

## STATE OF WEST VIRGINIA

At the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on June 28, 2013, the following order was made and entered **in vacation**:

**IN RE: REQUEST FOR PUBLIC COMMENT ON PROPOSED  
AMENDMENTS TO THE WEST VIRGINIA CODE OF JUDICIAL  
CONDUCT**

On a former day, to-wit, May 17, 2013, came the Judicial Investigation Commission, by its Counsel, Teresa A. Tarr, and presented to the Court proposed amendments to the Code of Judicial Conduct. Article VIII, Section 8 of the West Virginia Constitution vests the Supreme Court of Appeals of West Virginia with the exclusive authority to prescribe rules governing the conduct and performance of judicial officers, as well as the exclusive authority to impose sanctions and penalties for violations.

Upon review and consideration whereof, the Court is of the opinion to and does hereby approve a ninety-day period of public comment on the proposed amendments. All comments must be filed in writing with the Clerk of this Court no later than September 26, 2013.

The Court specifically requests that the three judicial associations, which represent circuit judges, family court judges, and magistrates, respectively, each submit public comments on the proposed amendments on behalf of their members.

The proposed amendments are attached to this Order in a separate document. Proposed additions are indicated by underlining, and proposed deletions are indicated by strikethrough. For the convenience of review, an engrossed version is also provided.

A True Copy

Attest: //s// Rory L. Perry II  
Clerk of Court



# PROPOSED AMENDMENTS to the WEST VIRGINIA CODE OF JUDICIAL CONDUCT

By Order of June 28, 2013, the following proposed amendments to the Code of Judicial Conduct were approved for a ninety-day period of public comment. All comments must be filed in writing with the Clerk of the Supreme Court by September 26, 2013.

Additions are indicated by underlining, deletions are indicated by strikethrough. For the convenience of review, an engrossed version of the proposed amendments is also included beginning at page 37.

## 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~~ provisions of this Code 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.~~

Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges and judicial candidates. It consists of broad statements called Canons, specific provisions ~~rules~~ set forth ~~in Sections~~ under each Canon, an Application Canon, Commentary, and a Terminology Section. The text of the Canons, the provisions therein ~~Sections~~, and the Terminology is authoritative. The Commentary, by explanation and example, provides guidance with respect to the purpose and meaning of the Canons ~~and Sections~~. The Commentary is not intended as a statement of additional rules. It is to provide guidance regarding the purpose, meaning and proper application of the Code. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons ~~and Sections~~ are rules of reason. They should be applied 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 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 the Code would be subverted if the Code were invoked for mere tactical advantage in a proceeding.

The text of the Canons ~~and Sections~~ is intended to govern conduct of judges and to be binding upon them. 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, the circumstances then existing, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Article VIII, Section 8 of the West Virginia Constitution vests the Supreme Court of Appeals of West Virginia with the exclusive authority to prescribe rules governing the conduct and performance of judges, as well as the exclusive authority to impose sanctions and penalties for violations. The Code of Judicial Conduct is the formal, written standard governing the conduct and discipline of judges and others serving in a judicial capacity. The ethical standards set forth in the Code of Judicial Conduct do not draw simplistic lines between right and wrong. Judges will find that acting responsibly, honestly, and ethically involves more than simply learning this or any other code. A true sense of professional responsibility derives from an understanding of the reasons that underlie the principles of the Code of Judicial Conduct. Good judgment and adherence to high moral and personal standards are also important.

**\* All terms marked with an asterisk (\*) are defined in the terminology section at the end of this Code.**

**Canon 1. A judge shall uphold the integrity, ~~and independence~~ and impartiality of the judiciary.**

- A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, promoting and enforcing high standards of conduct, and shall personally observe those standards so that the integrity,\* ~~and independence\*~~ and impartiality\* of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

**Canon 1 Commentary.** – *Deference to the judgments and rulings of courts depends upon public confidence in the integrity,\* ~~and independence\*~~ and impartiality\* of judges. The integrity,\* ~~and independence\*~~ and impartiality\* of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law,\* including 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, a violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.\**

**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,\* shall avoid impropriety\* and the appearance of impropriety\* in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity\* and impartiality\* of the judiciary.

**Canon 2A 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 the Code. Actual improprieties\* under this standard include violations of law,\* including court rules or other specific provisions of this Code. Errors in finding facts or in interpreting or applying law\* are not violations of this canon unless such judicial determinations involve bad faith or are done willfully or deliberately. 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.*

*See also Commentary under ~~Section~~ Canon 2D.*

- 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~~ personal or economic\* interests of the judge or others; nor shall a judge convey or knowingly\* permit others to convey the impression that they are in a special position to influence the judge.

**Canon 2B 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. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense.*

*Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

*A judge must avoid lending the prestige of judicial office for the advancement of the ~~private~~ personal or economic\* 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 ~~Section~~ Canons 4D(5)(a), 4D(5)(b) and Commentary.*

*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 on official letterhead, which need not bear the words "personal and unofficial." However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons 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 from such entities concerning the professional qualifications of a person being considered for a judgeship~~ judicial office. 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.~~*

*Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law.\* A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law.\* In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.*

- C. A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

**Canon 2C Commentary.** -- *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. 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.*

Whether or not the demands of justice indicate the judge should testify depends on the nature and depth of the judge's actual awareness of the character of the party for whom the judge would testify. It also depends upon the actual necessity that it be the judge, as opposed to another possible witness who is called to testify. Only if the judge is in a unique position to offer meaningful testimony about the individual should the judge testify.

- D.** A judge shall not hold membership in any organization that practices invidious discrimination by arbitrarily excluding persons on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin. For the purposes of this Canon, ~~an "organization which practices invidious discrimination" shall mean any organization which arbitrarily excludes persons from membership upon the basis of race, sex, religion, or national origin.~~ The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical, or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

**Canon 2D Commentary.** -- *Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality\* is impaired because of the appearance of judicial bias against persons excluded from membership. ~~Section~~Canon 2ED refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an 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. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, gender, sexual orientation, ethnicity or national origin persons who would otherwise be admitted to membership.*

*Although ~~Section~~Canon 2ED relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by ~~the~~ West Virginia or federal law\* ~~of the jurisdiction~~ also violates Canon 2 and ~~Section~~ 2A and gives the appearance of impropriety.\* In addition, it would be a violation of Canons 2 and ~~Section~~ 2A for a judge to arrange a meeting at a club that the judge knows\* practices invidious discrimination on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin in its membership or other policies, or for the judge to regularly use such a club. 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 2 and diminishes public confidence in the integrity\* and impartiality\* of the judiciary in violation of ~~Section~~Canon 2A.*

~~When a person who is a judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Section Canon 2 CD or under Canon 2 and Section 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.~~

**Canon 3. A judge shall perform the duties of judicial office impartially, competently and diligently.**

- A. Judicial duties in general. -- ~~The judicial duties of a judge~~ judicial office shall take precedence over all the judge's other personal and extrajudicial 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:

**Canon 3A Commentary.** -- *To ensure that judges are available to fulfill their judicial duties, judges should strive to conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.*

*Although it is not a duty of judicial office unless prescribed by law,\* judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.*

B. Adjudicative responsibilities.

- (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required by Canon 3E or other law.\*

**Canon 3B(1) Commentary.** -- *Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence,\* integrity\* and impartiality\* of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.*

- (2) A judge shall ~~be faithful to~~ uphold and apply the law\* and shall perform all duties of judicial office fairly and impartially.\* A judge shall perform judicial and administrative duties competently and diligently. 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 court.

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

**Canon 3B(4) Commentary.** – *The duty to hear all proceedings fairly and with patience and courtesy is not inconsistent with the duty to promptly dispose of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.*

- (5) A judge shall perform ~~judicial~~ the duties of judicial office, including administrative duties, without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, ~~or prejudice or harassment~~ based upon race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status, handicap or medical condition and shall not permit court staff, court officials ~~and~~ or others subject to the court's direction and control to do so.

**Canon 3(B)5 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. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; intimidating or hostile acts; suggestions of connections between race, ethnicity or nationality and crime; and irrelevant references to personal characteristics. Facial expression and body language, in addition to oral communication, can give convey to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias or prejudice. A judge must be alert to avoid behavior conduct that may reasonably be perceived as prejudicial or biased.*

*The same Canons of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper or over the telephone also apply to the internet and social networking sites like Facebook.*

- (6) A judge shall require\* lawyers in proceedings before the ~~judge~~ court to refrain from manifesting, ~~by words or conduct~~, bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, or socioeconomic status, handicap or medical condition against parties, witnesses, ~~counsel~~ lawyers or others. This Section ~~3B(6)~~ does not preclude legitimate advocacy ~~when race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, or other similar factors, are issues~~ reference to either the above-listed attributes or similar factors when they are relevant to an issue in the proceeding.

**Canon 3(B)6 Commentary.**–*Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap and medical*



condition. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature that is unwelcome.

- (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 or their lawyers concerning a pending or impending ~~proceeding matter~~\* except that:
- (a) ~~Where~~When circumstances require\* it, ex parte communications for scheduling, administrative purposes or emergencies, which does that do not deal with address substantive matters or issues on the merits ~~are authorized~~ is permitted;, provided:
    - (i) the judge reasonably believes that no party will gain a procedural, substantive 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 written 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 functions include aiding 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, permit or consider any ex parte communication when authorized by law.\*
  - (f) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
  - (g) A judge shall not independently investigate facts in a matter pending\* before the court and shall consider only the evidence presented and any facts that may properly be judicially noticed.
  - (h) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Canon is not violated by court staff, court officials and others subject to the judge's direction and control.

- (i) A judge may encourage parties and their lawyers in a proceeding to settle matters in dispute; but, shall not act in a manner that coerces any party into settlement.

**Canon 3B(7) Commentary.** – The right to be heard is an essential component of a fair and impartial\* system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

The proscription against communications concerning a proceeding includes communications ~~from~~ with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Section ~~Canon~~.

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

Whenever presence of a party or notice to a party is required by ~~Section~~ Canon 3B(7), it is the party's lawyer, or if the party is unrepresented, 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 Section 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 Section 3B(7) are clearly met. A judge must disclose to all parties all ex parte communications described in Sections 3B(7)(a) and 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 Section 3B(7) is not violated through law clerks or other personnel on the judge's staff.~~

~~If communication between the trial judge and the appellate court with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.~~

A judge may initiate, permit or consider ex parte communications expressly authorized by law,\* such as when serving on therapeutic or problem-solving courts, mental health courts or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers and others.

