

PROPOSED MASSACHUSETTS CODE OF JUDICIAL CONDUCT⁺
FOR PUBLIC COMMENT

~~**ABA MODEL CODE OF**~~
~~**JUDICIAL CONDUCT**~~

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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~~ persons 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 must strive to maintain and enhance confidence in the legal system.

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

[3] The ~~Model~~ 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~~ to maintain the highest standards of judicial and personal conduct, and to provide a basis for ~~regulating~~ regulation of their conduct through disciplinary ~~agencies~~ authorities.

SCOPE

[1] The ~~Model~~ 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 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~~ include 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~~ includes 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~~-Code of Judicial Conduct are rules of reason that should be applied ~~consistent~~consistently with constitutional requirements, statutes, other court rules, and decisional 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. Some conduct that may literally violate a Rule may not violate the policy behind the prohibition, or the violation may be de minimis. 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.

TERMINOLOGY

~~The first time~~ Whenever 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,~~

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

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

~~“Contribution” means both financial and in-kind contributions, judge is such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, that the friend's appearance or interest in a proceeding pending or impending before the judge would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.~~

~~“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. the judge. See Rule 2.11.3.13.~~

“Court personnel” means court employees subject to the judge's direction and control. See Rules 2.3, 2.8, 2.9, 2.10, 2.11, and 2.12.

~~“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.13.~~

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

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

~~See Rules 1.3, 2.11, and 3.2.11.~~

“Fiduciary” includes relationships such as executor, administrator, trustee, ~~or guardian,~~ attorney in fact, or other personal representative. See Rules 2.11, 3.2, and 3.8.

“Fundraising event” means an event for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself. See Rule 3.7.

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties or their representatives, as well as maintenance of an open mind in considering issues 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, and 3.13, 4.1, and 4.2.

“Impending matter” is a matter that is imminent or expected to occur in the near future. A matter is impending if it seems probable that a case will be filed, if charges are being investigated, or if someone has been arrested although not yet charged. See Rules 2.9, 2.10, and 3.13, and 4.1.

“Impropriety” ~~includes~~ means conduct that violates the law, ~~court rules, or,~~ * including provisions of this Code, and conduct that constitutes grounds for discipline under G. L. c. 211C, sec. 2(5), and conduct that undermines a judge’s independence, * integrity,* or impartiality. * See Canon 1 and Rule 1.2.

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

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. See Canons 1 and 4, and Rules 1.2, 2.15, 3.1, 3.12, and 3.13, and 4.2.

~~**“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.~~

“Judicial applicant” means any person who has submitted an application for appointment as a judge in any court of the Commonwealth. See Rule 2.11.

“Judicial nominee” means any person who has been nominated by the Governor to judicial office but who has not assumed judicial office. See Rule 2.11.

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. See Rules 2.9, 2.11, ~~2.13,~~ 2.15, 2.16, 3.65, and 4.13.6.

“Law” ~~encompasses~~ includes court rules and standing orders, as well as statutes, constitutional provisions, and decisional law. However, for purposes of this Code, law does not

include any provisions of c. 268A, §§ 3 and 23(b)(2) - (3) that are inconsistent with the provisions of this Code. See Rules 1.1, 2.1, 2.2, 2.3, 2.6, 2.7, 2.9, 3.1, 3.2, 3.4, 3.7, 3.9, 3.10, 3.12, 3.13, 3.14, 3.15, and 4.1, 4.2, 4.4, and 4.5.

~~“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~~family-like relationship. Residence in the household of a judge may be relevant but is not dispositive when determining whether a judge maintains a close family-like relationship with an “other relative or person.” See Rules ~~3.7, 2.11, 3.8, 3.10, and 3.11~~10.

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood, adoption, or marriage, a domestic partner,* 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.

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

“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, and 3.13, ~~and 4.1.~~

~~“Personally 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 4.1.~~

“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~~to political office or passage or defeat of ballot questions. See Rule 4.1. ~~For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.~~

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

“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.

APPLICATION

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

~~I.~~ I. Applicability of This Code

(A) Active Judges: The provisions of the Code apply to all judges of the Trial Court, the Appeals Court, and the Supreme Judicial Court until resignation, removal, or retirement, except as provided in Paragraph (B) below.

~~A) — The provisions of the Code apply to all full-time judges. Parts II through V of this section identify provisions that apply to four categories of part-time judges only while they are serving as judges, and provisions that do not apply to part-time judges at any time. All other Rules are therefore applicable to part-time judges at all times. 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. _____~~

(B) Retired Judges: A judge whose name has been placed upon the list of retired judges eligible to perform judicial duties, pursuant to G. L. c. 32, §§ 65E-65G, shall comply with all provisions of this Code during the term of such eligibility.

