

## PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times and should avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Utah Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards, as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct and to provide a basis for regulating their conduct through ~~disciplinary agencies~~ the judicial disciplinary system.

Approved 5/29/07

## SCOPE

[1] The Utah Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and ~~no~~ disciplinary action ~~should~~ shall not be taken for action or inaction

within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the ~~Model~~ Utah Code of Judicial Conduct are rules of reason that should be applied consistent with ~~constitutional requirements, statutes, other court rules, and decisional~~ the law and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

Approved 6/19/07

---

Committee Note: Unlike the current Code, the committee adopted the preamble and scope of the Model Code. The committee felt that these provisions help provide a framework for the canons and rules to follow. The committee did not make any

significant changes to the Model Code's proposal. When the committee discussed these sections, the committee decided that, as a general rule, the committee would follow the Model Code's recommendations on "shall" provisions versus "should" provisions. The committee determined that the Code should mostly have mandatory provisions, otherwise the Code will not have teeth.

## APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

### I. APPLICABILITY OF THIS CODE

**(A) The provisions of the Code apply to all full-time judges. Parts II through IV of this section identify those provisions that apply to four three distinct categories of part-time judges. ~~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.~~ Canon 4 applies to judges and judicial candidates.**

**(B) A judge, within the meaning of this Code, ~~is anyone who is authorized to perform judicial functions, including~~ includes a an officer such as a justice of the peace court judge, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.<sup>1</sup>**

### COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer depends upon the facts of the particular judicial service.

~~[3] In recent years many jurisdictions have created what are often called “problem solving” courts, in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts’ programs may be authorized and even encouraged to communicate directly with social workers, probation officers, and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. When local rules specifically authorize conduct not otherwise permitted under these Rules, they take precedence over the provisions set forth in the Code. Nevertheless, judges serving on “problem solving” courts shall comply with this Code except to the extent local rules provide and permit otherwise.~~

<sup>1</sup>~~Each jurisdiction should consider the characteristics of particular positions within the administrative law judiciary in adopting, adapting, applying, and enforcing the Code for the administrative law judiciary. See, e.g., Model Code of Judicial~~

Conduct for Federal Administrative Law Judges (1989) and Model Code of Judicial Conduct for State Administrative Law Judges (1995). Both Model Codes are endorsed by the ABA National Conference of the Administrative Law Judiciary.

## **II. ~~RETIRED JUDGE SUBJECT TO RECALL~~ ACTIVE SENIOR JUDGE**

**A retired judge subject to recall for service, who by law is not permitted to practice law, An active senior judge appointed under Rule 11-201 of the Rules of Judicial Administration is not required to comply:**

**(A) at any time with Rule 3.8 (Appointments to Fiduciary Positions); or**

**(B) with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge.**

### **COMMENT**

[1] For the purposes of this section, ~~as long as a retired~~ an active senior judge is subject to being recalled for service, the judge is considered to “perform judicial functions.” this Code during any term of office to which he or she has been appointed to serve.

## **III. ~~CONTINUING PART-TIME JUSTICE COURT JUDGE~~**

**A part-time justice court 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”) an active senior justice court judge appointed under Rule 11-203 of the Rules of Judicial Administration,**

**(A) is not required to comply:**

**(1) with Rules 2.10(A) and 2.10(B) (Judicial Statements on Pending and Impending Cases) and 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges) except while serving as a judge; or**

**(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11 (Financial, Business, or Remunerative Activities), ~~3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and~~**

**(B) 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 nor act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.**

## **COMMENT**

[1] When a person who has been a continuing part-time justice court judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall serving as a judge, 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 informed consent of all parties, and pursuant to any applicable Model Rules of Professional Conduct. An adopting jurisdiction should substitute a reference to its applicable rule.

## **~~IV. PERIODIC PART-TIME JUDGE~~**

**~~A periodic part-time 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,~~**

**~~(A) is not required to comply:~~**

**~~(1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or~~**

**~~(2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), 3.15 (Reporting Requirements), 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office); and~~**

**~~(B) 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.~~**

## **IV. JUDGE PRO TEMPORE PART-TIME JUDGE**

**A judge pro tempore part-time 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 appointed under Rule 11-202 of the Rules of Judicial Administration is not required to comply:**

**(A) except while serving as a judge, with Rules 1.2 (Promoting Confidence in the Judiciary), 2.4 (External Influences on Judicial Conduct), 2.10 (Judicial Statements on Pending and Impending Cases), or 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); or**

**(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value), ~~3.15 (Reporting Requirements)~~, 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judges in Retention Elections), and 4.53 (Activities of Judges Who Become Candidates for Nonjudicial Office).**

#### **V. SENIOR JUDGE**

**A senior judge is not required to comply with the provisions of this Code.**

#### **VI. TIME FOR COMPLIANCE**

**A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges as to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply compliance shall comply with those Rules occur as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.**

#### **COMMENT**

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, 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 Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

Approved 8/26/08

---

Committee Note: The Model Code created categories of judges that are different from the categories of judges in this state. The committee therefore decided to use the definitions and applicability from the current Code of Conduct. There are a few differences from the current Code. The current Code states that active senior judges are not required to comply with the provision that prohibits judges from being arbitrators or mediators. The proposal will also allow active senior judges to accept appointments to fiduciary positions. The section on part-time justice court judges clarifies that they may comment on pending cases, as long as they are not doing so in their role as a judges. The section on pro tempore judges also clarifies those provisions that will apply when the individual is acting as a judge, and those provisions that will not apply when the individual is acting as an attorney. The applicability section also includes a specific time frame for when a new judge must comply with the Code. The applicability section is otherwise the same as the current applicability section.

## TERMINOLOGY

**The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (\*).**

**“Aggregate,”** in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s ~~campaign~~ committee, but also all contributions made indirectly with the understanding that they will be used to support the election retention of a candidate ~~or to oppose the election of the candidate’s opponent~~. See Rules 2.11 and 4.4.