A judge may consult with other judges on pending matters,\* but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

*A judge may consult ethics advisory committees, outside counsel or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of ~~Section~~ Canon 3B(7)(b).*

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

**Canon 3B(8) 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~~ may encourage and seek to facilitate settlement, but ~~parties should not feel coerced into surrendering the right to have their controversy resolved by the courts~~ shall not act in a manner that coerces any party into settlement.*

*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~~ take reasonable measures to ensure that court officials, litigants and their lawyers cooperate with the judge to that end.*

- (9) Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending ~~proceeding~~ matter\* which might reasonably be expected to affect its outcome or impair its fairness. A judge shall require\* similar abstention on the part of court personnel subject to the court's direction and control.

**Canon 3B(9) Commentary.** – *The requirement that judges abstain from public comment regarding a pending or impending ~~proceeding~~ matter\* continues during any appellate process and until final disposition. This ~~Section~~ 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 3.6 of the Rules of Professional Conduct~~.*

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

**Canon 3B(11) Commentary.** – *In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.*

*This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel or other judicial officers if consistent with other provisions of this Code.*

- (12) A judge may permit, under guidelines approved by the ~~West Virginia~~ Supreme Court of Appeals of West Virginia, the broadcasting, televising, recording and taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions.

**Canon 3B(12) Commentary.** – *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.*

### C. Administrative responsibilities.

- (1) A judge shall ~~diligently discharge the judge's~~ perform all administrative responsibilities ~~duties competently, diligently and without bias, or prejudice and maintain professional competence in judicial administration, and should~~ A judge should cooperate with other judges and court officials in the administration of court business.
- (2) A judge shall require\* court 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.~~ act in a manner consistent with the judge's obligations under this Code.
- (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~~ ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

**Canon 3C(3) Commentary.** -- *Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.*

- (4) ~~A judge shall not make unnecessary~~ In making administrative appointments, A a judge shall exercise the power of appointment impartially\* and on the basis of merit, ~~and A judge~~ shall avoid nepotism\* and unnecessary appointments. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

**Canon 3C(4) Commentary.** – *Appointees of a judge include assigned counsel; officials such as magistrates, referees, commissioners, special masters, receivers and guardians; and personnel such as clerks, secretaries, court reporters, probation officers and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by ~~Section~~ Canon 3C(4).*

- (5) A judge shall not ~~require any direct court personnel subject to the judge's direction to act contrary to any code of ethics applicable to the judge or to the personnel, or to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.~~ A judge shall not direct any such personnel to engage in any activity or perform any work not reasonably related to the official position or functions of the personnel. ~~A judge shall not require or knowingly\* permit such personnel to act, in any official capacity, contrary to the law\*.~~

**Canon 3C(5) Commentary.** -- *A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.*

#### D. Disciplinary responsibilities.

- (1) A judge who ~~receives information indicating a substantial likelihood~~ has probable cause to believe that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the ~~appropriate authority~~ \* Judicial Investigation Commission or, as appropriate, the Administrative Director of the Courts (see Rule 2.14 of the Rules of Judicial Disciplinary Procedure).
- (2) A judge who ~~receives information indicating a substantial likelihood~~ has probable cause to believe that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct 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~~ \*. Office of Lawyer Disciplinary Counsel.
- (3) A judge who has ~~knowledge\*~~ probable cause to believe that another judge is incapacitated or impaired, raising a substantial question as to the judge's fitness for office, shall inform the Judicial Committee on Assistance and Intervention ~~of the judiciary and the Judicial Investigation Commission.~~
- (4) A judge who has probable cause to believe that a lawyer is incapacitated or impaired, raising a substantial question as to the lawyer's fitness to practice law, shall inform the Lawyer Committee on Assistance and Intervention and the Office of Lawyer Disciplinary Counsel.
- (5) Acts of a judge in the discharge of disciplinary responsibilities, required or permitted by Section ~~Section~~ Canons 3D(1), 3D(2), 3D(3) and 3D(4), 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.

**Canon 3D(5) 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. Taking action to address know-known\* misconduct is a judge's obligation. Paragraphs (1) and (2) impose an obligation on the judge to report the known\* misconduct of another judge or a lawyer that raises a substantial question regarding fitness of that judge or lawyer. Ignoring or denying known\* misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Canon limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.~~

A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but has probable cause to believe such misconduct occurred, is also required to take appropriate action. Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

## E. Disqualification.

- (1) A judge shall disqualify himself or herself in ~~a~~ any proceeding in which the judge's impartiality\* might reasonably be questioned, including but not limited to ~~instances where~~ the following circumstances:

**Canon 3E(1) Commentary.** – ~~Under this rule, a judge is disqualified whenever the judge's impartiality\* might reasonably be questioned, regardless whether any of the specific rules in Section Canon 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared.~~

A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed. 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.

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 itself disqualify the judge.

- (a) ~~†~~ The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of disputed evidentiary facts that are in dispute in concerning the proceeding;
- (b) ~~†~~ The judge:
- (i) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially in a matter that the judge also participated in with whom the judge previously practiced law served during such association as a lawyer concerning the matter,;
  - (ii) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
  - (iii) or the judge has been was a material witness concerning it the matter; or
  - (iv) previously presided as a judge over the matter in another court.
- (c) ~~†~~ The judge knows\* that he or she, individually or as a fiduciary,\* or the judge's spouse, domestic partner,\* parent or child wherever residing, or any other member of the judge's family residing in the judge's household,\* has an economic interest\* in the subject matter in controversy or is 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 knows\* that the judge or the judge's spouse, or domestic partner,\* or a person within the third degree of relationship\* to either of them, or the spouse or domestic partner\* of such a person is:
- (i) is a party to the proceeding, or an officer, director, general partner, managing member or trustee of a party;
  - (ii) is acting as a lawyer in the proceeding;
  - (iii) is a person who has more known\* by the judge to have a more than a de minimis\* interest that could be substantially affected by the proceeding; or
  - (iv) is to the judge's knowledge\* likely to be a material witness in the proceeding.
- (e) The judge, while a judge or a judicial candidate,\* has made a public statement, other than in a court proceeding, judicial decision or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

- (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 or domestic partner\* and minor children residing in the judge's household.\*

**F. Waiver of Disqualification.** A judge subject to disqualification under this Canon, other than for bias or prejudice under Canon 3E(1)(a), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

**Canon 4. A judge shall ~~so conduct the judge's extra-judicial personal and~~ extrajudicial activities ~~as to minimize the risk of conflict with~~ judicial ~~the obligations of judicial office.~~**

- A. Extrajudicial activities in general. -- A judge ~~shall conduct all of the judge's extra-judicial activities so that they do not:~~ may engage in extrajudicial activities, except as prohibited by law\* or this Code. However, when engaging in extrajudicial activities, a judge shall not:
- (1) ~~cast reasonable doubt on the judge's capacity to act impartially as a judge~~ participate in activities that would appear to a reasonable person to undermine the judge's independence, \* integrity\* or impartiality;\*
  - (2) ~~demean the judicial office; or~~ participate in activities that will lead to the frequent disqualification of the judge;
  - (3) participate in activities that will interfere with the proper performance of the judge's judicial duties;
  - (4) engage in conduct that would appear to a reasonable person to be coercive; or
  - (5) make use of court premises, staff, stationary, equipment or other resources, except for activities that concern the law,\* the legal system or the administration of justice, or unless such additional use is permitted by law.\*

**Canon 4(A) Commentary.** – *~~Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives.~~*

*To the extent that time permits, and judicial, integrity,\* independence\* and impartiality\* are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial*



activities that concern the law,\* the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.\*

Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity,\* independence\* and impartiality.\* Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap and medical condition. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Canon 2D.

While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Canon 4C(2) and (3), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor.

- 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 non-legal subjects, subject to the requirements of this Code.

**Canon 4(B) 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.*

*In this and other ~~Sections~~ provisions of Canon 4, the phrase "subject to the requirements of this Code" 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 ~~Sections~~ provisions of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.*

C. Governmental, civic, or charitable activities.

- (1) Governmental activities. -- 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, or the administration of justice or when acting pro se in a matter involving ~~the judge or the judge's~~ legal or economic\* interests, or when the judge is acting in a fiduciary\* capacity, subject to the requirements of this Code.

**Canon 4(C)(1) Commentary.** -- *In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Canon 2B, prohibiting judges from using the prestige of office to advance their own or others' interests, Canon 3B(9), governing public comment on pending and impending matters,\* and Canon 4A(1), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence,\* integrity\* or impartiality.\**

- (2) Quasi-judicial activities -- Subject to other provisions of this Code and the prohibition in Article VIII, Section 7, Constitution of West Virginia that “[n]o justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government . . . ,” appointments of judges made by the Supreme Court of Appeals of West Virginia to any quasi-judicial boards or to any other position or activity, do not violate this constitutional provision. A judge may also serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law,\* the legal system, or the administration of justice. A judge may assist ~~such as these~~ organizations in raising funds and may participate in their management and investment, but ~~should cannot~~ personally participate in public fund-raising activities. 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. However, any appointment of a judge made by the Governor or any other governmental official to any other office or to a position of public trust under this or any other government must have the approval of the Supreme Court of Appeals of West Virginia.
- (3) Civic and charitable activities. -- A judge may participate in civic and charitable activities and organizations not conducted for profit that do not reflect adversely upon the judge's impartiality\* or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee or non-legal adviser 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.
- (b) Other than the permitted soliciting of membership for an organization concerned with the law,\* the legal system or the administration of justice, ~~A judge should cannot~~ solicit funds for any educational, religious, charitable, fraternal or civic organization, or

use or permit the use of the prestige of office for that purpose; but a judge may be listed as an officer, director or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

- (c) A judge ~~should~~ is not to give investment advice to such an organization, but a judge may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.
- (d) A judge may appear or speak at, receive an award or other recognition at, or be featured on the program and permit his or her title to be used in connection with a non-fundraising event of an organization or entity covered by this Canon. If the event concerns the law,\* the legal system, or the administration of justice, a judge may participate in the event.
- (e) A judge should encourage lawyers to provide pro bono public legal services.

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

#### D. Financial activities.

(1) A judge shall not engage in financial and business dealings that:

- (a) may reasonably be perceived to exploit the judge's judicial position;~~or~~
- (b) involve the judge in frequent transactions or continuing business relationships with ~~those~~ lawyers or other persons likely to come before the court on which the judge serves; or result in a violation of other provisions of this Code; or
- (c) interfere with the proper performance of judicial duties.

