

Supreme Court Rule 2 –The Code of Judicial Conduct

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Rule 2.01. Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Rule 2 are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements and specific rules of conduct called Canons contained in Rule 2.03, a terminology section contained in Rule 2.02, and a compliance section contained in Rule 2.04 and commentary. The text of the Canons, the terminology and compliance sections are authoritative. The commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons. The commentary is not intended as a statement of additional rules.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. This Rule 2 is to be construed so as not to impinge on the essential independence of judges in making judicial decisions.

This Rule 2 is designed to provide guidance to judges and candidates for judicial office and to provide a structure for regulating conduct through disciplinary agencies. It is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of this Rule 2 would be subverted if it were invoked by lawyers for mere tactical advantage in a proceeding.

The text of the Canons is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned

application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

This Rule 2 is not intended as an exhaustive guide for the conduct of judges. They should also be governed in their judicial and personal conduct by general ethical standards. This Rule 2 is intended, however, to state basic standards that should govern the conduct of all judges and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.02. Terminology

(a) "Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Canons [3D\(1\)](#) and [3D\(2\)](#).

(b) "Candidate" is a person seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions of support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to nonjudicial office. See [Rule 2.01](#) and [Canon 5](#).

(c) "Court personnel" are reporters, clerks, bailiffs and office personnel performing duties in a proceeding before a judge but are not lawyers representing litigants. See Canons [3B\(7\)\(c\)](#) and [3B\(9\)](#).

(d) "De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Canons [3E\(1\)\(c\)](#) and [3E\(1\)\(d\)](#).

COMMENTARY

[Section 105.464, RSMo](#), provides criminal culpability where a judge knows that the subject matter of any proceeding is such that the judge may receive a direct or indirect financial gain from any potential result proceeding. If section [105.464](#) is read in its broadest intendment, any case could conceivably result in at least some insignificant direct or indirect benefit to the judge. The rule of

necessity obviates such a result. Direct or indirect benefit as used in section [105.464](#) does not include any de minimis interest as defined by this Rule 2.02(d).

(e) "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that:

(1) ownership of an interest 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 or a proceeding pending or impending before the judge could substantially affect the value of the interest;

(2) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal, or civic organization, or service by a judge's spouse, parent or child as an officer, director, advisor or other active participant in any organization does not create an economic interest in securities held by that organization;

(3) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, is not an economic interest in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(4) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities;

(5) ownership of small amounts of publicly traded corporations is not an economic interest unless a proceeding pending or impending before the judge could substantially affect the value of the shares.

See Canons [3E\(1\)\(c\)](#) and [3E\(2\)](#).

(f) "Fiduciary" includes such relationships as personal representative, executor, administrator, trustee, attorney-in-fact under power of attorney, and guardian. See Canons [3E\(2\)](#) and [4E](#).

(g) "Knowingly", "knowledge", "known" or "knows" denotes actual

knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Canons [3D](#) and [3E\(1\)](#).

(h) "Law" denotes court rules as well as applicable constitutional provisions, statutes, ordinances and decisional and other law. See Canons [2A](#), [3A](#), [3B\(2\)](#), [3B\(7\)](#), [4B](#), [4C](#), [4E](#), [4F](#), and [4I](#).

(i) "May" denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

(j) "Member of the candidate's family" or "member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship. See Canons [4D\(3\)](#), [4E\(1\)](#), [4G](#), and [5B\(1\)\(a\)](#).

(k) "Member of the judge's family residing in the judge's household" denotes 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. See Canons [3E\(1\)](#) and [4D\(3\)](#).

(l) "Nonpublic information" denotes information that, by law, is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statutes or court order, impounded, or communicated in camera; and information offered in grand jury proceedings, pre-sentencing reports, dependency cases or psychiatric reports. See [Canon 3B\(11\)](#).

(m) "Part-time judge" is a judge who serves on a continuing or periodic basis but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge.

(n) "Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See [Canon 5](#).

(o) "Require" The rules prescribing that a judge "require" certain conduct of others are, like all provisions of this Rule 2, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See [Canon 3](#).

(p) "Shall" or "shall not" intends to impose binding obligations the violation of which can result in disciplinary action.