Approved 2/26/08

**“Appropriate authority”** means the presiding judge and the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

Approved 2/29/08

**“Contribution”** means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

Approved 2/26/08

**“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 Rule 2.11.

Approved 2/26/08

**“Domestic partners”** ~~means a~~ are persons with whom another person who maintains a household and an intimate relationship, ~~other than a person to whom he or she is~~ who are not legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

Approved 2/26/08

**“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.

(Approved 7/30/07)

See Rules 1.3 and 2.11.

**“Fiduciary”** includes relationships such as executor, administrator, trustee, personal representative, holder of a power of attorney, or guardian. See Rules 2.11, 3.2, and 3.8.

Approved 2/26/08 and 5/27/08 ( p of a)

**“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 presence of an objective and open mind in considering matters that ~~may~~ come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

Approved 8/27/07

**“Impending matter”** is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

Approved 12/17/07

**“Impropriety”** includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

Approved 8/25/08

**“Independence”** means a judge's freedom from influences or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

Approved 3/24/08

**“Integrity”** means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

Approved 3/24/08

**“Judicial 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. See Rules 2.11, 4.1, 4.2, and 4.4.

Approved 2/26/08

**“Knowingly,” “knowledge,” “known,” and “knows”** mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

Approved 2/25/08

**“Law”** encompasses, but is not necessarily limited to, court rules, ~~as well as~~ statutes, ordinances, constitutional provisions, and ~~decisional case~~ law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

Approved 7/30/07

~~**“Member of the candidate’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.~~

**“Member of the judge’s family”** means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

Approved 2/26/08

**“Member of a judge’s family residing in the judge’s household”** means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge’s family who resides in the judge’s household. See Rules 2.11 and 3.13.

Approved 2/26/08

**“Nonpublic information”** means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute, rule, or court order ~~or impounded~~ or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

Approved 4/28/08

**“Pending matter”** is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

Approved 12/17/07

**“Personally Directly solicit”** means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.2.

Approved 8/25/08

**“Political organization”** means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.2. See Rules 4.1 and 4.2.

Approved 8/25/08

~~**“Public election”** includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.~~

Approved 7/30/08

**“Third degree of relationship”** includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

Approved 2/26/08

Committee Note: The committee reviewed the terminology section as each word came up within a rule. For the most part, the committee adopted the proposals of the Model Code, only making grammar changes. The substantive provisions are found in only a couple of rules. The committee added “presiding judge” to the definition of “appropriate authority,” because the presiding judge rule gives presiding judges some authority to address potential Code violations. The definition of “fiduciary” includes several other fiduciary types that were not included in the proposed definition. The committee added ordinances to the definition of law and made clear that there could be other sources of law. The committee changed the phrase “personally solicit” to “directly solicit” because the phrase “personally solicit” was eliminated from the rules.

**CANON 1**

**A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.**

Approved 6/18/07

**RULE 1.1**

***Compliance with the Law***

A judge shall comply with the law; \* ~~including the Code of Judicial Conduct.~~

Approved 6/18/07 (subject to later definition of the "law") Approved 7/30/07

---

Committee Note: Rule 1.1 is the same as current code language. The committee deleted the reference to the Code of Judicial Conduct, because that is already included in the definition of law. The definition of law is addressed in the terminology section.

RULE 1.2

*Promoting Confidence in the Judiciary*

**A judge ~~shall~~ should act at all times in a manner that promotes ~~and shall not undermine~~ public confidence in the independence, \*integrity,\* and impartiality\* of the judiciary and shall avoid impropriety and the appearance of impropriety.**

Approved 6/18/07

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

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

**Approved 6/18/07**

---

Committee Note: Rule 1.2 is essentially a restatement of current Canon 2A. However, the committee was concerned about mandating that a judge promote public confidence, for which a judge could be sanctioned for failing to do so. The committee felt that a judge should be subject to sanctions for taking actions that undermine public confidence, but should not be required to actively engage in such activities. The committee therefore changed Rule 1.2 to create culpability only if a judge acts in a way that undermines public confidence. Comment [6] is language that is found in the black-letter rule of the current Canon 4(C)(4). The committee believes that all judges should participate in outreach activities. However, a judge should not be subject to sanctions for failure to do so.

## **CANON 2**

**A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.**

### **RULE 2.1**

#### ***Giving Precedence to the Duties of Judicial Office***

**The duties of judicial office, as prescribed by law,\* shall take precedence over all of a judge’s personal and extrajudicial activities.**

#### **COMMENT**

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] 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.

**(Approved 8/27/07)**

---

Committee Note: Rule 2.1 contains language that is substantively similar to current Canon 3A. The Model Code replaces the phrase “judge’s other activities” with the phrase “judge’s personal and extra-judicial activities.” In its deliberations, the committee decided that the change is inconsequential.

Comment [1] reflects a generally accepted view that judges must avoid extra-judicial activities that will create conflicts. The committee discussed the fact that judges develop friendships that result in frequent disqualification. The committee agreed that these situations clearly would not be prohibited by the Code.

The language in comment [3] is similar to language found in the black-letter of the current canons. The committee agreed that the provision is better suited for the comments.

## **RULE 2.2**

### ***Impartiality and Fairness***

**A judge shall uphold and apply the law,\* and shall perform all duties of judicial office fairly and impartially.\***

**Approved 8/27/07**

### **COMMENT**

~~[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.~~

[2] [1] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] [2] When applying and interpreting the law, a judge may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] [3] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Approved 8/27/07

---

Committee Note: The specific language in Rule 2.2 is not found in the current Canons, but is a restatement of existing provisions and does not constitute a substantive change. The committee's discussions focused on the definition of "impartially." The definition will be discussed in the terminology section. The committee deleted the proposed comment [1] because it was essentially a restatement of the black-letter rule and therefore did not add anything.

Comment [2] reflects the practice of the Judicial Conduct Commission. The Commission will not pursue complaints alleging error in the decision-making process.

The committee discussed the parameters of judges dealing with pro se litigants. The committee agreed that judges must remain fair and unbiased and the Code need not provide any additional direction.

## **RULE 2.3**

### ***Bias, Prejudice, and Harassment***

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

**(B) 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, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.**

**(C) 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, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.**

**(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.**

Approved 9/24/07

### **COMMENT**

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

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

[3] Harassment, as referred to in paragraphs (B) and (C), 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, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] 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.