II. Time for Compliance: A person to whom this Code becomes applicable shall comply immediately with all its provisions except Rules 3.8, 3.11(B), and 3.11(C), and shall comply with those sections as soon as reasonably possible and in any event within one year.

~~(B) — A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a justice of the peace, magistrate, court commissioner, special master, referee, or member of the administrative law judiciary.[†]~~

COMMENT

[1] A judge who has retired or resigned from judicial office shall not, for a period of six months following the date of retirement, resignation, or most recent service as a retired judge pursuant to G. L. c. 32, §§ 65E-65G, perform court-connected dispute resolution services except on a pro bono publico basis, enter an appearance, or accept an appointment to represent any party, in any court of the Commonwealth.

~~[†]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 Administrative Law Judiciary.~~

[2] Judges should be aware that their conduct prior to their assuming judicial office may have consequences under the law.* See, e.g., G. L. c. 211C, § 2(2), Rule 2.11(A)(4).

[3] This Code does not apply to judicial applicants* and judicial nominees.* Historically, by Executive Order, the Governor of the Commonwealth has created a code of conduct for judicial applicants* and judicial nominees.*

[4] An active judge who becomes an applicant or candidate for a different judicial office, state or federal, must comply with the requirements of any appointing authority in addition to this Code.

~~[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.~~

~~II.—RETIRED JUDGE SUBJECT TO RECALL~~

~~A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply:~~

~~(A) —with Rule 3.9 (Service as Arbitrator or Mediator), except while serving as a judge.~~

~~(B) —at any time with Rule 3.8(A) (Appointments to Fiduciary Positions).~~

~~COMMENT~~

~~[1]—For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to “perform judicial functions.”~~

~~III.—CONTINUING PART-TIME JUDGE~~

~~A judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall who is permitted to practice law (“continuing part-time judge”),~~

~~(A) —is not required to comply:~~

~~(1) — with Rule 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7), except while serving as a judge; or~~

~~(2) — at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities); 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.~~

COMMENT

~~[1] — When a person who has been a continuing part time judge is no longer a continuing part time judge, including a retired judge no longer subject to recall, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the 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 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7), except while serving as a judge; or~~

~~(2) — at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities); 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.~~

V. — PRO TEMPORE PART-TIME JUDGE

~~A 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 is not required to comply:~~

~~(A) — except while serving as a judge, with Rules 2.4 (External Influences on Judicial Conduct), 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials), and 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7); or~~

~~(B) — at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8(A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities).~~

VI. — TIME FOR COMPLIANCE

~~A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules 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.~~

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE,⁵* INTEGRITY,⁵* AND IMPARTIALITY* OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY* AND THE APPEARANCE OF IMPROPRIETY.*

RULE 1.1

Compliance with the Law

A judge shall comply with the law,* including the Code of Judicial Conduct.

RULE 1.2

Promoting Confidence in the Judiciary

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

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,⁵* integrity,⁵* ~~and,*~~ or 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~~ A judge is encouraged to 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~~ Improprieties include violations of law,⁵* ~~court rules*~~ or ~~provisions of~~ this Code,⁵* or other conduct for which the judge could be disciplined pursuant to G. L. c. 211C, § 2(5). 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,⁵* temperament, or fitness to serve as a judge.

[6] A judge ~~should~~ is encouraged to initiate and participate in appropriate 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. See Rules 3.1 and 3.7.

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.

COMMENT

_____ [1] It is improper for a judge to use or attempt to use ~~his or her~~ the judge's position to gain personal advantage or ~~deferential~~ preferential treatment of any kind. For example, ~~it would be improper for a judge~~ reference to ~~allude to his or her~~ a judge's own judicial status to gain favorable treatment in encounters with traffic officials. ~~would be improper.~~ Similarly, a judge must not use judicial letterhead to gain an advantage in conducting ~~his or her~~ personal business.

_____ [2] A judge may provide ~~an educational or employment~~ reference or recommendation for an individual based ~~upon~~ on the ~~judge's~~ judge's personal knowledge. ~~*~~ The judge may use official letterhead and sign the recommendation using the judicial title if the ~~judge indicates~~ judge's knowledge* of the applicant's qualifications arises from observations made in the judge's judicial capacity. The recommendation may not be accompanied by conduct that ~~the reference is personal and if there is no likelihood that the use of the letterhead would~~ reasonably be perceived as an attempt to exert pressure ~~by reason of the judicial office~~ on the recipient to hire or admit the applicant. Where a judge's knowledge* of the applicant's qualifications does not arise from observations made in the judge's judicial capacity, the judge may not use official letterhead, court email, or the judicial title, but the judge may send a private letter stating the judge's personal recommendation. The judge may refer to the judge's current position and title in the body of the private letter only if it is relevant to some substantive aspect of the recommendation.