(q) "Should" or "should not" is intended as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. Such conduct shall not be the subject of discipline under any other provision that uses the terms "shall" or "shall not."

(r) "Subject to the requirements of this Rule 2" is used, notably in connection with a judge's governmental, civic or charitable activities. This phrase is included to remind judges that the use of permissive language in various Canons of this Rule 2 does not relieve a judge from the other requirements of the Canons of this Rule 2 that apply to the specific conduct.

(s) "Third degree of relationship" The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece. See Canon [3E\(1\)\(d\)](#) and [4E\(1\)](#).

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.03. Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary

A. 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 shall personally observe those standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Rule 2 are to be construed and applied to further that objective.

COMMENTARY

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 promptly, courteously and without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Rule 2. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Rule 2 diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.03. Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities

A. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

COMMENTARY

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 on the judge's conduct 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 prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Rule 2. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this Rule 2. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

COMMENTARY

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the

prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as preferential treatment when stopped by a police officer for a traffic offense.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. 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. As to the acceptance of awards, see [Canon 4D\(5\)](#)(a) and the commentary thereto.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. However, a judge must not initiate the communication or information to a sentencing judge or a probation or corrections officer but may provide such information for the record in response to a formal request.

Judges 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 a judgeship. See also [Canon 5](#) regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. 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.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.03. Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

A. Judicial Duties in General. The judicial duties of a judge take

precedent over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers and of staff, court officials and others subject to the judge's direction and control.

COMMENTARY

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. Judges can be efficient and businesslike while being patient and deliberate.

(5) A judge shall perform judicial duties without bias or prejudice. A judge, in the performance of judicial duties, shall not by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, sexual orientation, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

COMMENTARY

A judge must perform judicial duties impartially and fairly. A judge who manifests bias or prejudice on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge

must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require lawyers in open court or in chambers to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, sexual orientation, religion, national origin, disability or age against parties, witnesses, counsel or others. This Canon 3B(6) does not preclude legitimate advocacy when race, sex, sexual orientation, religion, national origin, disability or age or other similar factors are issues in the proceeding.

COMMENTARY

Legal interpretations of Title VII of the Civil Rights Act of 1964 provide useful guidance in interpreting the provisions of Canon 3B(5) and (6). Sexual harassment is defined as illegal sex discrimination pursuant to Title VII in the context of employment relationships. A judge must refrain from speech, gestures or other conduct that reasonably could be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control. 'Sexual harassment' constitutes misconduct whether the conduct is in an employment relationship or in a nonemployment relationship manifested in the course of the performance of judicial duties.

"Sexual harassment" denotes:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(1) submission to that conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;

(2) submission to or rejection of such conduct by an individual is used as a factor in decisions affecting such individual; or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive environment.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge 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.

(c) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

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

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

COMMENTARY

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. To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to a party is required by [Canon 3B\(7\)](#), it is the party's lawyer, or if the party is underrepresented, the party, who is to be present or to whom notice is to be given. 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*.

Certain *ex parte* communication is approved by [Canon 3B\(7\)](#) to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communication and allow it only if all the criteria stated in [Canon 3B\(7\)](#) are clearly met. A judge must disclose to all parties all *ex parte* communications described in [Canon 3B\(7\)\(a\)](#) and [Canon 3B\(7\)\(b\)](#) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that [Canon 3B\(7\)](#) is not violated through law clerks or other personnel on the judge's staff.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

COMMENTARY

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. Containing costs while preserving fundamental rights of parties also protects the interests of witnesses and the general public. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs. A judge should encourage and seek to facilitate settlement, but parties should not feel coerced into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial 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.

(9) A judge shall abstain from public comment about a pending or impending proceeding in any court and should require similar abstention on the part of court personnel subject to the judge's direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the Court.

COMMENTARY

This requirement continues during any appellate process and until final disposition. This Canon does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, but in cases such as a writ of mandamus where the judge is a litigant in an official capacity, the judge must not comment publicly. The conduct of lawyers relating to trial publicity is governed by [Rule 4-3.6](#).

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding but may express appreciation to jurors for their service to the judicial system and the community.

COMMENTARY

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.

