**

*Temperate conduct of judicial proceedings is essential to the fair administration of justice. The recording and reproduction of a proceeding should not distort or dramatize the proceeding.*

**RULE 2.11 Disqualification.**

- (A) A judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
- (1) The judge has a personal bias or prejudice concerning a party, or a personal knowledge of disputed evidentiary facts concerning the proceeding;
  - (2) The judge or the judge's spouse or domestic partner, or a person within the third degree of relationship, calculated according to the civil law system, to either of them, or the spouse or domestic partner of such a person:
    - a. is a party to the proceeding, or an officer, director, or trustee of a party;
    - b. is acting as a lawyer in the proceeding;
    - c. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;
    - d. is to the judge's knowledge likely to be a material witness in the proceedings.
  - (3) The judge knows that, individually or as a fiduciary, the judge or the judge's spouse or domestic partner or minor child residing in the judge's household has an economic interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

**Comment:**

*This Rule, for example, would disqualify the judge if a parent, grandparent, uncle or aunt, brother or sister, or niece or nephew of the judge or the judge's spouse or domestic partner, or the spouse of a domestic partner of any of the foregoing were a party or lawyer in the proceeding, but would not disqualify the judge if a cousin were a party or lawyer in the proceeding.*

*The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Rule 2.11(A), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Rule 2.11(A)(2)(c), may require the judge's disqualification.*

- (4) The judge
  - (a) served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it, or the judge was associated in the practice of law within the preceding year with a law firm or lawyer acting as counsel in the proceeding;
  - (b) served in government employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

- (B) A judge should keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.
- (C) A judge disqualified by the terms of Rule 2.11, except a disqualification by the terms of Rule 2.11(A)(1) or Rule 2.11(A)(4), may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification. If the parties and their lawyers, after such disclosure and an opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

**Comment:**

*This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the assurance of the lawyer on the record that his party's consent will be subsequently obtained.*

**RULE 2.12 Supervisory Duties.**

A judge should require staff and court officials subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

**RULE 2.13 Administrative Appointments.**

- (A) A judge should not make unnecessary appointments.

**Comment:**

*Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries, and bailiffs.*

- (B) A judge should exercise the power of appointment only on the basis of merit, avoiding nepotism and favoritism.
- (C) A judge should not approve compensation of appointees beyond the fair value of services rendered.

**Comment:**

*Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.*

**RULE 2.14 Disability and Impairment**

A judge, having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, should take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

**Comment:**

*"Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.*

*Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.*

#### **RULE 2.15 Responding to Judicial and Lawyer Misconduct.**

A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

##### **Comment:**

*Appropriate action may include direct communication with the judge or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authorities.*

### **CANON 3**

**A judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties.**

#### **RULE 3.1 Extra-judicial Activities in General.**

A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities if in doing so the judge does not cast reasonable doubt on the capacity to decide impartially, independently and with integrity any issue that may come before the judge:

- (A) A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice (including projects directed to the drafting of legislation).

##### **Comment:**

*In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.*

- (B) A judge may write, lecture, teach, and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties.

##### **Comment:**

*Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives.*

- (C) A judge may engage in activities to improve the law, the legal system, and the administration of justice.
- (D) A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 3, except for uses that are *de minimis*.

**RULE 3.2 Appearance before Governmental Bodies and Consultation with Governmental Officials.**

- (A) A judge may appear at a public hearing before or otherwise consult with an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's knowledge or experience as acquired in the course of a judge's judicial duties provides special expertise in the area.

**Comment:**

*A judge 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 concerning a person being considered for judgeship.*

- (B) A judge acting *pro se* may also appear before or consult with such officials or bodies in a matter involving the judge or the judge's legal or economic interest or when the judge is acting in a fiduciary capacity.

**RULE 3.3 Testifying as a Character Witness**

A judge should not testify voluntarily as a character witness

**Comment:**

*The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Rule, however, does not afford the judge a privilege against testifying in response to an official summons. 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.*

**RULE 3.4 Appointments to Governmental Positions.**

- (A) A judge should not accept appointment to a governmental committee, commission, board, agency or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. A judge, however, may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

**Comment:**

*Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.*

- (B) A judge may serve as a member, officer, or director of an organization or governmental agency, committee, board, commission or other governmental position devoted to the improvement of the law, the legal system, or the administration of justice. A judge may assist such an organization in planning fund-raising activities and may participate in the management and investment of funds, but, except as provided herein, should not personally participate in fund-raising activities.

**Comment:**

*As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that the judge's time permits, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.*

*Service on the board of a public, as well as private, law school is permissible.*

*A judge may attend fund-raising activities of a law-related organization although the judge may not be a speaker, guest of honor, or featured on the program of such an event.*

- (C) A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice. A judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority. A judge shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

**RULE 3.5 Use of Nonpublic Information.**

Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any purpose not related to the judge's judicial duties.

**RULE 3.6 Affiliation with Discriminatory Organizations.**

- (A) A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation.