Court hiring policies may impose additional restrictions on recommendations for employment in the judicial branch, and the law* may impose additional restrictions for employment in state government. See, e.g., G. L. c. 66, § 3A; G. L. c. 276, § 83; G. L. c. 211B, § 10(D). See also Trial Court Personnel Policies and Procedures Manual, § 4.000 et seq. See Rule 3.3 for instances when a judge is asked to provide a character reference on behalf of a bar applicant or provide information for a background investigation in connection with an application for public employment or for security clearance.

_____ [3] Judges may participate in the process of judicial selection by cooperating with screening, nominating, appointing, and confirming authorities ~~and screening committees, and by responding~~. Judges may make written recommendations to and respond to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office. Judges also may testify at confirmation hearings.

_____ [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.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY^{5.2*} 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^{5.2*} judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system. [See Rule 3.7.](#)

[3] With respect to time devoted to personal and extrajudicial activities, this Rule must be construed in a reasonable manner. Family obligations, illnesses, and emergencies may require a judge's immediate attention. Attending to those obligations and situations is not prohibited by this Rule.

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.*

COMMENT

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

[2] 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] When applying and interpreting the law^{5.2*} a judge sometimes may make good-faith errors of fact or law^{5.2*} Errors of this kind do not violate this Rule. A judicial decision or action determined by an appellate court to be incorrect either as a matter of law* or as an abuse of discretion is not a violation of this Code unless the judge acted in bad faith.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure ~~pro se~~self-represented litigants the opportunity to have their matters fairly heard. See Rule 2.6(A).

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 status or condition such as race, sex, gender, identity, religion, nationality, national origin, ethnicity, ancestry, disease or disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, ~~and~~. A judge also shall not permit court ~~staff, court officials, personnel*~~ or others subject to the judge's direction and control to ~~do so~~. engage in such prohibited behavior.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, ~~against parties, witnesses, lawyers, or others. Prohibited acts include bias, prejudice, or harassment~~ based upon ~~attributes including but not limited to~~ status or condition such as race, sex, gender identity, religion, nationality, national origin, ethnicity, ancestry, disease or disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, ~~against parties, witnesses, lawyers, or others~~.

(D) The restrictions of ~~paragraphs~~ 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.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. However, a judge may make legitimate reference to any factor relevant to an issue in a proceeding.

[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; improper 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~~ Paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person ~~on bases~~ based upon attributes such as race, sex, gender identity, religion, nationality, national origin, ethnicity, ancestry, disease or 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.

RULE 2.4

External Influences on Judicial Conduct

- (A) A judge shall not be swayed by partisan interests, 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.

RULE 2.5

Competence, Diligence, and Cooperation

- (A) A judge shall 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 adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission advisement, and to take reasonable measures to ensure that court ~~officials, personnel,*~~ litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, 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.

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.* A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.

(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.

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 the settlement of disputes, but~~

[1A] The judge has an affirmative role in facilitating the ability of every person who has a legal interest in a proceeding to be fairly heard. In the interest of ensuring fairness and access to justice, judges may make reasonable accommodations that help self-represented litigants to understand the proceedings and applicable procedural requirements, secure legal assistance, and be heard according to law.* The judge should be careful that accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. In some circumstances, particular accommodations for self-represented litigants are required by decisional or other law.* In other circumstances, potential accommodations are within the judge's discretion. By way of illustration, a judge may: (1) construe pleadings liberally, (2) provide brief information about the proceeding and evidentiary and foundational requirements, (3) ask neutral questions to elicit or clarify information, (4) modify the manner or order of taking evidence or hearing argument, (5) attempt to make legal concepts understandable, (6) explain the basis for a ruling, and (7) make referrals as appropriate to any resources available to assist the litigants. For civil cases involving self-represented litigants, the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants (April 2006) provide useful guidance to judges seeking to exercise their discretion appropriately so as to ensure the right to be heard.

[2] Judicial participation may play an important role 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~~A judge's participation in settlement discussions shall be conducted in accordance with applicable law.* Other factors that a judge should consider when deciding upon an appropriate settlement practice for a case ~~are~~include: (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 (self-represented,~~ (6) whether the matter is civil or criminal, ~~and~~ (7) whether there is a history of violence between the parties. See Rule 2.9(A)(4).

[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).

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.*

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 judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

RULE 2.8

Decorum, Demeanor, and Communication with Jurors

(A) A judge shall 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,~~ personnel,* and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court ~~staff, court officials,~~ personnel,* 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 but may express appreciation to jurors for their service to the judicial system and the community.