C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, shall maintain professional competence in judicial administration, and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt

disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A judge shall exercise the power of appointment impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENTARY

Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers and guardians and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by [Canon 3C\(4\)](#).

D. Disciplinary Responsibilities.

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Rule 2 should take appropriate action. A judge having knowledge that another judge has committed a violation of this Rule 2 that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of Rule 4 should take appropriate action. A judge having knowledge that a lawyer has committed a violation of Rule 4 that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

(3) Acts of a judge, in the discharge of disciplinary responsibilities, required or permitted by Canon 3D(1) or Canon 3D(2) are part of a judge's judicial duties and shall be absolutely privileged, and no civil action predicated thereon may be instituted against the judge.

COMMENTARY

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 authority or other agency or body.

E. Recusal.

(1) A judge shall recuse in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

COMMENTARY

Under this Canon 3E(1), a judge is disqualified whenever the judge's impartiality might reasonably be question, regardless whether any of the specific rules in Canon 3E(1) apply. For example, if a judge was in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and use reasonable efforts to transfer the matter to another judge as soon as practicable.

A judge ordinarily required to recuse as a result of the proscriptions of this Canon 3E need not do so in a default proceeding.

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge 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 has been a material witness concerning it;

COMMENTARY

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Canon 3E(1)(b); a judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

(c) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest, that could be substantially affected by the proceeding;

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a 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 Canon 3E(1) or that the 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 Canon 3E(1)(d)(iii) may require the judge's disqualification.

(2) A judge shall 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 and minor children residing in the judge's household.

F. Remittal of Disqualification. A judge disqualified by the terms of

Canon 3E may disclose on the record the basis of the disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree 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.

COMMENTARY

A remittal procedure provides the parties an opportunity to proceed without undue delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the lawyers jointly propose remittal after consultation as provided in this Canon 3F. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999. Amended November 25, 2003, eff. January 1, 2004.)

Rule 2.03. Canon 4. A Judge Shall So Conduct the Judge's Extrajudicial Activities as to Minimize the Risk of Conflict With Judicial Obligations

A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extrajudicial activities so that they do not:

- (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

COMMENTARY

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.

B. Avocational Activities. A judge may speak, write, lecture, teach and participate in other extrajudicial activities concerning the law, the legal system, the administration of justice and nonlegal subjects, subject to the requirements of this Rule 2.

COMMENTARY

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 time permits, a 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. Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession and may express opposition to the persecution of lawyers and judges in other countries because of their professional activities.

C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the judge or the judge's interests.

See [Canon 2B](#) regarding the obligation to avoid improper influence.

(2) A judge shall not accept appointment to a governmental committee or commission or other governmental 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 may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.

COMMENTARY

[Canon 4C\(2\)](#) prohibits a judge from accepting any governmental position except one relating to the law, legal system or administration of justice as authorized by [Canon 4C\(3\)](#). The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary. [Canon 4C\(2\)](#) does not govern a judge's service in a

nongovernmental position. See [Canon 4C\(3\)](#) permitting service in a nongovernmental position. See [Canon 4C\(3\)](#) permitting service by a judge with organizations devoted to the improvement of the law, the legal system or the administration of justice and with educational, religious, charitable, fraternal or civil organizations not conducted for profit. For example, service on the board of a public educational institution, unless it was a law school, would be prohibited under [Canon 4C\(2\)](#), but service on the board of a public law school or any private educational institution would generally be permitted under [Canon 4C\(3\)](#).

(3) A judge may serve as an officer, director, trustee or nonlegal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Rule 2.

COMMENTARY

[Canon 4C\(3\)](#) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system or the administration of justice; see [Canon 4C\(2\)](#).

Service by a judge on behalf of a civic or charitable organization may be governed by other provisions of Canon 4 in addition to [Canon 4C](#). For example, a judge is prohibited by [Canon 4G](#) from serving as a legal advisor to a civic or charitable organization.