**Canon 4D(1) Commentary.** -- *The Time for Compliance provision of this Code (Canon 6; ~~Section F~~) postpones the time for compliance with certain provisions of ~~this Section in some cases 4D.~~*

*When a judge acquires in judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See ~~Section~~Canon 2B; ~~see also Section and~~ 3B(11).*

*A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come*

*either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family\* from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to ~~Section~~Canon 3E(1) relating to disqualification.*

*Participation by a judge in financial and business dealings is subject to the general prohibitions in ~~Section~~Canon 4A against activities that tend to reflect adversely on impartiality,\* demean the judicial office or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety\* or the appearance of impropriety\* and the prohibition in ~~Section~~Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for ~~Section~~Canon 4B regarding use of the phrase "subject to the requirements of this Code."*

- (2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family,\* ~~including real estate, and engage in other remunerative activity.~~
- (3) A judge shall not serve as an officer, director, manager, general partner, adviser or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:
  - (a) a business closely held by the judge or members of the judge's family,\* or
  - (b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.\*

**Canon 4D(3) Commentary.** -- *Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family,\* or by the judge and members of the judge's family.\**

*Although participation by a judge in a closely-held family business might otherwise be permitted by ~~Section~~Canon 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.*

- (4) 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 himself or herself of investments and other financial interests that might require frequent disqualification.

- (5) A judge shall not accept, or knowingly\* permit staff, court officials and others subject to judge's direction and control to accept, and should urge members of the judge's family residing in the judge's household,\* not to accept a gift, bequest, favor or loan from anyone except for:

**Canon 4D(5) Commentary.** -- ~~Section~~Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.

*Because a gift, bequest, favor or loan to a member of the judge's staff, court officials and others subject to the judge's direction and control and of the judge's family residing in the judge's household\* might be viewed as intended to influence the judge, a judge should inform staff, court officials and others subject to the judge's direction and control and those family members of the relevant ethical constraints upon the judge in this regard and discourage those subject to the judge's direction and control and those family members from violating them. A judge cannot, however, reasonably be expected to know\* or control all of the financial or business activities of all family members residing in the judge's household.\**

- (a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system, or the administration of justice;

**Canon 4D(5)(a) Commentary.** -- Acceptance of an invitation to a law-related function is governed by ~~Section~~Canon 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by ~~Section~~Canon 4D(5)(h).

*A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See ~~Sections~~Canons 4A(1) and 2B.*

- (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse 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 other family member and the judge (as spouse 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;
- (c) ordinary social hospitality;
- (d) 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;

**Canon 4D(5)(d) Commentary.** -- *A gift to a judge, or to a member of the judge's family living in the judge's household,\* that is excessive in value raises questions about the judge's impartiality\* and the integrity\* of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required.*

See, however, ~~Section~~Canon 4D(5)(e).

- (e) 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 disqualification under ~~Section~~Canon 3E;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; ~~or~~
- (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds one hundred and fifty dollars (\$150.00), the judge reports it in the same manner as the judge reports compensation in ~~Section~~Canon 4H; or

**Canon 4D(5)(h) Commentary.** -- ~~Section~~Canon 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

- (i) unsolicited holiday gifts of food or candy to the judge's office with a value of twenty-five dollars (\$25.00) or less from lawyers, unless the circumstances of accepting the gift would appear to undermine the judge's independence, integrity or impartiality. The total value of all items given should not be more than twenty-five dollars (\$25.00) for any one year.

#### E. Fiduciary activities.

- (1) A judge shall not serve as executor, fiduciary,\* administrator or other personal representative, trustee, guardian, or attorney in fact, ~~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.
- (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.

- (4) If a person who is serving in a fiduciary\* position becomes a judge, he or she must comply with this Canon as soon as reasonably practicable, but in no event later than one year after becoming a judge.

**Canon 4E Commentary.** – ~~*The Time for Compliance provision of this Code (Section 6F) postpones the time for compliance with certain provisions of this Section in some cases.*~~

*The restrictions imposed by this Canon 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 Section 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.\*

**Canon 4F Commentary.** - ~~*Section*~~*Canon 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial or administrative duties or concerns, or from participating in arbitration, mediation or settlement conferences performed at the request, or with the permission of, other judges, as long as it is without compensation. Section*~~*Canon 6B permits retired judges to act as mediators and arbitrators in a private capacity.*~~

- 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.\*

**Canon 4G 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 members of the judge's family.\* See ~~Section~~Canon 2(B).*

*The Code 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 in a legal matter.*

- H. Compensation, reimbursement, and reporting.

- (1) Compensation and reimbursement. -- A judge may receive reasonable compensation and reimbursement of expenses for ~~the~~ extrajudicial activities permitted by this Code, or other law,\* 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. appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\*

- ~~(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 name of a firm, corporation or partnership in which the judge has an interest and relationship thereto. In addition, should the judge receive compensation during the calendar year exceeding \$500 from sources other than those listed in the preceding sentence, the judge shall report the name of the payor and the reason for the compensation. Compensation or income of a judge's spouse contributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. The report must be made annually by July 1 for the preceding calendar year, and must be filed as a public document in the office of the Clerk of the Supreme Court of Appeals or other office designated by rule of the Supreme Court of Appeals.

**Canon 4H** Commentary. -- ~~See Section~~Canon 4D(5) regarding reporting of gifts, bequests and loans.

*The Code does not prohibit a judge from accepting honoraria or other compensation for speaking, teaching, writing and other extrajudicial activities ~~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 financial information. -- Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in ~~Section~~Canon 3E, or as otherwise required by law.\*

**Canon 4I** Commentary. -- ~~Section~~Canon 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest.\* ~~Section~~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; ~~Section~~Canon 4H requires a judge to report certain 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.

**Canon 5.** A judge or judicial candidate shall ~~refrain from inappropriate political activity~~not engage in political or campaign activity that is



**inconsistent with the independence, integrity, or impartiality of the judiciary.**

A. All judges and candidates.

- (1) Except as permitted by law, or authorized in by Sections~~Sections~~ Canons 5B(2), 5C(12), and 5C(34), a judge or a candidate\* for election or appointment to judicial office shall not:
- (a) act as a leader or hold an office in a political organization,\*
  - (b) publicly endorse or publicly oppose another candidate\* for public office;
  - (c) make speeches on behalf of a political organization;\*
  - (d) publicly display any campaign paraphernalia from an ongoing campaign in any area where judicial activities are conducted or knowingly\* permit any such display; or
  - (e) solicit funds for a political organization\* or candidate.\*

**Canon 5A(1) Commentary.** – Public confidence in the independence,\* integrity\* and impartiality\* of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.

Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law\* and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates,\* taking into account the different methods of selecting judges.

When a person becomes a judicial candidate,\* this Canon becomes applicable to his or her conduct.

A judge or candidate\* for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate\* having knowledge\* of the facts is not prohibited by ~~Section~~Canon 5A(1) from making the facts public.

~~Section~~Canon 5A(1)(a) does not prohibit a candidate\* for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."\*

~~Section~~Canon 5A(1)(b) does not prohibit a judge or judicial candidate\* from privately expressing his or her views on judicial candidates or other candidates for public office. A candidate\* does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.

- (2) A judge shall resign from judicial office upon becoming a candidate\* for a non-judicial office either in a primary or in a general election, except that the 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 the judge is otherwise permitted by law\* to do so. Upon becoming a candidate for a non-judicial appointed office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

**Canon 5A(2) Commentary.** -- *In campaigns for non-judicial elective public office, candidates may make pledges, promises or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in non-judicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for non-judicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.*

*The “resign to run” rule ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive non-judicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.*

- (3) A candidate\* for a judicial office:

- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence,\* integrity\* and ~~independence- impartiality\*~~ of the judiciary, and shall act in a manner that promotes public confidence in the independence,\* integrity\* and impartiality\* of the judiciary, and should encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate\* that apply to the candidate\*;

**Canon 5A(3) Commentary.** - *Although a judicial candidate\* must encourage members of his or her family\* to adhere to the same standards of political conduct in support of the candidate\* that apply to the candidate,\* family members are free to participate in other political activity.*

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and officials subject to the candidate's\* direction and control from doing on the candidate's\* behalf what the candidate\* is prohibited from doing under the ~~Sections~~ provisions of this Canon;
- (c) except to the extent permitted by Section 5C(23), shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate\* is prohibited from doing under the ~~Sections~~ provisions of this Canon;
- (d) shall not:

- (i) ~~make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office~~ any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending\* in any court;
- (ii) ~~make statements that commit or appear to commit the candidate\* with respect to in connection with cases, controversies or issues that are likely to come before the court; or make pledges, promises or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of judicial office;~~
- (iii) knowingly\* misrepresent the identity, qualifications, present position, or other fact concerning the candidate\* or an opponent; or
- (iv) knowingly\* or with reckless disregard for the truth, make any false or misleading statement;

**Canon 5A(3)(d) Commentary.** - ~~Section 5A(3)(d) prohibits a candidate\* for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, Judicial candidates\* must be scrupulously fair and accurate in all statements made by them and their campaign committees. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates\* provided in Canon 5 allow candidates\* to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates\* and make informed electoral choices. The making of a pledge, promise or commitment is not dependent upon, or limited to, use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. At all times, a candidate\* should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section Canon 3B(9), the general rule on public comment by judges. Section Canon 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration such as a promise to dispose a backlog of cases, start court sessions on time or avoid favoritism in appointments and hiring. A candidate\* may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.~~

~~Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Depending upon the wording and format of the questions, responses by judicial candidates\* might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial\* way. To avoid a violation of the Canon, candidates\* who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially\* if elected. Candidates\* who choose not to respond may state their reasons for not responding,~~

such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence\* or impartiality,\* or that it might lead to frequent disqualification.

~~Not does + This Section~~ Canon does not prohibit an incumbent judge from making private statements to other judges or court personnel\* in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also ~~Rule 8.2 of the Rules of Professional Conduct.~~

- (e) may respond to personal attacks or attacks on the candidate's\* record as long as the response does not violate ~~Section~~ Canon 5A(3)(d).

**Canon 5A(3)(e) Commentary.** -- Judicial candidates\* are sometimes the subject of false, misleading or unfair allegations made by opposing candidates,\* third parties or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications or judicial rulings of a candidate.\* In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the judicial candidate\* does not violate Canon 5A(3)(d), he or she may make a factually accurate public response. In addition, when an independent third party has made an unwarranted attack on a judicial candidate's\* opponent, the candidate\* may disavow the attacks and request the third party to cease and desist.

If the false, misleading or unfair allegations relate to a pending or impending matter,\* it is preferable for someone else, such as a campaign chairperson, to respond to the claims. However, if no other person is available, a judicial candidate\* is permitted to make a direct response that does not violate Canons 3B(9) or 5A(3)(d).