Approved 9/24/07

---

Committee Note: Rule 2.3 contains language that is currently found in Canon 3B. The Model Code adds the categories of gender, ethnicity, marital status, and political affiliation. The current canon is a “should” provision. The majority of the committee’s discussions centered on whether this should be a “shall” provision. The committee generally followed the recommendations of the Model Code on the “shall” provisions. Paragraph (B) requires a judge to exercise control over staff. The committee determined that the word “permit” will give judges an adequate understanding of what is required. A judge would have to specifically allow the conduct in order to be sanctioned. In paragraph (C), the committee determined that a judge would fulfill his or her responsibility by warning attorneys about this requirement if a situation arises. The committee deleted the word “negative” from comment [2] because it could not think of an instance of positive stereotyping. The committee decided that the comments were otherwise self-explanatory.

## **RULE 2.4**

### ***External Influences on Judicial Conduct***

- (A) A judge shall not be swayed by public clamor or fear of criticism.**
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.**
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.**

### **COMMENT**

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Approved 9/24/07

---

Committee Note: Rule 2.4 contains language that is essentially the same as the current Canons 2B and 3B(2). In paragraph (A), the phrase “partisan interest,” found in the current Code, has been deleted. In paragraph (B) the phrases “political,” “financial,” or “other interest” have been added. The committee decided that the additions do not change the concepts in a material way. The committee did not have any significant discussions on this rule.

## **RULE 2.5**

### ***Competence, Diligence, and Cooperation***

**(A) A judge shall competently and diligently perform judicial and administrative duties, ~~competently and diligently~~.**

**(B) A judge shall cooperate with other judges and court officials in the administration of court business.**

### **COMMENT**

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all judicial and administrative responsibilities.

[3] ~~Prompt~~ Competent and diligent 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.

[4] In ~~disposing of matters promptly and efficiently~~ competently and diligently performing judicial and administrative duties, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Approved 9/24/07

---

Committee Note: Rule 2.5 contains new language, although the concept of competence is found in the current Canon 3B(2). The committee's discussions focused primarily on changing phrases to make the rule more readable. The committee also deleted the words "prompt" and "promptly" from the comments because that concept is not covered by the black letter-rule.

## **RULE 2.6**

### ***Ensuring the Right to Be Heard***

**(A) 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.\***

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

Approved 9/24/07

## **COMMENT**

[1] 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.

[2] ~~The judge plays an important role in overseeing~~ If a judge participates in the settlement of disputes, but the judge should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge may consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

Approved 10/22/07

---

Committee Note: Paragraph (A) of Rule 2.6 is essentially the same as existing language, except that the current Canon 3B(7) states: “full” right to be heard according to law. The change does not seem important. Paragraph (B) is new. The committee members recognized that the new language probably reflects existing practice as judges sometimes encourage parties to settle. The committee changed comment [2] to state that a judge is not required to participate in settlement discussions, but should be cautious if the judge does.

**RULE 2.7*****Responsibility to Decide***

**A judge shall hear and decide matters assigned to the judge, except when disqualification is required by ~~Rule 2.11 or other law~~\* or permitted.**

**COMMENT**

[1] Judges must be available to decide the matters that come before the court. 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~~ A judge should not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Approved 10/22/07

---

Committee Note: The approved version of Rule 2.7 is the same as our existing Canon 3B(1). The Model Code does not contain the phrase “or permitted.” The committee reinserted the language because of case law which states that there are situations in which disqualification is the better course of action, even though disqualification is not automatically required. The committee deleted the middle portion of the comment because it does not add anything. The last sentence is the important concept that is being conveyed.

## **RULE 2.8**

### ***Decorum, Demeanor, and Communication with Jurors***

**(A) A judge shall take reasonable measures to require order and decorum in proceedings before the court.**

**(B) 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 take reasonable measures to require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.**

**(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.**

**Approved 10/22/07**

## **COMMENT**

[1] The duty to hear all proceedings with patience and courtesy is consistent with the duty imposed in Rule 2.5 to dispose promptly competently and diligently of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

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

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

**Approved 10/22/07**

---

Committee Note: Current Canons 3B(3), 3B(4), and 3B(10) are similar to proposed Rule 2.8, except that the Utah canons treat paragraph (A) as a "should" provision and not a "shall" provision. The committee decided to retain the "shall" as proposed by the Model Code but to then qualify the language by requiring "reasonable measures." The addition will hopefully allow judges to exercise considerable discretion when deciding how best to control the courtroom. Paragraph (C) is different from the current code, because the current code permits a judge to express appreciation to jurors

for their service. The drafters of the Model Code determined that the language need not be included because it should go without saying that a judge can thank jurors for their service. The committee agreed that the language is not necessary.

## **RULE 2.9**

### ***Ex Parte Communications***

**(A) 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 as follows:**

**(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:**

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

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

**(2) 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 advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.**

**(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record and does not abrogate the responsibility to personally decide the matter.**

**(4) 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.**

**(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law\* to do so.**

**(B) 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.**

**(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.**

**(D) A judge shall make reasonable efforts, ~~including providing appropriate supervision, to ensure that the judge does not receive inappropriate ex parte communications through or from this Rule is not violated~~ by court staff, court officials, and others subject to the judge's direction and control.**

**COMMENT**

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

[2] Whenever the presence of a party or notice to a party is required by this Rule, 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.

[3] 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 Rule.

[4] 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.

[5] 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.

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

[7] 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 paragraph (A)(2).

Approved up through (B) 11/26/07

Approved rest 12/17/07

---

Committee Note: Rule 2.9 differs from current Canon 3B(7) in several respects. The proposed rule permits ex parte communications for scheduling, administrative, or emergency purposes. This language was in the previous Model Code, but Utah had decided to not adopt the language because of the difficulty in determining when matters are procedural or substantive. The committee decided to adopt the Model

Code provision because judges should be able to differentiate between the types of communications, and court staff will usually be the ones involved in the communications. Paragraph A(2) is similar to the existing canon but the Model Code will require a judge to give advance notice of the consultation and to subsequently inform the parties of the advice received. Paragraph (B) is new. The language reflects a consensus of ethics advisory opinions throughout the country. The provision requires a judge to cure inadvertent ex parte communications by notifying all parties of the substance of the communications. Paragraph (C) also reflects ethics advisory opinions throughout the country. The committee discussed what might be considered a factual investigation. There may be occasional problems in deciding whether something is a factual investigation or a legal inquiry. The committee was unable to craft language to help resolve the issue and therefore decided to leave the language as is and have the issue resolved on a situation-by-situation basis.