(a) A judge shall not serve as an officer, director, trustee or nonlegal advisor if it is likely that the organization:

(i) will be engaged in proceedings that would ordinarily come before the judge, or

(ii) will be engaged frequently in adversary proceedings in the court of which the judge is a member or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if it is proper for the judge to continue the affiliation. 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 as an officer, director, trustee or nonlegal advisor, or as a member or otherwise:

(i) may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds but shall not personally participate in the solicitation of funds or other fund raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or, except as permitted in [Canon 4C\(3\)\(b\)\(i\)](#), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

COMMENTARY

A judge may solicit membership or endorse or encourage membership efforts for an organization devoted to the improvement of the law, the legal system or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds for an organization and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge must not engage in direct, individual solicitation of funds or memberships in person, in writing or by telephone except in the following cases: 1) a judge may solicit for funds or memberships from other judges over whom the judge does not exercise supervisory or appellate authority; 2) a judge may solicit other persons for membership in the organizations described above if neither those persons nor persons with whom they are affiliated are likely ever to appear

before the court on which the judge serves; and 3) a judge who is an officer of such an organization may send a general membership solicitation mailing over the judge's signature.

D. Financial Activities.

(1) A judge shall 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 the judge's judicial position, or involve the judge in frequent transactions with lawyers or persons likely to come before the court on which the judge serves.

(2) A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall divest investments and other financial interests that might require frequent disqualification.

COMMENTARY

This Canon does not prohibit a judge from serving on the board of a private corporation, including a financial institution, as long as such activity does not violate the intent of this Rule 2 and provided that judicial title or office shall not be shown or used in connection with the judge's name or position with the corporation.

(3) Neither a judge nor a member of the judge's family residing in the household shall accept a gift, bequest, favor, or loan from anyone except as follows:

(a) a judge may accept a gift incident to a public testimonial to the judge; books supplied by publishers on a complimentary basis for office use; or an invitation to the judge and the judge's spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of the judge's family residing in the household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of the judge's family residing in the household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and, if its value exceeds \$100, the judge reports it in the same manner as compensation is reported in [Canon 4H](#).

COMMENTARY

This Canon does not apply to contributions to a judge's campaign for judicial office, a matter governed by [Canon 5](#).

(4) A judge is not required by this Rule 2 to disclose income, debts, or investments, except as provided in this Canon, [Canon 3](#), and [Canon 4H](#).

COMMENTARY

[Canon 3](#) requires a judge to recuse in any proceeding in which the judge has more than a de minimis interest that could be substantially affected by the proceeding; Canon 4D requires a judge to refrain from engaging in business and financial activities that might interfere with the impartial performance of judicial duties; [Canon 4H](#) requires a judge to report all compensation received by the judge for activities outside the judge's judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of judicial duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(5) Information acquired by a judge in a judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. Fiduciary Activities.

(1) A judge shall not serve as executor, administrator, other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the judge's family, providing such person is the judge's spouse or within the third degree of relationship to the judge or the judge's spouse, and then only if such service will not interfere with the proper performance of judicial duties.

(2) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary 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.

(3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

COMMENTARY

[Rule 2.05](#) postpones the time for compliance with certain provisions of this Canon 4E in some cases.

The restrictions imposed by this Canon 4 may conflict with the judge's obligation as a fiduciary. For example, a judge should resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of [Canon 4D\(4\)](#).

F. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

COMMENTARY

Canon 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

COMMENTARY

This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family. See [Canon 2B](#). Rule 2 allows a judge to give legal advice to and draft legal

documents for members of the judge's family, so long as the judge receives no compensation. A judge must not, however, act as an advocate or negotiator for a member of the judge's family by appearance in a court proceeding.

H. Compensation, Reimbursement and Reporting.

(1) Compensation and Reimbursement. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Rule 2, if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety.

(a) Compensation shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activity.

(b) Expense reimbursement shall 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 guest. Any payment in excess of such an amount is compensation.

(2) Public Reports. A judge shall report the date, place and nature of any activity for which the judge received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. The report shall be made at least annually and shall be filed as a public document in the office of the clerk of this Court.

COMMENTARY

See [Canon 4D\(3\)](#) regarding reporting of gifts, bequests and loans. Rule 2 does not prohibit a judge from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

I. Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon 4, in [Canon 3E](#), and in [Canon 3F](#), or as otherwise required by law.