## B. Candidates seeking appointment to judicial or other governmental office.

- (1) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.
- (2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment inconsistent with the provisions of ~~Section~~ Canon 5A(1), but such persons may:
  - (a) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
  - (b) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to office, and from individuals to the extent requested or required by those specified in ~~Section~~ Canon 5B(2)(a); and

- (c) provide to those specified in ~~Section~~Canon 5B(2)(a) and 5B(2)(b) information as to his or her qualifications for the office.
- (3) A non-judge candidate\* for appointment to judicial office may, in addition, unless otherwise prohibited by law,\* retain an office in a political organization.\*

**Canon 5B Commentary.** -- ~~Section~~Canon 5B(2) provides a limited exception to the restrictions imposed by ~~Sections~~Canons 5A(1) and 5D. Under ~~Section~~Canon 5B(2), candidates\* seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support. Although under ~~Section~~Canon 5B(23) non-judge candidates\* seeking appointment to judicial office are permitted during candidacy to retain office in a political organization,\* they remain subject to other provisions of this Code during candidacy. See ~~Sections~~Canons 5B(1), 5B(2)(a), 5E and Canon 6.

When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

#### C. Judges and candidates subject to public election.\*

##### (1) A judge or a candidate\* subject to public election\* shall:

- (a) act at all times in a manner consistent with the independence,\* integrity\* and impartiality\* of the judiciary;
- (b) comply with all applicable election, election campaign and election campaign fund-raising laws and regulations of this jurisdiction;
- (c) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before their dissemination; and
- (d) take appropriate corrective action if he or she learns of any misrepresentations made in his or her campaign statements or materials.

##### ~~(1)~~ (2) A judge or a candidate\* subject to public election\* may, except as prohibited by law:\*

- (a) at any time
  - (i) purchase tickets for and attend political gatherings;
  - (ii) identify himself or herself as a member of a political party; and
  - (iii) contribute to a political organization;\*
- (b) when a candidate for election

- (i) speak to gatherings on his or her own behalf;
- (ii) appear in newspaper, television, and other media advertisements supporting his or her candidacy; and
- (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

**Canon 5C Commentary.** - ~~Section~~Canon 5C(42) permits judges subject to public election\* at any time to be involved in limited political activity. ~~Section~~Canon 5D, applicable solely to incumbent judges, would otherwise bar this activity.

- (~~23~~) A candidate\* shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate\* may, however, establish committees of responsible persons to conduct campaigns for the candidate\* through all media advertisements, brochures, mailings, candidate forums, and other means not prohibited by these Canons or by law.\* Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate\* shall not use or permit the use of campaign contributions for the private benefit of the candidate\* or others.

**Canon 5C(3) Commentary.** -- ~~Section~~Canon 5C(23) permits a candidate,\* other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge,\* made by lawyers or others who appear before the judge, may be relevant to disqualification under ~~Section~~Canon 3E.

Campaign committees established under ~~Section~~Canon 5C(23) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.

~~Section~~Canon 5C(23) does not prohibit a candidate\* from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

- (~~34~~) Except as prohibited by law,\* a candidate\* for judicial office in a public election\* may permit the candidate's\* name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

**Canon 5C(4) Commentary.** -- ~~Section~~Canon 5C(34) provides a limited exception to the restrictions imposed by ~~Section~~Canon 5A(1).

The Time for Compliance provision of this Code (~~Section~~ (Canon 6F) postpones the time for compliance with certain provisions of this ~~Section~~Canon in some cases.

- D. Incumbent judges. A judge shall not engage in any political activity except: (i) as authorized under any other ~~Section~~ provision of this Code; (ii) on behalf of measures to improve the law,\* the legal system or the administration of justice; or (iii) as expressly authorized by law.\*

**Canon 5D Commentary.** -- ~~Neither Section~~Canon 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law,\* the legal system, and the administration of justice, see Commentary to ~~Section~~Canon 4B and ~~Section~~Canon 4C(1) and its Commentary.

- E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.\* A candidate,\* whether or not an incumbent and whether or not successful, is subject to judicial discipline for his or her campaign conduct.

**Canon 5E Commentary.** - A lawyer who is a candidate\* for judicial office may also be disciplined under the Rules of Professional Conduct for his or her campaign conduct. See especially ~~Rule 8.2.~~

## **Canon 6. Application of the Code of Judicial Conduct.**

- A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family—~~Law~~—~~Masters~~ Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters, is a judge within the meaning of the Code. All judges shall comply with this Code except as provided below. All candidates for judicial office shall comply with the applicable provisions of this Code.

**Canon 6A Commentary.** – The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this ~~Section~~Canon, as long as a retired judge is subject to recall, the judge is considered to “perform judicial functions.” The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.

*The Code does not apply to an administrative law judge, hearing examiner or similar officer within the executive branch of government or to municipal judges.*

## B. Retired judges.

- (1) A retired judge admitted to senior status but who does not engage in the practice of law\* is not required to comply with ~~Section~~Canon 4E.
- (2) A retired judge admitted to senior status but who engages in limited law\* practice is not required to comply with ~~Section~~Canons 4E and 4G.
- (3) A retired judge not admitted to senior status but who is recalled for specific cases or specific periods of service shall be deemed a pro tempore part-time judge\* subject to ~~Section~~Canon 6E.
- (4) A retired judge, whether or not admitted to senior status and whether or not engaging in law\* practice, may be employed as a mediator or an arbitrator notwithstanding the provisions of ~~Section~~Canon 4F.

## C. Continuing part-time judge. A continuing part-time judge:\*

- (1) is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law\* (“continuing part-time judge”).
- ~~(1)~~(2) is not required to comply
  - (a) except while serving as a judge, with ~~Section~~Canon 3B(9); and
  - (b) at any time with ~~Section~~Canons 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2), and 5D.
- ~~(2)~~(3) may practice law\* in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

**Canon 6C Commentary.** – ~~A part-time Family Law Master shall not accept any domestic relations matter or serve as an attorney in any proceeding related to a case in which he or she has served as a Family Law Master, nor shall a Mental Hygiene Commissioner shall not accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner, nor shall a Juvenile Referee accept any juvenile matters or serve as an attorney in any proceeding related to a case in which, he or she has served as a Juvenile Referee.~~

*When a person who has been a continuing part-time judge\* is no longer a continuing part-time judge,\* including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to ~~Rule 1.12(a)~~ of the Rules of Professional Conduct.*



D. Periodic part-time judge. A periodic part-time judge:\*

- (1) who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter, is not required to comply:
  - (a) except while serving as a judge, with ~~Section~~Canon 3B(9);
  - (b) at any time, with ~~Section~~Canons 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.
- (2) shall not practice law\* in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

**Section 6D Commentary.** -- *When a person who has been a periodic part-time judge\* is no longer a periodic part-time judge\* (no longer accepts appointments) that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to ~~Rule 1.12(a)~~ of the Rules of Professional Conduct.*

E. Pro tempore part-time judge. A pro tempore part-time judge:\*

- (1) who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:
  - (a) except while serving as a judge, with ~~Section~~Canons 2A, 2B, 3B(9), and 4C(1);
  - (b) at any time with ~~Section~~Canons 2C, 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2), and 5D.
- (2) ~~A person who has been a pro tempore part time judge\* shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by Rule 1.12(a) of the Rules of Professional Conduct.~~

F. Time for compliance. A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except ~~Section~~Canons 4D(2), 4D(3) and 4E and shall comply with these ~~Section~~Canons as soon as reasonably possible and shall do so in any event within the period of one year. ~~History—[Amended by order entered June 14, 1994, effective July 1, 1994; and by order entered February 15, 1995, effective March 1, 1995.]~~

**Section 6F Commentary.** – *If serving as a fiduciary\* when selected as judge, a new judge may, notwithstanding the prohibitions in ~~Section~~Canon 4E, continue to serve as fiduciary\* but only for that period of time necessary to avoid serious adverse*

*consequences to the beneficiaryies of the fiduciary\* relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in ~~Section~~Canon 4D(3), continue in that activity for a reasonable period but in no event longer than one year.*

## Terminology.

Terms explained below are noted with an asterisk (\*) in the ~~Section~~Canons where they appear. In addition, the ~~Section~~Canons where terms appear are referred to after the explanation of each term below.

~~"Appropriate authority" denotes the authority with responsibility for initiation of disciplinary process with respect to the violation to be reported. See Sections 3D(1) and 3D(2).~~

"Candidate." A candidate ~~is a~~ means any person, including a sitting judge, who is 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 or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.~~ The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. *See ~~Section~~Canons 3E(1), 5A, 5B, 5C, 5E and 6A.*

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, ~~a part-time family law master, a juvenile referee, and~~ such as a retired judge subject to recall who is permitted to practice law or a mental hygiene commissioner. *See ~~Section~~Canon 6C.*

~~"Court personnel" does not include the lawyers in a proceeding before a judge. See Sections 3B(7)(e) and 3B(9).~~

"De minimis" in the context of interests pertaining to disqualification of a judge means ~~denotes~~ an insignificant interest that could not raise a reasonable question as ~~to a~~ regarding the judge's impartiality. *See ~~Section~~Canons 3E(1)(c) and 3E(1)(d).*

"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. *See Canons 3E(1) and 3E(2).*

"Economic interest" ~~denotes~~ means ownership of a more than a 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:~~

(i) ~~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;~~

~~(ii) 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;~~  
~~(iii) 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;~~  
~~(iv) 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. See Sections 3E(1)(c) and 3E(2).~~

Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent or child serves as a director, an officer, an advisor or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union or similar proprietary interests;  
or
- (4) an interest in the issuer of government securities held by the judge. See Canons 2B, 3E(1), 3E(2), 4C and 4I.

"Fiduciary" includes ~~such~~ relationships such as executor, administrator, trustee ~~and or~~ guardian. ~~See Section~~ Canons 3E(1), 3E(2), 4C and 4E.

"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. See Canons 1A, 2A, 2D, 3B(1), 3B(2), 3B(7), 3C(4) and 3E(1), 4A, 4C, 4D(1), 4D(5), 4H(1), 5A(1) and 5A(3).

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Canons 3B(9) and 5A(3).

"Impropriety" includes conduct by the judge that violates the law, court rules or provisions of this Code, and conduct that undermines a judge's independence, integrity or impartiality. See Canons 2A, 2D and 4D(1).

“Independence” means a judge’s freedom from influence or controls other than those established by law. See Canons 1A, 3B(1), 4A, 4B, 4C, 4H(1), 5A(1) and 5A(3).

“Integrity” means probity, fairness, honesty, uprightness and soundness of character. See Canons 1A, 2A, 2D, 3B(1), 4A, 4B, 4C, 4D(5), 4H(1), 5A(1) and 5A(3).