Paragraph (D) is a new provision requiring judges to ensure that ex parte communications are not received through staff. The Model Code language would require the judge to ensure that court staff do not receive ex parte communications. The committee recognized that staff often receive ex parte communications and a judge should just ensure that those communications do not reach the judge.

Most of the comments are straight-forward explanations of the ex parte communication provisions. Comment [4] discusses ex parte communications in specialty courts. The drafters of the Model Code decided to not put the specialty court issue in the black letter rule. The approach of the ABA Committee is to defer to court rules on whether ex parte communications are permitted in specialty courts. The committee similarly decided to defer to the Judicial Council on whether ex parte communications should be permitted by rule. If the Judicial Council decides to not enact a rule on ex parte communications, the committee might revisit the rule and whether to include an exception for specialty courts.

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

**(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending\* or impending\* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.**

**(B) A judge shall not, 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.**

**(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).**

**(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.**

**(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.**

**COMMENT**

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

---

Committee Note: Rule 2.10 contains some language which is not found in existing Canon 3B(9) on this same topic. However, the new language reflects current practices and ethics advisory opinions throughout the country. Paragraph (B) is language that comes from the political activity portion of the code. The committee agreed with the drafters' decision to include such a provision in the public comment portion.

Paragraph (C) requires a judge to control the actions of staff, similar to other provisions in the code. The paragraph is a restatement of language in the current code. Paragraph (E) permits a judge to respond through a third party, such as a public information officer, but the response is subject to the same restrictions that would apply if the judge were to personally make the statements. The committee adopted the rule as proposed.

**RULE 2.11*****Disqualification***

**(A) 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:**

**(1) 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.**

**(2) The judge knows\* that the judge, 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:**

**(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;**

**(b) acting as a lawyer in the proceeding;**

**(c) a person who has more than a de minimis\* interest that could be substantially affected by the proceeding; or**

**(d) likely to be a material witness in the proceeding.**

**(3) 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 in a party to the proceeding.**

**(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has within the previous three years made aggregate\* contributions\* to the judge's retention campaign in an amount that is greater than \$50 ~~for an individual or \$[insert amount] for an entity~~ ~~[is reasonable and appropriate for an individual or an entity]~~.**

**(5) 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 or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.**

**(6) The judge:**

**(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;**

**(b) 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;**

**(c) was a material witness concerning the matter; or**

**(d) previously presided as a judge over the matter in another court.**

**(B) 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.**

**(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), 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.**

#### **COMMENT**

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. ~~In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."~~

[2] 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.

[3] 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 matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] ~~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 judge is disqualified in proceedings involving a law firm which employs the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing~~

in the judge's household as an equity holder in the law firm. A judge is not disqualified in other situations unless the judge's impartiality might reasonably be questioned under paragraph (A), or the a relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] ~~“Economic interest,” as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a 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, officer, 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.~~

Approved 2/26/08

---

Committee Note: Rule 2.11 is similar to existing Canon 3E, but with several additions. Paragraph (A)(4) will require disqualification based on certain campaign contributions. This will rarely be an issue. Paragraph (A)(5) is also related to campaigns, requiring a judge to recuse if the judge has made a statement which appears to commit the judge to reach a particular result in a case. Paragraph (A)(6)(b) is new language reflecting ethics advisory opinions which create a distinction between prior public employment and prior private employment for purposes of disqualification. In public employment, personal participation on the case is required for disqualification. In private employment, mere association with the attorney who was participating on the case during the time of association requires disqualification. Paragraphs (A)(6)(c) and (A)(6)(d) are new provisions requiring disqualification if a judge was a material witness in the matter or if the judge presided over the matter in

another court. The latter provision will apply primarily to appellate courts. Both provisions reflect ethics advisory opinions throughout the country. Comment [3] addresses the rule of necessity which has been established by case law and ethics opinions and is now specifically recognized in the Code. Comment [4] was amended to specifically overrule a Utah ethics advisory opinion which states that a judge should enter disqualification in any case in which a judge's relative receives a salary from the law firm. The new language will only require disqualification if the relative is an equity participant or the judge knows that the outcome of the case might affect a relative's economic interests. Comment [6] was eliminated because economic interest is defined in the terminology section.

## **RULE 2.12**

### ***Supervisory Duties***

**(A) A judge shall take reasonable measures to 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.**

**(B) 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 timely disposition of matters before them.**

### **COMMENT**

~~[1] 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.~~

[2] 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 timely administer their workloads promptly .

Approved 2/29/08

---

Committee Note: Rule 2.12 is similar to existing Canon 3C, but, as with other, similar provisions, the Utah canon is a “should” provision. The committee again decided to keep this as a “shall” provision but to again add the qualifying language about reasonable measures. Comment [1] was amended to hopefully indicate that a judge is not directly responsible for the actions of others.

## **RULE 2.13**

### ***Administrative Appointments***

**(A) In making administrative appointments, a judge:**

**(1) shall exercise the power of appointment impartially\* and on the basis of merit; and**

**(2) shall avoid nepotism, favoritism, and unnecessary appointments.**

**(B) A judge shall not appoint a lawyer to a position if the judge either knows\* that the lawyer, or the lawyer's spouse or domestic partner,\* has contributed more than \$50 within the prior 3 years to the judge's ~~election~~ retention campaign, or learns of such a contribution\* by means of a timely motion by a party or other person properly interested in the matter, unless:**

**(1) the position is substantially uncompensated;**

**(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or**

**(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.**

**(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.**

### **COMMENT**

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

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

[3] The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's retention ~~election~~ campaign includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses.

Approved 2/29/08

---

Committee Note: Rule 2.13(A) relates to existing Canon 3C(4). Section (B) is new language and will prohibit appointing a lawyer who has contributed to a judge's campaign, unless certain circumstances exist. The committee found the rule to be straight-forward and appropriate.