**Comment:**

*Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Rule 3.6 refers to the current practices of the organization.*

*Whether an organization practices invidious discrimination is often a complex question to which a judge should be sensitive. The answer cannot be determined from a mere examination of organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited.*

*Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation persons who would otherwise be admitted to membership.*

*Although Rule 3.6 relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation, a judge's membership in an organization that engages in any invidiously*

*discriminatory membership practices prohibited by applicable law violates Rules 1.1 and 1.2 and gives the appearance of impropriety. In addition, it would be a violation of Rules 1.1 and 1.2 for a judge to arrange a meeting at a club 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 for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 1 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Rule 1.2.*

*When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Rule 3.6(A) or under Rules 1.1 and 1.2, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.*

(B) A judge should 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 bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of the Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

### **RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities.**

A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's independence, integrity, impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(A) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

#### **Comment:**

*The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to re-examine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the judge's relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.*

(B) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee or such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(C) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.



**Comment:**

*A judge's participation in an organization devoted to quasi-judicial activities is governed by Rule 3.1. A judge may attend fund-raising activities of the organization although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of an organization's letterhead for fund-raising or membership solicitation does not violate these Rules, provided the letterhead lists only the judge's name and position in the organization, and, if comparable designations are listed for other persons, the judge's judicial designation.*

**RULE 3.8 Appointments to Fiduciary Positions.**

- (A) A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

**Comment:**

*Mere residence in the household of a judge is insufficient for a person to be considered a member of the judge's family for the purposes of this Rule. The person must be treated by the judge as a member of the judge's family.*

- (B) As a family fiduciary, a judge is subject to the following restrictions:

- (1) The judge should not serve if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
- (2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in his or her personal capacity.

**Comment:**

*A judge's obligation under this Rule and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Rule 3.8(B)(1).*

**RULE 3.9 Service as Arbitrator or Mediator.**

A judge should not act as an arbitrator or mediator, or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.

**RULE 3.10 Practice of Law.**

- (A) A judge should not practice law.

- (B) Notwithstanding this prohibition, a judge may:

- (1) act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.
- (2) Practice law pursuant to military service.

**RULE 3.11 Financial, Business, or Remunerative Activities.**

- (A) A judge may hold and manage investments of the judge and members of the judge's family.

- (B) A judge should not serve as an officer, director, general partner, manager, advisor or employee of any business entity, except that a judge may manage or participate in:
  - (1) a business closely held and controlled by members of the judge's family.
  - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge's participation in a closely held family business may be prohibited if it takes too much time or involves misuse of or is demeaning to the judicial office or if the business is likely to come before the judge's court.
- (D) A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit or demean the judicial position, or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.
- (E) A judge has the rights of an ordinary citizen with respect to financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

**Rule 3.12 Compensation for Extrajudicial Activities.**

A judge may receive compensation and reimbursement of expenses for the law-related and extra-judicial activities permitted by this Code or other law, if the source of such payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

- (A) Compensation should not exceed a reasonable amount.
- (B) A judge should not solicit or accept a fee, reimbursement of expenses, or a gift for solemnizing a marriage, except that a judge may accept a non-monetary gift, if the gift is fairly commensurate with the occasion and the judge's relationship with the persons involved.

**RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value.**

- (A) Neither a judge nor a member of the judge's family residing in the judge's household should solicit or accept a gift, bequest, favor or loan from anyone except for:
  - (1) a gift incident to a public testimonial to the judge, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and a family member or guest to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;
  - (2) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or domestic partner or other family member of a judge residing in the judge's household including gifts, awards and benefits for the use of both the spouse or domestic partner or other family member and the judge (as spouse or domestic partner or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
  - (3) ordinary social hospitality;

- (4) 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;
- (5) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require that the judge take no official action with respect to the case;
- (6) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges.
- (7) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or
- (8) any other gift, bequest, favor or loan only if:
  - (i) the donor has not sought and is not seeking to do business with the court or other entity served by the judge; or
  - (ii) the donor is not a party or other person who has come or is likely to come before the judge or whose interests may be substantially affected by the performance or nonperformance of his or her official duties.

(B) A judge is not required by this Code to make financial disclosures except as provided by the Supreme Court.

**RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges**

Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge’s spouse or domestic partner or guest. Any payment in excess of such an amount is compensation.

**Comment:**

*Reimbursement or direct payment of travel expenses may be a gift and, if so, its acceptance is governed by Rule 3.13. A judge or employee may receive as a gift travel expense reimbursement including the cost of transportation, lodging, and meals, for the judge and a guest incident to the judge’s attendance at a bar-related function or at an activity devoted to the improvement of the law, the legal system, or the administration of justice.*

**RULE 3.15 Reporting Requirements.**

(A) A judge should regularly file reports of compensation received for law-related and extra-judicial activities, as required by the Supreme Court.

(B) A judge should make financial disclosures as required by the Supreme Court.

**CANON 4**

**A judge should refrain from political activity inappropriate to the judge’s judicial office.**

**RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates.**

(A) A judge should not:

- (1) act as a leader or hold any office in a political organization;

- (2) make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office;
  - (3) directly or indirectly solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other functions.
- (B) A judge should resign the judicial office when the judge becomes a candidate either in a party primary or in a general election for nonjudicial office.
- (C) A judge should not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice.

**Comment:**

*Political contributions by the judge's spouse or domestic partner must result from the independent choice of the spouse or domestic partner and checks by which such contributions are made shall not include the name of the judge.*

*A person becomes a candidate as soon as he or she makes a public announcement of candidacy, declares or files as candidate with the election authority, or authorizes solicitation or acceptance of contributions or support.*