"Knowingly," "knowledge," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. ~~See Section~~Canons 2B, 2D, 3C(5), 3D(1), 3D(2), 3E(1), 5A(1), 5A(3) and 5C .

"Law" ~~denotes~~ encompasses court rules as well as statutes, constitutional provisions, and decisional law. ~~See Section~~Canons 2A, 3A, 3B(2), 3B(7), 3C(5), 4A, 4B, 4C, 4D(5), 4F, 4I, 5A(1), 5A(2), 5B(3), 5C, 5D, and 6B, 6C and 6D.

"Member of the candidate's family" denotes a spouse, domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. ~~See Section~~Canon 5A(3)(a).

"Member of the judge's family" denotes a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. ~~See Section~~Canons 4D, 4E and 4G.

"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 Section~~Canons 3E(1), 3E(2) and 4D(5).

"Nepotism" ~~denotes~~ means favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household. ~~See Section~~Canon 3C(4).

"Nonpublic information" ~~denotes~~ is information that, ~~by law,~~ is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, or impounded, or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. ~~See Section~~Canon 3B(11).

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Canons 3B(7), 3B(9) and 5A(3).

"Periodic part-time judge-" ~~A periodic part-time judge-~~ is a judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter. ~~See Section~~Canon 6D.

"Political organization" ~~denotes~~ 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 to political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee . ~~See Section~~Canons 5A(1), 5B(3) and 5C(1).

"Pro tempore part-time judge-" ~~A pro tempore part-time judge~~ is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. ~~See Section~~Canons 6B and 6E.

"Public election." ~~This term~~ includes primary and general elections; ~~it includes partisan elections,~~ partisan elections, nonpartisan elections and retention elections. ~~See Section~~Canons 5C(1) and 5C(3).

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, 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 Section~~Canons 3B(3), 3B(4), 3B(6), 3B(7), 3B(8), 3B(9) and 3C(2).

"Third degree of relationship" means ~~t~~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~~ and niece. ~~See Section~~Canon 3E(1)(d).

## **PROPOSED AMENDMENTS to the WEST VIRGINIA CODE OF JUDICIAL CONDUCT**

By Order of June 28, 2013, the following proposed amendments to the Code of Judicial Conduct were approved for a ninety-day period of public comment. All comments must be filed in writing with the Clerk of the Supreme Court by September 26, 2013.

This is an engrossed version of the proposed amendments. A strikethrough and underline version begins at page 1.

### **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 provisions of this Code 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. Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges and judicial candidates. It consists of broad statements called Canons, specific provisions set forth under each Canon, an Application Canon, Commentary, and a Terminology Section. The text of the Canons, the provisions therein, and the Terminology is 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. It is to provide guidance regarding the purpose, meaning and proper application of the Code. When the text uses "shall" or "shall not," it is intended to impose binding obligations the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Canons are rules of reason. They should be applied 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 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 the Code would be subverted if the Code were invoked 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. 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, the circumstances then existing, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

Article VIII, Section 8 of the West Virginia Constitution vests the Supreme Court of Appeals of West Virginia with the exclusive authority to prescribe rules governing the conduct and performance of judges, as well as the exclusive authority to impose sanctions and penalties for violations. The Code of Judicial Conduct is the formal, written standard governing the conduct and discipline of judges and others serving in a judicial capacity. The ethical standards set forth in the Code of Judicial Conduct do not draw simplistic lines between right and wrong. Judges will find that acting responsibly, honestly, and ethically involves more than simply learning this or any other code. A true sense of professional responsibility derives from an understanding of the reasons that underlie the principles of the Code of Judicial Conduct. Good judgment and adherence to high moral and personal standards are also important.

**\* All terms marked with an asterisk (\*) are defined in the terminology section at the end of this Code.**

**Canon 1. A judge shall uphold the integrity, independence and impartiality of the judiciary.**

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

**Canon 1 Commentary.** – *Deference to the judgments and rulings of courts depends upon public confidence in the integrity,\* independence\* and impartiality\* of judges. The integrity,\* independence\* and impartiality\* of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law,\* including 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, a violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.\**

**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,\* shall avoid impropriety\* and the appearance of impropriety\* in all of the judge's activities, and shall act at all times in a manner that promotes public confidence in the integrity\* and impartiality\* of the judiciary.

**Canon 2A 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 the Code. Actual improprieties\* under this standard include violations of law,\* including court rules or other specific provisions of this Code. Errors in finding facts or in interpreting or applying law\* are not violations of this canon unless such judicial determinations involve bad faith or are done willfully or deliberately. 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. See also Commentary under Canon 2D.*



- 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 personal or economic\* interests of the judge or others; nor shall a judge convey or knowingly\* permit others to convey the impression that they are in a special position to influence the judge.

**Canon 2B 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. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.*

*A judge must avoid lending the prestige of judicial office for the advancement of the personal or economic\* 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 Canons 4D(5)(a), 4D(5)(b) and Commentary.*

*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 on official letterhead, which need not bear the words "personal and unofficial." However, a judge must not initiate the communication of information to a sentencing judge or a probation or corrections officer but may provide to such persons 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 and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office. See also Canon 5 regarding use of a judge's name in political activities.*

*Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law.\* A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law.\* In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.*

- C. A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

**Canon 2C Commentary.** -- *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. 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.*

*Whether or not the demands of justice indicate the judge should testify depends on the nature and depth of the judge's actual awareness of the character of the party for whom the judge would testify. It also depends upon the actual necessity that it be the judge, as opposed to another possible witness who is called to testify. Only if the judge is in a unique position to offer meaningful testimony about the individual should the judge testify.*

- D. A judge shall not hold membership in any organization that practices invidious discrimination by arbitrarily excluding persons on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin. For the purposes of this Canon, the term "organization" shall not include an association of individuals dedicated to the preservation of religious, ethnic, historical, or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection.

**Canon 2D Commentary.** -- *Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality\* is impaired because of the appearance of judicial bias against persons excluded from membership. Canon 2D refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an 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. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, gender, sexual orientation, ethnicity or national origin persons who would otherwise be admitted to membership.*

*Although Canon 2D relates only to membership in organizations that invidiously discriminate on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by West Virginia or federal law\* also violates Canons 2 and 2A and gives the appearance of impropriety.\* In addition, it*

*would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows\* practices invidious discrimination on the basis of race, sex, gender, sexual orientation, religion, ethnicity or national origin in its membership or other policies, or for the judge to regularly use such a club. 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 2 and diminishes public confidence in the integrity\* and impartiality\* of the judiciary in violation of Canon 2A.*

*When a judge learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2D or under Canons 2 and 2A, the judge is required to resign immediately from the organization.*

**Canon 3. A judge shall perform the duties of judicial office impartially, competently and diligently.**

A. Judicial duties in general. -- The duties of judicial office shall take precedence over all the judge's personal and extrajudicial activities. Judicial duties include all the duties of the judge's office prescribed by law.

**Canon 3A Commentary.** -- *To ensure that judges are available to fulfill their judicial duties, judges should strive to conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.*

*Although it is not a duty of judicial office unless prescribed by law,\* judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.*

B. Adjudicative responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required by Canon 3E or other law.\*

**Canon 3B(1) Commentary.** -- *Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence,\* integrity\* and impartiality\* of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial or unpopular issues.*

(2) A judge shall uphold and apply the law\* and shall perform all duties of judicial office fairly and impartially.\* A judge shall perform judicial and administrative duties competently and diligently. 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 court.

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

**Canon 3B(4) Commentary.** – *The duty to hear all proceedings fairly and with patience and courtesy is not inconsistent with the duty to promptly dispose of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.*

- (5) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice or harassment based upon race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap or medical condition and shall not permit court staff, court officials or others subject to the court's direction and control to do so.

**Canon 3(B)5 Commentary.** – *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; intimidating or hostile acts; suggestions of connections between race, ethnicity or nationality and crime; and irrelevant references to personal characteristics. Facial expression and body language, in addition to oral communication, can convey to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudicial or biased.*

*The same Canons of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper or over the telephone also apply to the internet and social networking sites like Facebook.*

- (6) A judge shall require\* lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap or medical condition against parties, witnesses, lawyers or others. This Canon does not preclude legitimate reference to either the above-listed attributes or similar factors when they are relevant to an issue in the proceeding.

**Canon 3(B)6 Commentary.**—*Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap and medical condition. Sexual harassment includes but is not limited to sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature that is unwelcome.*

- (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 or their lawyers concerning a pending or impending matter\* except that:
- (a) When circumstances require\* it, ex parte communication for scheduling, administrative purposes or emergencies, which does not address substantive matters or issues on the merits is permitted, provided:
    - (i) the judge reasonably believes that no party will gain a procedural, substantive 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 written 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 functions include aiding 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 settle matters pending\* before the judge.
  - (e) A judge may initiate, permit or consider any ex parte communication when authorized by law.\*
  - (f) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
  - (g) A judge shall not independently investigate facts in a matter pending\* before the court and shall consider only the evidence presented and any facts that may properly be judicially noticed.
  - (h) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Canon is not violated by court staff, court officials and others subject to the judge's direction and control.
  - (i) A judge may encourage parties and their lawyers in a proceeding to settle matters in dispute; but, shall not act in a manner that coerces any party into settlement.

**Canon 3B(7) Commentary.** – *The right to be heard is an essential component of a fair and impartial\* system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.*

*The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Canon.*

*To the extent reasonably possible, all parties or their lawyers shall be included in communications with the 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 unrepresented, the party, who is to be present or to whom notice is to be given.*

*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 may initiate, permit or consider ex parte communications expressly authorized by law,\* such as when serving on therapeutic or problem-solving courts, mental health courts or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers and others.*

*A judge may consult with other judges on pending matters,\* but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.*

*The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.*

*A judge may consult ethics advisory committees, outside counsel or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of Canon 3B(7)(b).*

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

**Canon 3B(8) 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 may encourage and seek to facilitate settlement, but shall not act in a manner that coerces any party into settlement.*

*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 take reasonable measures to ensure that court officials, litigants and their lawyers cooperate with the judge to that end.*

- (9) Except for statements made in the course of official duties or to explain court procedures, a judge shall not make any public or nonpublic comment about any pending or impending

matter\* which might reasonably be expected to affect its outcome or impair its fairness. A judge shall require\* similar abstention on the part of court personnel subject to the court's direction and control.

**Canon 3B(9) Commentary.** – *The requirement that judges abstain from public comment regarding a pending or impending matter\* 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 the Rules of Professional Conduct.*

(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.

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

**Canon 3B(11) Commentary.** – *In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.*

*This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel or other judicial officers if consistent with other provisions of this Code.*

(12) A judge may permit, under guidelines approved by the Supreme Court of Appeals of West Virginia, the broadcasting, televising, recording and taking of photographs in the courtroom and areas immediately adjacent thereto during sessions of court or recesses between sessions.