**RULE 2.14*****Disability and Impairment***

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

**COMMENT**

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

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

Approved 2/29/08

---

Committee Note: Rule 2.14 is new, although it is based on Canon 3D in the current code. Canon 3D requires a judge to take action against another judge or lawyer for unprofessional conduct. This is a “shall” provision. The rule will allow a judge to refer the other judge or lawyer to an assistance program.

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

**(A) A judge having knowledge\* that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.\***

**(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.**

**(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.**

**(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.**

**COMMENT**

[1] ~~Taking action~~ A judge has an obligation to address a known misconduct violation by a judge or a lawyer of the Code or the Utah Rules of Professional Conduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or 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 Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have ~~committed misconduct~~ violated the Code or the Utah Rules of Professional Conduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). 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.

Approved 2/29/08

---

Committee Note: Rule 2.15 is also similar to existing Canon 3D, but contains an important distinction. The rule distinguishes between code violations that raise a substantial question about a judge's or lawyer's fitness to act versus violations that do not rise to that level. The rule also distinguishes between knowledge of a violation versus information about a violation. In the first categories, a judge will be required to report the conduct to the appropriate authority, primarily the Judicial Conduct Commission or Utah State Bar. The latter categories will permit a judge to take other appropriate action, such as discussing the violation with the judge. The committee agreed that this distinction is helpful and important.

**RULE 2.16**

***Cooperation with Disciplinary Authorities***

**(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.**

**(B) A judge shall not retaliate, directly or indirectly, against a person known\* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.**

**COMMENT**

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Approve 2/29/08

---

Committee Note: Rule 2.16 is new. The committee did not engage in a significant discussion about the proposal because they felt it is straight-forward and appropriate.

**CANON 3**

**A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL—AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.**

**RULE 3.1***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:**

**(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;**

**(B) participate in activities that will lead to unreasonably frequent disqualification of the judge;**

**(C) participate in activities that would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality;\***

~~**(D) engage in conduct that would appear to a reasonable person to be coercive;**~~  
or

**(E) make inappropriate use of court premises, staff, stationery, equipment, or other resources, ~~except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.~~**

**COMMENT**

[1] To the extent that time permits, and judicial 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. See Rules 3.7 and 3.12.

[2] 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.

[3] 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 and impartiality. Examples include

jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. 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 Rule 3.6.

~~[4] 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 Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.~~

Contingent approval 3/24/08

---

Committee Note: Proposed Rule 3.1 contains many provisions that are found in current Canon 4A, although the provisions are stated differently. The committee added the word "unreasonably" to paragraph (B) because there are activities which result in frequent disqualification - such as becoming close friends with attorneys - that should not be prohibited. Paragraph (D) is a new provision. The committee decided to delete the paragraph because the provisions are covered in other areas. The committee was concerned with the word "coercive" because it could be construed too broadly. A judge who is the coach of a sports team might be coercive in motivating players. The committee decided that Rule 1.3 should be sufficient because it deals with inappropriate use of the judicial office. The committee felt that inappropriately using the judicial office is the key concept and therefore wanted to avoid any confusion about the word "coercive." Paragraph (E) is also a new provision. The committee decided to delete the last portion of paragraph (E) because it is inconsistent with current practice. Judges can use government resources consistent with Judicial Council rule and local policy. The committee deleted comment [4] because it relates to paragraph (D).

## **RULE 3.2**

### ***Appearances before Governmental Bodies and Consultation with Government Officials***

**A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:**

**(A) in connection with matters concerning the law, the legal system, or the administration of justice;**

**(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or**

**(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary\* capacity.**

### **COMMENT**

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] 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 Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Approved 4/28/08

---

Committee Note: Proposed Rule 3.2 contains some provisions that are found in current Canon 4C(1)(a). The proposal includes two provisions which are not in the current code. Paragraph (B) is new. The committee agreed that the provision might be helpful. A judge should be able to discuss knowledge or expertise. Other

provisions of the code, such as the prohibition against giving legal advice, will restrict what a judge can say at such hearings. The other new provision is the last clause in paragraph (C). A different section of the code permits a judge to be a fiduciary for a family member. This section now expressly permits a judge who is a fiduciary to appear before an administrative body if necessary to fulfill the fiduciary duties.

### **RULE 3.3**

#### ***Testifying as a Character Witness***

**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 subpoenaed.**

#### **COMMENT**

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. 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.

Approved 4/28/08

---

Committee Note: Proposed Rule 3.3 is similar to language in current Canon 2B. The committee changed the word “summoned” to “subpoenaed” because the committee felt that a subpoena is how a judge will be required to appear before a tribunal.

## **RULE 3.4**

### ***Appointments to Governmental Positions***

**A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.**

### **COMMENT**

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Approved 4/28/08

---

Committee Note: Proposed Rule 3.4 is the same as current Canon 4C(2) and there isn't a need for change.

## **RULE 3.5**

### ***Use of Nonpublic Information***

**A judge shall not intentionally disclose or use nonpublic information\* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.**

### **COMMENT**

[1] 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.

[2] 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.

Approved 5/27/08

---

Committee Note: Proposed Rule 3.5 is similar to existing Canon 3B(11). The court deleted the language in comment [2] because it should already go without saying that a judge may share information with those individuals.

**RULE 3.6*****Affiliation with Discriminatory Organizations***

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

**(B) A judge shall not use the benefits or facilities of an organization if the judge knows\* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join under Rule 3.6(A) is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.**

**COMMENT**

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited, such as scouting organizations.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Approved 5/27/08

Committee Note: Proposed Rule 3.6 expands on a concept found in current Canon 2C. Paragraph (A) is essentially the same language as in the current code with the addition of gender, ethnicity, and sexual orientation. The Model Code does not include the qualifying language “other than a religious organization” which is found in the Utah Code. The committee determined that it did not need to include the phrase “other than a religious organization” because comment [2] discusses what might be considered invidious discrimination and the definition will allow membership in religious organizations that might, for example, limit clergy positions to one gender. Paragraph (B) is a new provision. The committee added “under Rule 3.6(A)” to clarify that the prohibition on use of facilities is limited to the organizations that are described in the rule. The committee otherwise accepted the prohibition in (B). The committee added the phrase “such as scouting organizations” to comment [2] to specifically state that judges can be members and leaders of scouting organization. This was a concern expressed by several judges.