COMMENTARY

Canon 3E requires a judge to recuse in any proceeding in which the judge has an economic interest. See "economic interest" as defined in [Rule 2.02](#). Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of judicial duties; [Canon 4H](#) requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.03. Canon 5. A Judge and Certain of the Judge's Employees Shall Refrain From Inappropriate Political Activity

A. Political Conduct in General.

(1) No judge appointed to or retained in office in the manner prescribed in [section 25\(a\)-\(g\) of article V](#) of the state constitution shall directly or indirectly make any contribution to or hold any office in a political party or organization or take part in any political campaign.

(2) Where it is necessary that a judge be nominated and elected as a candidate of a political party, an incumbent judge or candidate for election to judicial office may attend or speak on the judge or candidate's own behalf at political gatherings and may make contributions to the campaign funds of the party of choice. However, neither the judge nor the candidate shall accept or retain a place on any party committee or act as party leader or solicit contributions to party funds.

(3) A judge shall resign judicial office when the judge becomes a candidate either in a party primary or in a general election for a nonjudicial office, except that a judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.

(4) A judge shall not engage in any other political activity except on behalf of measures to improve the law, the legal system, or the administration of justice.

(5) Persons appointed as a circuit or associate circuit judge selected pursuant to [section 25\(a\)-\(g\) of article V](#) of the state constitution and their employees shall not directly or indirectly make any contributions to or hold an office in a political party or organization or take part in any political campaign.

B. Campaign Conduct.

(1) A candidate, including an incumbent judge, for a judicial office that is filled either by public election between competing candidates or on the basis of the non-partisan court plan:

(a) shall maintain the dignity appropriate to judicial office and shall encourage members of the candidate's family to adhere to the same standards of political conduct that apply to the candidate;

(b) shall prohibit public officials or employees subject to the candidate's direction or control from doing for the candidate what the candidate is prohibited from doing under this Canon 5; and except to the extent authorized under [Canon 5B\(2\)](#) or [Canon 5B\(3\)](#), such candidate shall not allow any other person to do for the candidate what the candidate is prohibited from doing under this Canon 5;

(c) shall not make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office or misrepresent the candidate's identity, qualifications, present position, or other fact.

(2) A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not solicit or accept campaign funds in a courthouse or on courthouse grounds. Such candidate shall not solicit in person campaign funds from persons likely to appear before the judge. A candidate may make a written campaign solicitation for campaign funds of any person or group, including any person or group likely to appear before the judge.

The candidate may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign. Such committees are not prohibited from soliciting campaign contributions in person and may distribute the candidate's written requests for campaign funds.

A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or members of the candidate's family.

(3) An incumbent judge who is a candidate for retention in or reelection to office without a competing candidate, and whose candidacy has drawn active opposition, may campaign in response thereto and may obtain publicly stated support and campaign funds in the manner provided in [Canon 5B\(2\)](#).

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999. Amended April 27, 1999, eff. July 1, 1999. Amended May 2, 2006, eff. May 2, 2006.)

Rule 2.04. Compliance with the Code of Judicial Conduct

Anyone, whether or not a lawyer, who is an officer of a judicial system performing judicial functions, including an officer such as a special master, court commissioner, or magistrate, is a judge for the purpose of this Rule 2. All judges, except part-time judges, shall comply with this Rule 2.

A part-time judge:

(1) is not required to comply with [Canon 4](#) or [Canon 5](#) except while serving as a senior judge;

(2) who is also a senior judge is not required to comply with [Canon 4H\(2\)](#); and

(3) shall not practice law in the court on which the part-time judge serves or in any court subject to the appellate jurisdiction of the court on which the part-time judge serves or act as a lawyer in a proceeding in which the part-time judge has served as a judge or in any other proceeding related thereto.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)

Rule 2.05. Effective Date of Compliance

A person to whom this Rule 2 becomes applicable should arrange the person's affairs as soon as reasonably possible to comply with it. If, however, the demands on time and the possibility of conflicts of interest are not substantial, a person who holds judicial office on the date this Rule 2 becomes effective may continue to act as an executor, administrator, trustee, or other fiduciary for the estate or

person of one who is not a member of the family.

(Adopted Jan. 29, 1998, eff. Jan. 1, 1999.)