**Canon 3B(12) Commentary.** – *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.*

### C. Administrative responsibilities.

(1) A judge shall perform all administrative duties competently, diligently and without bias. A judge should cooperate with other judges and court officials in the administration of court business.

(2) A judge shall require\* court staff, court officials and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

- (3) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

**Canon 3C(3) Commentary.** -- *Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.*

- (4) In making administrative appointments, a judge shall exercise the power of appointment impartially\* and on the basis of merit, and shall avoid nepotism\* and unnecessary appointments. A judge shall not approve compensation of appointees beyond the fair value of services rendered.

**Canon 3C(4) Commentary.** – *Appointees of a judge include assigned counsel; officials such as magistrates, referees, commissioners, special masters, receivers and guardians; and personnel such as clerks, secretaries, court reporters, probation officers 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).*

- (5) A judge shall not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge. A judge shall not direct any such personnel to engage in any activity or perform any work not reasonably related to the official position or functions of the personnel.

**Canon 3C(5) Commentary.** -- *A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.*

#### D. Disciplinary responsibilities.

- (1) A judge who has probable cause to believe that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the Judicial Investigation Commission or, as appropriate, the Administrative Director of the Courts (see Rule 2.14 of the Rules of Judicial Disciplinary Procedure).
- (2) A judge who has probable cause to believe that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's fitness as a lawyer in other respects shall inform the Office of Lawyer Disciplinary Counsel.



- (3) A judge who has probable cause to believe that another judge is incapacitated or impaired, raising a substantial question as to the judge's fitness for office, shall inform the Judicial Committee on Assistance and Intervention and the Judicial Investigation Commission.
- (4) A judge who has probable cause to believe that a lawyer is incapacitated or impaired, raising a substantial question as to the lawyer's fitness to practice law, shall inform the Lawyer Committee on Assistance and Intervention and the Office of Lawyer Disciplinary Counsel.
- (5) Acts of a judge in the discharge of disciplinary responsibilities, required or permitted by Canons 3D(1), 3D(2), 3D(3) and 3D(4), 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.

**Canon 3D(5) Commentary.** -- *Taking action to address known\* misconduct is a judge's obligation. Paragraphs (1) and (2) impose an obligation on the judge to report the known\* misconduct of another judge or a lawyer that raises a substantial question regarding fitness of that judge or lawyer. Ignoring or denying known\* misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Canon limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.*

*A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but has probable cause to believe such misconduct occurred, is also required to take appropriate action. Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.*

#### E. Disqualification.

- (1) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality\* might reasonably be questioned, including but not limited to the following circumstances:

**Canon 3E(1) Commentary.** – *Under this rule, a judge is disqualified whenever the judge's impartiality\* might reasonably be questioned, regardless whether any of the specific rules in Canon 3E(1) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that firm appeared.*

*A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed. 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.*

*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 itself disqualify the judge.*

- (a) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge\* of facts that are in dispute in the proceeding;
- (b) The judge:
  - (i) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially in a matter that the judge also participated in;
  - (ii) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;
  - (iii) was a material witness concerning the matter; or
  - (iv) previously presided as a judge over the matter in another court.
- (c) The judge knows\* that he or she, individually or as a fiduciary,\* or the judge's spouse, domestic partner,\* parent or child or any other member of the judge's family residing in the judge's household,\* has an economic interest\* in the subject matter in controversy or is a party to the proceeding;
- (d) The judge knows\* that the judge or the judge's spouse or domestic partner,\* or a person within the third degree of relationship\* to either of them, or the spouse or domestic partner\* of such a person is:
  - (i) a party to the proceeding, or an officer, director, general partner, managing member or trustee of a party;
  - (ii) acting as a lawyer in the proceeding;
  - (iii) a person who has more than a de minimis\* interest that could be substantially affected by the proceeding; or

- (iv) is likely to be a material witness in the proceeding.
- (e) The judge, while a judge or a judicial candidate,\* has made a public statement, other than in a court proceeding, judicial decision or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (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 or domestic partner\* and minor children residing in the judge's household.\*
- F. **Waiver of Disqualification.** A judge subject to disqualification under this Canon, other than for bias or prejudice under Canon 3E(1)(a), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

**Canon 4. A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.**

- A. **Extrajudicial activities in general.** -- A judge may engage in extrajudicial activities, except as prohibited by law\* or this Code. However, when engaging in extrajudicial activities, a judge shall not:
  - (1) participate in activities that would appear to a reasonable person to undermine the judge's independence, \* integrity\* or impartiality,\*
  - (2) participate in activities that will lead to the frequent disqualification of the judge;
  - (3) participate in activities that will interfere with the proper performance of the judge's judicial duties;
  - (4) engage in conduct that would appear to a reasonable person to be coercive; or
  - (5) make use of court premises, staff, stationary, equipment or other resources, except for activities that concern the law,\* the legal system or the administration of justice, or unless such additional use is permitted by law.\*

**Canon 4(A) Commentary.** – *To the extent that time permits, and judicial integrity,\* independence\* and impartiality\* are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law,\* the legal system, and the*

*administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law.\**

*Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.*

*Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity,\* independence\* and impartiality.\* Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, creed, ethnicity, disability, age, sexual orientation, marital status, political affiliation, socioeconomic status, handicap and medical condition. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Canon 2D.*

*While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Canons 4C(2) and (3), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor.*

- 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 non-legal subjects, subject to the requirements of this Code.

**Canon 4(B) 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.*

*In this and other provisions of Canon 4, the phrase "subject to the requirements of this Code" 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 provisions of the Code does not relieve a judge from the other requirements of the Code that apply to the specific conduct.*

C. Governmental, civic, or charitable activities.

- (1) Governmental activities. -- 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, or the administration of justice or when acting pro se in a matter involving the judge's legal or economic\* interests, or when the judge is acting in a fiduciary\* capacity, subject to the requirements of this Code.

**Canon 4(C)(1) Commentary.** -- *In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Canon 2B, prohibiting judges from using the prestige of office to advance their own or others' interests, Canon 3B(9), governing public comment on pending and impending matters,\* and Canon 4A(1), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence,\* integrity\* or impartiality.\**

- (2) Quasi-judicial activities -- Subject to other provisions of this Code and the prohibition in Article VIII, Section 7, Constitution of West Virginia that “[n]o justice, judge or magistrate shall hold any other office, or accept any appointment or public trust, under this or any other government . . . ,” appointments of judges made by the Supreme Court of Appeals of West Virginia to any quasi-judicial boards or to any other position or activity, do not violate this constitutional provision. A judge may also serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law,\* the legal system, or the administration of justice. A judge may assist these organizations in raising funds and may participate in their management and investment, but cannot personally participate in public fund-raising activities. 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. However, any appointment of a judge made by the Governor or any other governmental official to any other office or to a position of public trust under this or any other government must have the approval of the Supreme Court of Appeals of West Virginia.
- (3) Civic and charitable activities. -- A judge may participate in civic and charitable activities and organizations not conducted for profit that do not reflect adversely upon the judge's impartiality\* or interfere with the performance of the judge's judicial duties. A judge may serve as an officer, director, trustee or non-legal adviser 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.
  - (b) Other than the permitted soliciting of membership for an organization concerned with the law,\* the legal system or the administration of justice, a judge cannot solicit funds for any educational, religious, charitable, fraternal or civic organization, or use or

permit the use of the prestige of office for that purpose; but a judge may be listed as an officer, director or trustee of such an organization, so long as the listing is not used for fund-raising purposes. A judge should not be a speaker or the guest of honor at an organization's fund-raising events, but may attend such events.

- (c) A judge is not to give investment advice to such an organization, but a judge may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.
- (d) A judge may appear or speak at, receive an award or other recognition at, or be featured on the program and permit his or her title to be used in connection with a non-fundraising event of an organization or entity covered by this Canon. If the event concerns the law,\* the legal system, or the administration of justice, a judge may participate in the event.
- (e) A judge should encourage lawyers to provide pro bono public legal services.

#### D. Financial activities.

(1) A judge shall not engage in financial and business dealings that:

- (a) may reasonably be perceived to exploit the judge's judicial position
- (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or result in a violation of other provisions of this Code; or
- (c) interfere with the proper performance of judicial duties.

**Canon 4D(1) Commentary.** -- *The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of 4D.*

*When a judge acquires in judicial capacity information, such as material contained in filings with the court, that is not yet generally known, the judge must not use the information for private gain. See Canon 2B and Canon 3B(11).*

*A judge must avoid financial and business dealings that involve the judge in frequent transactions or continuing business relationships with persons likely to come either before the judge personally or before other judges on the judge's court. In addition, a judge should discourage members of the judge's family\* from engaging in dealings that would reasonably appear to exploit the judge's judicial position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification. With respect to affiliation of relatives of a judge with law firms appearing before the judge, see Commentary to Canon 3E(1) relating to disqualification.*

*Participation by a judge in financial and business dealings is subject to the general prohibitions in Canon 4A against activities that tend to reflect adversely on impartiality,\* demean the judicial office or interfere with the proper performance of*

*judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety\* or the appearance of impropriety\* and the prohibition in Canon 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See Commentary for Canon 4B regarding use of the phrase "subject to the requirements of this Code."*

- (2) A judge may, subject to the requirements of this Code, hold and manage investments of the judge and members of the judge's family.\*.
- (3) A judge shall not serve as an officer, director, manager, general partner, adviser or employee of any business entity except that a judge may, subject to the requirements of this Code, manage and participate in:
  - (a) a business closely held by the judge or members of the judge's family,\* or
  - (b) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.\*

**Canon 4D(3) Commentary.** -- *Subject to the requirements of this Code, a judge may participate in a business that is closely held either by the judge alone, by members of the judge's family,\* or by the judge and members of the judge's family.\**

*Although participation by a judge in a closely-held family business might otherwise be permitted by Canon 4D(3), a judge may be prohibited from participation by other provisions of this Code when, for example, the business entity frequently appears before the judge's court or the participation requires significant time away from judicial duties. Similarly, a judge must avoid participating in a closely-held family business if the judge's participation would involve misuse of the prestige of judicial office.*

- (4) 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 himself or herself of investments and other financial interests that might require frequent disqualification.
- (5) A judge shall not accept, or knowingly\* permit staff, court officials and others subject to judge's direction and control to accept, and should urge members of the judge's family residing in the judge's household,\* not to accept a gift, bequest, favor or loan from anyone except for:

**Canon 4D(5) Commentary.** -- *Canon 4D(5) does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 5.*

*Because a gift, bequest, favor or loan to a member of the judge's staff, court officials and others subject to the judge's direction and control and of the judge's family residing in the judge's household\* might be viewed as intended to influence the judge, a judge should inform staff, court officials and others subject to the judge's direction and*

*control and those family members of the relevant ethical constraints upon the judge in this regard and discourage those subject to the judge's direction and control and those family members from violating them. A judge cannot, however, reasonably be expected to know\* or control all of the financial or business activities of all family members residing in the judge's household.\**

- (a) a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law,\* the legal system, or the administration of justice;

**Canon 4D(5)(a) Commentary.** -- *Acceptance of an invitation to a law-related function is governed by Canon 4D(5)(a); acceptance of an invitation paid for by an individual lawyer or group of lawyers is governed by Canon 4D(5)(h).*

*A judge may accept a public testimonial or a gift incident thereto only if the donor organization is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial and gift are otherwise in compliance with other provisions of this Code. See Canons 4A(1) and 2B.*

- (b) a gift, award or benefit incident to the business, profession or other separate activity of a spouse 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 other family member and the judge (as spouse 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;
- (c) ordinary social hospitality;
- (d) 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;

**Canon 4D(5)(d) Commentary.** -- *A gift to a judge, or to a member of the judge's family living in the judge's household,\* that is excessive in value raises questions about the judge's impartiality\* and the integrity\* of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Canon 4D(5)(e).*

- (e) 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 disqualification under Canon 3E;
- (f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;
- (g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;



- (h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds one hundred and fifty dollars (\$150.00), the judge reports it in the same manner as the judge reports compensation in Canon 4H; or

**Canon 4D(5)(h) Commentary.** -- *Canon 4D(5)(h) prohibits judges from accepting gifts, favors, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, favors, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.*

- (i) unsolicited holiday gifts of food or candy to the judge's office with a value of twenty-five dollars (\$25.00) or less from lawyers, unless the circumstances of accepting the gift would appear to undermine the judge's independence, integrity or impartiality. The total value of all items given should not be more than twenty-five dollars (\$25.00) for any one year.

#### E. Fiduciary activities.

- (1) A judge shall not serve as executor, fiduciary,\* administrator or other personal representative, trustee, guardian or attorney in fact, 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.
- (2) A judge shall not serve as a fiduciary\* if 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.
- (4) If a person who is serving in a fiduciary\* position becomes a judge, he or she must comply with this Canon as soon as reasonably practicable, but in no event later than one year after becoming a judge.

**Canon 4E Commentary.** – *The restrictions imposed by this Canon 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.\*

**Canon 4F Commentary.** - *Canon 4F does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial or administrative duties or concerns, or from participating in arbitration, mediation or settlement conferences performed at the request, or with the permission of, other judges, as long as it is without compensation. Canon 6B permits retired judges to act as mediators and arbitrators in a private capacity.*

- 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.\*

**Canon 4G 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 members of the judge's family.\* See Canon 2(B).*

*The Code 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 in a legal matter.*

#### H. Compensation, reimbursement, and reporting.

- (1) Compensation and reimbursement. -- A judge may receive reasonable compensation and reimbursement of expenses for extrajudicial activities permitted by this Code, or other law,\* if the source of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\*
- (2) Public reports. -- A judge shall report the name of a firm, corporation or partnership in which the judge has an interest and relationship thereto. In addition, should the judge receive compensation during the calendar year exceeding \$500 from sources other than those listed in the preceding sentence, the judge shall report the name of the payor and the reason for the compensation. Compensation or income of a judge's spouse contributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. The report must be made annually by July 1 for the preceding calendar year, and must be filed as a public document in the office of the Clerk of the Supreme Court of Appeals or other office designated by rule of the Supreme Court of Appeals.

**Canon 4H Commentary.** -- *See Canon 4D(5) regarding reporting of gifts, bequests and loans.*

*The Code does not prohibit a judge from accepting honoraria or other compensation for speaking, teaching, writing and other extrajudicial activities 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 financial information. -- Disclosure of a judge's income, debts, investments or other assets is required only to the extent provided in this Canon and in Canon 3E, or as otherwise required by law.\*

**Canon 4I Commentary.** -- *Canon 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest.\* 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 certain 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.*

**Canon 5. A judge or judicial candidate shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.**

A. All judges and candidates.

- (1) Except as permitted by law, or authorized by Canons 5B(2), 5C(2), and 5C(4), a judge or a candidate\* for election or appointment to judicial office shall not:
- (a) act as a leader or hold an office in a political organization,\*
  - (b) publicly endorse or publicly oppose another candidate\* for public office;
  - (c) make speeches on behalf of a political organization;\*
  - (d) publicly display any campaign paraphernalia from an ongoing campaign in any area where judicial activities are conducted or knowingly\* permit any such display; or
  - (e) solicit funds for a political organization\* or candidate.\*

**Canon 5A(1) Commentary.** – *Public confidence in the independence,\* integrity\* and impartiality\* of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence.*

*Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the*

*expressed views or preferences of the electorate, a judge makes decisions based upon the law\* and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates,\* taking into account the different methods of selecting judges.*

*When a person becomes a judicial candidate,\* this Canon becomes applicable to his or her conduct.*

*A judge or candidate\* for judicial office retains the right to participate in the political process as a voter.*

*Where false information concerning a judicial candidate is made public, a judge or another judicial candidate\* having knowledge\* of the facts is not prohibited by Canon 5A(1) from making the facts public.*

*Canon 5A(1)(a) does not prohibit a candidate\* for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."\**

*Canon 5A(1)(b) does not prohibit a judge or judicial candidate\* from privately expressing his or her views on judicial candidates or other candidates for public office. A candidate\* does not publicly endorse another candidate for public office by having that candidate's name on the same ticket.*

- (2) A judge shall resign from judicial office upon becoming a candidate\* for a non-judicial office either in a primary or in a general election, except that the 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 the judge is otherwise permitted by law\* to do so. Upon becoming a candidate for a non-judicial appointed office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

**Canon 5A(2) Commentary.** -- *In campaigns for non-judicial elective public office, candidates may make pledges, promises or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in non-judicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for non-judicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.*

*The “resign to run” rule ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive non-judicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.*

(3) A candidate\* for a judicial office:

- (a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the independence,\* integrity\* and impartiality\* of the judiciary, and shall act in a manner that promotes public confidence in the independence,\* integrity\* and impartiality\* of the judiciary, and should encourage members of the candidate's family\* to adhere to the same standards of political conduct in support of the candidate\* that apply to the candidate;\*

**Canon 5A(3) Commentary.** - *Although a judicial candidate\* must encourage members of his or her family\* to adhere to the same standards of political conduct in support of the candidate\* that apply to the candidate,\* family members are free to participate in other political activity.*

- (b) shall prohibit employees and officials who serve at the pleasure of the candidate,\* and shall discourage other employees and officials subject to the candidate's\* direction and control from doing on the candidate's\* behalf what the candidate\* is prohibited from doing under the provisions of this Canon;
- (c) except to the extent permitted by Canon 5C(3), shall not authorize or knowingly\* permit any other person to do for the candidate\* what the candidate\* is prohibited from doing under the provisions of this Canon;
- (d) shall not:
  - (i) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending\* in any court;
  - (ii) in connection with cases, controversies or issues that are likely to come before the court; make pledges, promises or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of judicial office;
  - (iii) knowingly\* misrepresent the identity, qualifications, present position or other fact concerning the candidate\* or an opponent; or
  - (iv) knowingly\* or with reckless disregard for the truth, make any false or misleading statement;

**Canon 5A(3)(d) Commentary.** - *Judicial candidates\* must be scrupulously fair and accurate in all statements made by them and their campaign committees. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates\* provided in Canon 5 allow candidates\* to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates\* and make informed electoral choices. The making of a pledge, promise or commitment is not dependent upon, or limited to, use of any specific words or phrases; instead, the*

*totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. At all times, a candidate\* should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Canon 3B(9), the general rule on public comment by judges. Canon 5A(3)(d) does not prohibit a candidate from making pledges or promises respecting improvements in court administration such as a promise to dispose a backlog of cases, start court sessions on time or avoid favoritism in appointments and hiring. A candidate\* may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.*

*Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Depending upon the wording and format of the questions, responses by judicial candidates\* might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial\* way. To avoid a violation of the Canon, candidates\* who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially\* if elected. Candidates\* who choose not to respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence\* or impartiality,\* or that it might lead to frequent disqualification.*

*This Canon does not prohibit an incumbent judge from making private statements to other judges or court personnel\* in the performance of judicial duties. This Canon applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also the Rules of Professional Conduct.*

- (e) may respond to personal attacks or attacks on the candidate's\* record as long as the response does not violate Canon 5A(3)(d).

**Canon 5A(3)(e) Commentary.** -- *Judicial candidates\* are sometimes the subject of false, misleading or unfair allegations made by opposing candidates,\* third parties or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications or judicial rulings of a candidate.\* In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the judicial candidate\* does not violate Canon 5A(3)(d), he or she may make a factually accurate public response. In addition, when an independent third party has made an unwarranted attack on a judicial candidate's\* opponent, the candidate\* may disavow the attacks and request the third party to cease and desist.*

*If the false, misleading or unfair allegations relate to a pending or impending matter,\* it is preferable for someone else, such as a campaign chairperson, to respond to the claims. However, if no other person is available, a judicial candidate\* is permitted to make a direct response that does not violate Canons 3B(9) or 5A(3)(d).*

**B. Candidates seeking appointment to judicial or other governmental office.**

- (1) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support his or her candidacy.
- (2) A candidate\* for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment inconsistent with the provisions of Canon 5A(1), but such persons may:
  - (a) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;
  - (b) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to office, and from individuals to the extent requested or required by those specified in Canon 5B(2)(a); and
  - (c) provide to those specified in Canons 5B(2)(a) and 5B(2)(b) information as to his or her qualifications for the office.
- (3) A non-judge candidate\* for appointment to judicial office may, in addition, unless otherwise prohibited by law,\* retain an office in a political organization.\*

**Canon 5B Commentary.** -- *Canon 5B(2) provides a limited exception to the restrictions imposed by Canons 5A(1) and 5D. Under Canon 5B(2), candidates\* seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support. Although under Canon 5B(3) non-judge candidates\* seeking appointment to judicial office are permitted during candidacy to retain office in a political organization,\* they remain subject to other provisions of this Code during candidacy. See Canons 5B(1), 5B(2)(a), 5E and Canon 6.*

*When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.*

**C. Judges and candidates subject to public election.\***

- (1) A judge or a candidate\* subject to public election\* shall:
  - (a) act at all times in a manner consistent with the independence,\* integrity\* and impartiality\* of the judiciary;
  - (b) comply with all applicable election, election campaign and election campaign fund-raising laws and regulations of this jurisdiction;

- (c) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee before their dissemination; and
  - (d) take appropriate corrective action if he or she learns of any misrepresentations made in his or her campaign statements or materials.
- (2) A judge or a candidate\* subject to public election\* may, except as prohibited by law:\*
- (a) at any time
    - (i) purchase tickets for and attend political gatherings;
    - (ii) identify himself or herself as a member of a political party; and
    - (iii) contribute to a political organization;\*
  - (b) when a candidate for election
    - (i) speak to gatherings on his or her own behalf;
    - (ii) appear in media advertisements supporting his or her candidacy; and
    - (iii) distribute pamphlets and other promotional campaign literature supporting his or her candidacy.