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

**(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:**

**(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;**

**(2) soliciting\* contributions\* for such an organization or entity, but only from members of the judge's family,\* or from judges over whom the judge does not exercise supervisory or appellate authority;**

**(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;**

**(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;**

**(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and**

**(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:**

**(a) will be engaged in proceedings that would ordinarily come before the judge;**  
**or**

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

**(B) A judge may encourage lawyers to provide pro bono publico legal services.**

**COMMENT**

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization or the nature of the judge's participation in or association with the organization would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer or to perform similar functions at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Approved 5/27/08

---

Committee Note: Proposed Rule 3.7 is essentially a restatement of current Canon 4C(3), except the Model Code uses some permissive language rather than restrictive language. The additions to the rule include paragraph (A)(2), which states that a judge may not solicit contributions from other judges over whom the judge has supervisory or appellate authority. Current Canon 4C(3)(b)(i) allows solicitation of any other judge. Paragraph (A)(3) allows a judge to solicit membership (unlike the current

canon) under certain circumstances. Paragraph (A)(4) is a new provision which allows a judge to be featured at a fund-raising event if the fund-raising is for an organization concerned with the law, the legal system, or the administration of justice. This will allow judges to be featured at an event, such as speaking at a fund-raiser for the “And Justice for All Campaign.” Paragraph (A)(6)(b) is a change from the existing canon. The current canon prohibits a judge from serving an organization that is a frequent litigant in any court. The proposed rule limits the frequent litigation to the judge’s court or in any court subject to the appellate jurisdiction of the judge’s court. This will expand the list of organizations which a judge may serve.

**RULE 3.8*****Appointments to Fiduciary Positions***

**(A) A judge shall not accept appointment to serve in a fiduciary\* position, ~~such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative,~~ except as a fiduciary 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.**

**(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely 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.**

**(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.**

**(D) If a person who is serving in a fiduciary position becomes a judge, he or she must shall comply with this Rule as soon as reasonably practicable, but in no event later than ~~{one year}~~ after becoming a judge.**

**COMMENT**

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Approved 5/27/07

---

Committee Note: Proposed Rule 3.8 is generally the same as current Canon 4E except for the addition of paragraph (D). The proposed paragraph reflects ethics advisory opinions from throughout the country which require a new judge to comply with the rules as soon as practicable. The paragraph establishes a deadline for compliance. The committee deleted the language in paragraph (A) because "fiduciary" is already defined in the terminology section. The committee added the word "shall" instead of the word "must" to be consistent with other rules.

**RULE 3.9**

***Service as Arbitrator or Mediator***

**A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.\***

**COMMENT**

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Approved 5/27/08

---

Committee Note: Proposed Rule 3.9 is the same as existing Canon 3F. The committee determined that changes are not necessary.

## **RULE 3.10**

### ***Practice of Law***

**A judge shall not practice law. 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,\* but is prohibited from serving as the family member's lawyer in any forum.**

### **COMMENT**

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

Approved 5/27/08

---

Committee Note: Proposed Rule 3.10 is similar to existing Canon 3G, except for the clarification that a judge may not serve as a family member's lawyer in any forum. This addition reflects the conclusions of ethics advisory opinions and probably reflects the intent of the previous Model Code. The committee determined that changes are not necessary.

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

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

**(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:**

**(1) a business closely held by the judge or members of the judge's family; or**

**(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.**

**(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:**

**(1) interfere with the proper performance of judicial duties;**

**(2) lead to frequent disqualification of the judge;**

**(3) 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**

**(4) result in violation of other provisions of this Code.**

**COMMENT**

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Approved 5/27/08

---

Committee Note: Proposed Rule 3.11 reflects the current language in Canon 4D, but also expands on the permitted activities. The permitted activities are already implicitly allowed by the current code and therefore do not constitute a shift in position. The committee adopted the rule with little discussion.

## **RULE 3.12**

### ***Compensation for Extrajudicial Activities***

**(A) A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law\* unless such acceptance would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\***

**(B) A judge shall not receive compensation for performing a marriage ceremony during regular court hours. A judge may receive compensation for performing a marriage ceremony during non-court hours.**

### **COMMENT**

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rules 2.1 and 3.1.

~~[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.~~

Approved 5/27/08

Approved 7/30/08 - delete comment [2]

---

Committee Note: Proposed Rule 3.12(A) reflects language that is in current Canon 4H. The committee added paragraph (B) which is found in the current code. The committee decided that this language should be retained as it is the subject of several ethics advisory opinions and the committee did not want to overrule those opinions. The committee deleted comment [2] because, as will be seen, the committee rejected a reporting requirement.

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

**(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law\* or would appear to a reasonable person to undermine the judge's independence,\* integrity,\* or impartiality.\***

**(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following ~~without publicly reporting such acceptance:~~**

**(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;**

**(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending\* or impending\* before the judge would in any event require disqualification of the judge under Rule 2.11;**

**(3) ordinary social hospitality;**

**(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;**

**(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;**

**(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;**

**(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or**

**(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,\* or other family member of a judge residing in the judge's household,\* but that incidentally benefit the judge.**

**~~(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:~~**

**~~(1) gifts incident to a public testimonial;~~**

**(2) (9) invitations to the judge and the judge’s spouse, domestic partner, or guest to attend without charge:**

**(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or**

**(b) an event associated with any of the judge’s educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and**

**~~(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.~~**

#### **COMMENT**

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge’s decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge’s independence, integrity, or impartiality is low, ~~and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it. In lieu of imposing financial reporting requirements, Utah has adopted stricter prohibitions than those proposed by the Model Code against the acceptance of gifts, loans, bequests, benefits, or other things of value.~~

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge’s independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge’s disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge’s decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, ~~and does not require public reporting.~~

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are

available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

Approved 7/30/08

---

Committee Note: Proposed Rule 3.13 involves accepting and reporting gifts, etc. The rule adds several categories which are not found in the existing canon 4D. Paragraph (B)(1) recognizes existing practices, such as when a judge receives a plaque from a Bar committee or a card from a former party. Paragraph (B)(5) is a new provision which allows judges to enter lotteries, along with millions of other people. Paragraph (B)(7) also reflects the practice of publishers sending complementary books, magazines, etc. to judges. These have been accepted by judges in the past and now there is express permission.

The committee rejected the reporting requirement contained in the Model Code. The committee determined that reporting may be onerous and will be of little benefit to the public. Rather than adopt a reporting requirement, the committee eliminated paragraph (C)(3) which would have allowed judges to accept items from parties or

lawyers. The committee noted in comment [1] that Utah is adopting stricter prohibitions on the acceptance of gifts, rather than adopting a reporting requirement.

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

**(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,\* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.**

**(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,\* or guest.**

~~**(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.**~~

**COMMENT**

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
- (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
- (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
- (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
- (e) whether information concerning the activity and its funding sources is available upon inquiry;
- (f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;
- (g) whether differing viewpoints are presented; and
- (h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Approved 7/30/08

---

Committee Note: Proposed Rule 3.14 reflects current Canon 4.H. Paragraph (C) was deleted to make the rule consistent with the change to Rule 3.13.

**RULE 3.15**

***Reporting Requirements***

~~(A) A judge shall publicly report the amount or value of:~~

~~(1) compensation received for extrajudicial activities as permitted by Rule 3.12;~~

~~(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$[insert amount]; and~~

~~(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$[insert amount].~~

~~(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.~~

~~(C) The public report required by paragraph (A) shall be made at least annually, except that for reimbursement of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.~~

~~(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law,\* and, when technically feasible, posted by the court or office personnel on the court's website.~~

Approved 7/30/08

---

Committee Note: The committee decided to delete the entire rule to be consistent with the changes in Rule 3.13.

## CANON 4

**A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.**

### RULE 4.1

*Political and Campaign Activities of Judges and Judicial Candidates in General*

(A) Except as permitted by law,\* or by Rules 4.2, 4.3, and 4.4 in this Canon, a judge or a judicial candidate\* shall not:

- (1) act as a leader in, or hold an office in, a political organization;\*
- (2) make speeches on behalf of as political organization;
- (3) publicly endorse or oppose a candidate for any public office;
- (4) solicit funds for, pay an assessment to, or make a contribution\* to a political organization or a candidate for public office;
- (5) attend political gatherings;
- (6) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- (7) publicly identify himself or herself as a candidate member of a political organization, except as necessary to vote in an election;
- (8) seek, accept, or use endorsements from a political organization;
- (8) ~~personally solicit\* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;~~
- (9) ~~use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;~~
- (9) use court staff, facilities, or other court resources in a campaign for judicial office seeking judicial office;
- (10) knowingly,\* or with reckless disregard for the truth, make any false or misleading statement in seeking judicial office;
- (11) 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; or
- (12) ~~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~~ other than the faithful, impartial and diligent performance of judicial duties.

**(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under ~~paragraph (A)~~ this Canon.**

## COMMENT

### GENERAL CONSIDERATIONS

[1] 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 various methods of selecting judges.~~

[2] ~~When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.~~

### PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. ~~Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.~~

[4] ~~Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(b)(2) and 4.2(B)(3).~~

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member’s political activity

or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. ~~For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).~~

#### STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(10) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] 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 candidate does not violate ~~paragraphs (A)(11), (A)(12), or (A)(13)~~ other provisions of this Canon, the candidate may make a factually accurate public response. ~~In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.~~

[9] Subject to ~~paragraph (A)(12)~~ the provisions of this Canon, a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her ~~during a campaign while seeking judicial office~~, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(11) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer

who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

## PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. 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 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.~~

[12] Paragraph (A)(12) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the 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. ~~Pledges, promises, or commitments must be contrasted with statement or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.~~

[14] A judicial candidate may make ~~campaign~~ promises related to judicial organization, administration, and court management, such as a promise to dispose of 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.

[15] ~~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. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, 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 do not 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. See Rule 2.11.~~

Approved 8/25/08

---

Committee Note: In reviewing Canon 4 on political activity, the committee decided to use our current canons as a model. The ABA Model Code was written with several different types of election systems in mind. The committee felt that our current canons have been working well and therefore decided to incorporate its provisions. Rule 4.1 applies to judges and judicial candidates. Most of the provisions in Rule 4.1 are found in the existing canons. In paragraph (7), the committee added the phrase "as except as necessary to vote in an election" to recognize the current ethics advisory opinion which permits judges to register as a member of one political party in order to vote in a closed primary election. Paragraphs (9) and (10) are new, but should be non-controversial. Paragraph (12) deals with the pledges and promises clause. The ABA Model Code proposed significant changes to the clause, based on the ABA Committee's reading.

## RULES 4.2

### *Political and Campaign Activities of Judicial Candidates Judges in Public Retention Elections*

(A) A ~~judicial candidate\*~~ in a partisan, non partisan, or judge standing for retention public election\* shall

~~(1)~~ act at all times in a manner consistent with the independence,\* integrity,\* and impartiality\* of the judiciary and encourage members of the judge's family to adhere to the same standards of conduct in support of the judge that apply to the judge.