**Canon 5C Commentary.** - *Canon 5C(2) permits judges subject to public election\* at any time to be involved in limited political activity. Canon 5D, applicable solely to incumbent judges, would otherwise bar this activity.*

- 3) A candidate\* shall not personally solicit or accept campaign contributions or personally solicit publicly stated support. A candidate\* may, however, establish committees of responsible persons to conduct campaigns for the candidate\* through all means not prohibited by these Canons or by law.\* Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers. A candidate\* shall not use or permit the use of campaign contributions for the private benefit of the candidate\* or others.

**Canon 5C(3) Commentary.** -- *Canon 5C(3) permits a candidate,\* other than a candidate for appointment, to establish campaign committees to solicit and accept public support and reasonable financial contributions. At the start of the campaign, the candidate must instruct his or her campaign committees to solicit or accept only contributions that are reasonable under the circumstances. Though not prohibited, campaign contributions of which a judge has knowledge,\* made by lawyers or others who appear before the judge, may be relevant to disqualification under Canon 3E.*



*Campaign committees established under Canon 5C(3) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible.*

*Canon 5C(3) does not prohibit a candidate\* from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.*

- (4) Except as prohibited by law,\* a candidate\* for judicial office in a public election\* may permit the candidate's\* name: (a) to be listed on election materials along with the names of other candidates for elective public office, and (b) to appear in promotions of the ticket.

**Canon 5C(4) Commentary.** -- *Canon 5C(4) provides a limited exception to the restrictions imposed by Canon 5A(1).*

*The Time for Compliance provision of this Code (Canon 6F) postpones the time for compliance with certain provisions of this Canon in some cases.*

- D. Incumbent judges. A judge shall not engage in any political activity except: (i) as authorized under any other provision of this Code; (ii) on behalf of measures to improve the law,\* the legal system or the administration of justice; or (iii) as expressly authorized by law.\*

**Canon 5D Commentary.** -- *Neither Canon 5D nor any other provision of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law,\* the legal system, and the administration of justice, see Commentary to Canon 4B and Canon 4C(1) and its Commentary.*

- E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates.\* A candidate,\* whether or not an incumbent and whether or not successful, is subject to judicial discipline for his or her campaign conduct.

**Canon 5E Commentary.** - *A lawyer who is a candidate\* for judicial office may also be disciplined under the Rules of Professional Conduct for his or her campaign conduct.*

## **Canon 6. Application of the Code of Judicial Conduct.**

- A. Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including but not limited to Justices of the Supreme Court of Appeals, Circuit Judges, Family Court Judges, Magistrates, Mental Hygiene Commissioners, Juvenile Referees, Special Commissioners and Special Masters, is a judge within the meaning of the Code. All judges shall comply with this Code except as provided below. All candidates for judicial office shall comply with the applicable provisions of this Code.

**Canon 6A Commentary.** – *The four categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. For the purposes of this Canon, as long as a retired judge is subject to recall, the judge is considered to “perform judicial functions.” The determination of which category and, accordingly, which specific Code provisions apply to an individual judicial officer, depend upon the facts of the particular judicial service.*

*The Code does not apply to an administrative law judge, hearing examiner or similar officer within the executive branch of government or to municipal judges.*

## B. Retired judges.

- (1) A retired judge admitted to senior status but who does not engage in the practice of law\* is not required to comply with Canon 4E.
- (2) A retired judge admitted to senior status but who engages in limited law\* practice is not required to comply with Canons 4E and 4G.
- (3) A retired judge not admitted to senior status but who is recalled for specific cases or specific periods of service shall be deemed a pro tempore part-time judge\* subject to Canon 6E.
- (4) A retired judge, whether or not admitted to senior status and whether or not engaging in law\* practice, may be employed as a mediator or an arbitrator notwithstanding the provisions of Canon 4F.

## C. Continuing part-time judge. A continuing part-time judge:\*

- (1) is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law\* (“continuing part-time judge”).
- (2) is not required to comply
  - (a) except while serving as a judge, with Canon 3B(9); and
  - (b) at any time with Canons 4D(3), 4E(1), 4F, 4G, 4H, 5A(1), 5B(2), and 5D.
- (3) may practice law\* in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, but shall not act as a lawyer in a proceeding in which the judge has served as a judge in any other proceeding related thereto, or in any matter involving the same subject-matter jurisdiction.

**Canon 6C Commentary.** – *A part-time Mental Hygiene Commissioner shall not accept any mental hygiene matters or serve as an attorney in any proceeding related to a case in which he or she has served as a Mental Hygiene Commissioner, nor shall a*

*Juvenile Referee accept any juvenile matters or serve as an attorney in any proceeding related to a case in which, he or she has served as a Juvenile Referee.*

*When a person who has been a continuing part-time judge\* is no longer a continuing part-time judge,\* including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.*

**D. Periodic part-time judge. A periodic part-time judge:\***

- (1) who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter, is not required to comply:
  - (a) except while serving as a judge, with Canon 3B(9);
  - (b) at any time, with Canons 4C(3)(a), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5B(2) and 5D.
- (2) shall not practice law\* in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

**Canon 6D Commentary.** -- *When a person who has been a periodic part-time judge\* is no longer a periodic part-time judge\* (no longer accepts appointments) that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.*

**E. Pro tempore part-time judge. A pro tempore part-time judge:\***

- (1) who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:
  - (a) except while serving as a judge, with Canons 2A, 2B, 3B(9), and 4C(1);
  - (b) at any time with Canons 2C, 4C(3)(a), 4C(3)(b), 4D(1)(b), 4D(3), 4D(4), 4D(5), 4E, 4F, 4G, 4H, 5A(1), 5A(2), 5B(2), and 5D.

**F. Time for compliance.** A person to whom this Code becomes applicable shall comply immediately with all provisions of this Code except Canons 4D(2), 4D(3) and 4E and shall comply with these Canons as soon as reasonably possible and shall do so in any event within the period of one year.

**Canon 6F Commentary.** – *If serving as a fiduciary\* when selected as judge, a new judge may, notwithstanding the prohibitions in Canon 4E, continue to serve as fiduciary\* but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary\* relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Canon 4D(3), continue in that activity for a reasonable period but in no event longer than one year.*

## Terminology.

Terms explained below are noted with an asterisk (\*) in the Canons where they appear. In addition, the Canons where terms appear are referred to after the explanation of each term below.

"Candidate." A candidate means any person, including a sitting judge, who is 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, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. *See* Canons 3E(1), 5A, 5B, 5C, 5E and 6A.

"Continuing part-time judge." A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, such as a retired judge subject to recall who is permitted to practice law or a mental hygiene commissioner. *See* Canon 6C.

"De minimis" in the context of interests pertaining to disqualification of a judge means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. *See* Canons 3E(1)(c) and 3E(1)(d).

"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. *See* Canons 3E(1) and 3E(2).

Economic interest" means ownership of more than a de minimis legal or equitable interest, except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent or child serves as a director, an officer, an advisor or other participant;

- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge. *See* Canons 2B, 3E(1), 3E(2), 4C and 4I.

"Fiduciary" includes relationships such as executor, administrator, trustee or guardian. *See* Canons 3E(1), 3E(2), 4C and 4E.

"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. *See* Canons 1A, 2A, 2D, 3B(1), 3B(2), 3B(7), 3C(4) and 3E(1), 4A, 4C, 4D(1), 4D(5), 4H(1), 5A(1) and 5A(3).

"Impending matter" is a matter that is imminent or expected to occur in the near future. *See* Canons 3B(9) and 5A(3).

"Impropriety" includes conduct by the judge that violates the law, court rules or provisions of this Code, and conduct that undermines a judge's independence, integrity or impartiality. *See* Canons 2A, 2D and 4D(1).

"Independence" means a judge's freedom from influence or controls other than those established by law. *See* Canons 1A, 3B(1), 4A, 4B, 4C, 4H(1), 5A(1) and 5A(3).

"Integrity" means probity, fairness, honesty, uprightness and soundness of character. *See* Canons 1A, 2A, 2D, 3B(1), 4A, 4B, 4C, 4D(5), 4H(1), 5A(1) and 5A(3).

"Knowingly," "knowledge," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. *See* Canons 2B, 2D, 3C(5), 3D(1), 3D(2), 3E(1), 5A(1), 5A(3) and 5C .

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. *See* Canons 2A, 3A, 3B(2), 3B(7), 3C(5), 4A, 4B, 4C, 4D(5), 4F, 4I, 5A(1), 5A(2), 5B(3), 5C, 5D, 6B, 6C and 6D.

"Member of the candidate's family" denotes a spouse, domestic partner, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. *See* Canon 5A(3)(a).

"Member of the judge's family" denotes a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Canons 4D, 4E and 4G.

"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), 3E(2) and 4D(5).

"Nepotism" means favoritism shown in the treatment of a member of the judge's family or a person living in the judge's household. *See* Canon 3C(4).

"Nonpublic information" is information that is not available to the public. Nonpublic information may include but is not limited to: information that is sealed by statute or court order, or impounded or communicated in camera; and information offered in grand jury proceedings, presentencing reports, dependency cases or psychiatric reports. *See* Canon 3B(11).

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. *See* Canons 3B(7), 3B(9) and 5A(3).

"Periodic part-time judge" is a judge who serves or expects to serve repeatedly on a part-time basis, but under a separate appointment for each limited period of service or for each matter. *See* Canon 6D.

"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 to political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee. *See* Canons 5A(1), 5B(3) and 5C(1).

"Pro tempore part-time judge" is a judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard. *See* Canons 6B and 6E.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections and retention elections. *See* Canons 5C(1) and 5C(3).

"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, 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* Canons 3B(3), 3B(4), 3B(6), 3B(7), 3B(8), 3B(9) and 3C(2).

"Third degree of relationship" means the following persons; great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* Canon 3E(1)(d).