(B) If a judge standing for retention has drawn public opposition, the judge may operate a campaign for office subject to the following limitations:

(1) The judge shall comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations ~~of this jurisdiction;~~

(2) The judge shall not directly solicit\* or accept campaign funds or solicit public statements of support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support. Committees may solicit campaign contributions and public statements of support from lawyers and non-lawyers. Surplus contributions held by the committee after the election shall be contributed without public attribution to the Utah Bar Foundation. Committees must not permit the use of campaign contributions for the private benefit of the judge or member of the judge's family;

(3) The judge shall review and approve the content of all campaign statements and materials produced by ~~the candidate~~ or his or her campaign committee, ~~as authorized by Rule 4.4,~~ before their dissemination;

(4) The judge may speak to public gatherings on the judge's own behalf;

(5) A judge may respond to personal attacks or attacks on the judge's record, provided the response is consistent with other provisions of this rule; and

(6) When a party or lawyer who made a contribution of \$50 or more to a judge's campaign committee appears in a case, the judge shall disclose the contribution to the

parties. The requirement to disclose shall continue from the time the judge forms a campaign committee until 180 days after the judge's retention election. and

~~(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.~~

~~(B) A candidate for elective judicial office may, unless prohibited by law,\* and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general or retention election:~~

~~(1) establish a campaign committee pursuant to the provisions of Rule 4.4;~~

~~(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;~~

~~(3) publicly endorse or oppose candidates for the same judicial office for which he or she is running;~~

~~(4) attend or purchase tickets for dinners or other events sponsored by a political organization\* or a candidate for public office;~~

~~(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization; and~~

~~(6) contribute to a political organization or candidate for public office, but not more than \$[insert amount] to any one organization or candidate.~~

~~(C) A judicial candidate in a partisan public election may, unless prohibited by law, and not earlier than [insert amount of time] before the first applicable primary election, caucus, or general election:~~

~~(1) identify himself or herself as a candidate of a political organization; and~~

~~(2) seek, accept, and use endorsement of a political organization.~~

## COMMENT

~~[1] Paragraphs (B) and (C) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Candidates may not engage in these activities earlier than [insert amount of time] before the first applicable electoral event, such as a caucus or a primary election.~~

~~[2] Despite paragraphs (B) and (C), judicial candidates for public election remain subject to many of the provisions of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11) and (13).~~

~~[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.~~

~~[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.~~

~~[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In endorsing or opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.~~

~~[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].~~

[1] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Judges are

responsible for compliance with the requirements of election law and other applicable law and for the activities of their campaign committees.

[2] At the start of a campaign, the judge must instruct the campaign committee to solicit or accept only such conditions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a retained judge are permitted to make campaign contributions, the judge should instruct his or her campaign committee to be especially cautious in connection with such contributions, so that they do not create grounds for disqualification if the judge is retained. See rule 2.11.

Approved 8/25/08

---

Committee Note: Rule 4.2 was rewritten to reflect Utah's current practice on retention elections. The committee essentially deleted the proposed rule and incorporated current provisions into Rule 4.2. The ABA Model Code proposed that judges be allowed to form campaign committees for any retention election, even if the judge had not drawn public opposition. The committee decided that this proposal should not be adopted in Utah and we should retain our current practice of permitting committees only if a judge draws public opposition. g of White v. Republican Party. The White case dealt with the announce clause. The Utah canons have never contained an announce clause. The pledges and promises clause has never been addressed by the U.S. Supreme Court. The committee felt that it is far from clear that the current pledges and promises clause would be held to violate First Amendment rights. The committee therefore decided to retain the pledges and promises clause that is found in the current Code. In the comments, the committee primarily deleted those provisions that deal with systems different from Utah's and those comments that deal with the Model Code's proposal on the pledges and promises clause. The committee also deleted comment [15] which deal, in part, with election questionnaires. The current practice is for judges to not answer questionnaires. The committee felt that it would be best to maintain this practice and therefore deleted the comment. Otherwise, the comments reflect the black-letter rule.

**RULE 4.3**

*~~Activities of Candidates for Appointive Judicial Office~~*

~~A candidate for appointment to judicial office may:~~

~~(A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and~~

~~(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.~~

**COMMENT**

~~[1] 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 that office. See rule 4.1(A)(12).~~

Approved 8/25/08

---

Committee Note: The committee's review of Rule 4.3 resulted in a determination that the rule did not add anything to the canons. The committee determined that paragraph (A) is governed by the nominating commission rules and should remain that way. The committee felt that paragraph (B) was already covered in other provisions, such as Rule 4.1 paragraph (A).

**RULE 4.4***Campaign Committees*

~~(A) A judicial candidate\* subject to public retention election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.\*~~

~~(B) A judicial candidate subject to public election shall direct his or her campaign committee:~~

~~(1) to solicit and accept only such campaign contributions\* as are reasonable, in any event not to exceed, in the aggregate,\* \$[insert amount] from any individual or \$[insert amount] from any entity or organization;~~

~~(2) not to solicit or accept contributions for a candidate's current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and~~

~~(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding \$[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.~~

## COMMENT

~~[1] Judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(8). This rule recognizes that in many jurisdictions, judicial candidates must raise campaign funds to support their candidacies, and permits candidates, other than candidates for appointive judicial office, to establish campaign committees to solicit and accept reasonable financial contributions or in-kind contributions.~~

~~[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.~~

~~[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds, for disqualification if the candidate is elected to judicial office. See Rule 2.11.~~

Approved 8/25/08

---

Committee Note: The committee deleted Rule 4.4 because the provisions of this rule were incorporated into Rule 4.2.

**RULE 4.53***Activities of Judges Who Become Candidates for Nonjudicial Office*

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law\* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

## COMMENT

[1] In campaigns for nonjudicial 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 nonjudicial 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 together with~~ the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, ~~together~~ dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) 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 nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

Approved 8/25/08

---

Committee Note: Rule 4.5 reflects language that is in current Canon 5E. The committee decided to retain the language as written, because the current canon is not controversial and seems to be working well.







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

**A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others or allow others to do so.**

(Approved 7/30/07)

**COMMENT**

[1] It is improper for a judge to use abuse or attempt to abuse 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 judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. ~~The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead~~ reference or recommendation would reasonably be perceived as an attempt to exert pressure by reason of the judicial office. In making such references or recommendations, the judge may refer to his or her judicial office and use official letterhead only for employment or educational opportunities.

[3] Judges may participate in the process of judicial selection by cooperating encouraging individuals to apply for judicial office and communicating 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.

[4] 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.

(Approved 7/30/07)

Committee Note: Rule 1.3 is similar to current Canon 2B. The committee edited comment [2] to clarify the rules on letters of recommendation. The committee decided that a judge should be able to write a letter of reference or recommendation whenever there isn't a perception of judicial pressure. The committee decided that a judge can use his or her letterhead for employment and educational references. A judge should not use letterhead in other circumstances. The committee amended comment [3] to reflect ethics advisory opinions which not only permit judges to respond to inquiries from nominating commissions, but to also initiate such contact.