COMMENT

[1] The duty to ~~hear~~ conduct all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly 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, other than in a court order or opinion, may imply a judicial expectation in future cases and may impair a juror's ability to be

fair and impartial ~~in a subsequent~~* in a subsequent case. Such commendations or criticisms of verdicts may also call into question the judge's ability to rule impartially* on any post-trial motions, or on remand, in the same 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.

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.~~

(2) A judge may engage in ex parte communications in specialty courts, sessions, or programs, as authorized by law.*

(3) A judge may consult with court ~~staff and court officials~~personnel* whose ~~functions are~~function is to aid the judge in carrying out the ~~judge's~~judge's adjudicative responsibilities, or with other judges, ~~provided~~subject to the following:

(a) a judge ~~makes~~shall take all reasonable ~~efforts~~steps to avoid receiving from court personnel* or other judges factual information concerning a case that is not part of the case record, ~~and does. If court personnel* or another judge nevertheless brings information about a matter that is outside of the record to the judge's attention, the judge may not~~ ~~abrogate the responsibility personally to decide the~~ base a decision on it without giving the parties notice of that information and an opportunity to respond. Consultation is permitted between a judge, clerk-magistrate or other appropriate court personnel* and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;

(b) when a judge consults with a probation officer, housing specialist, or comparable court employee about a party in a pending* or impending* matter, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond, except as provided in Paragraph (A)(2).

(c) a judge shall not consult with an appellate judge, or a judge in a different trial court department, about a matter that the judge being consulted might review on appeal; and

(d) no judge shall consult with another judge about a pending matter before one of them when the judge initiating the consultation knows* the other judge has a financial, personal or other interest that would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows* he or she has such an interest.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle civil 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, and shall not undertake any independent investigation of the facts in a matter.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court ~~staff, court officials, and others subject to the judge's direction and control.~~ personnel.*

COMMENT

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

[1A] "Ex Parte communication" means a communication pertaining to a proceeding that occurs without notice to or participation by all other parties or their representatives between a judge (or by court personnel* acting on behalf of a judge) and (i) a party or a party's lawyer, or (ii) another person who is not a participant in the proceeding.

[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~~ self-represented, the party, who is to be present or to whom notice is to be given, ~~unless otherwise required by law.*~~ For example, court rules with respect to Limited Assistance Representation may require that notice be given to both the party and the party's limited assistance attorney.

[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 Paragraph (A)(2) permits a judge may initiate, permit, or consider to engage in~~ ex parte communications ~~expressly authorized by law, such as when serving on therapeutic or problem-solving~~ in conformance with law* governing operation of specialty courts, sessions, or programs, including but not limited to drug courts, mental health courts, or drug courts. In this capacity and tenancy preservation programs. Where ex parte communications are authorized, judges may be permitted to attend and assume a more an interactive role ~~with-in~~ meetings or “staffings,” even if held outside of the presence of one or more parties, treatment providers, or their counsel.

[4A] Ex parte communications with probation officers, social workers, and others, housing specialists, or other comparable court employees are permitted where authorized by law,* such as rules governing the courts, sessions, or programs identified in Paragraph (A)(2) and Comment [4]. Where ex parte conversations are not permitted, a judge may consult with these employees ex parte about the specifics of various available programs so long as there is no discussion about the suitability of the program for a particular party.

[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~~ A judge may consult with other judges, subject to the limitations set forth by this Rule. This is so whether or not the judges serve on the same court. A judge must avoid ex parte discussions of a matter with a judge who has previously been disqualified from hearing the matter and with an appellate judge who might be called upon to review that matter on appeal. The same holds true with respect to those instances in which a judge in one department of the trial court may be called upon to review a case decided by a judge in a different department; for example, a judge in the Superior Court may be required to review a bail determination made by a judge in the District Court. The appellate divisions of the Boston Municipal Court and of the District Court present a special situation. The judges who sit as members of these appellate divisions review on appeal cases decided by judges who serve in the same court department. However, the designation of judges to sit on the appellate divisions changes quite frequently; every judge on the Boston Municipal Court will, and every judge on the District Court may, serve for some time as a member of that court's appellate division. Judges in the same court department are not barred from consulting with each other about a case, despite the possibility that one of the judges may later review the case on appeal. However, when a judge is serving on an appellate division, the judge may not review any case that the judge has previously discussed with the judge who decided it; recusal is required. Consultation between or among judges, if otherwise permitted, is appropriate only if the judge before whom the matter is pending* does not abrogate the responsibility personally to decide it.

[6] The prohibition in Paragraph (C) against a judge independently investigating the facts in a matter ~~extends~~ applies equally to information available in all ~~mediums~~ media, including electronic.

[7] A judge may consult ~~ethics advisory committees~~ the Committee on Judicial Ethics, the State Ethics Commission, 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).~~

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~~ Massachusetts court.

~~(B)~~ A judge shall not, in connection with cases, controversies, or issues that are likely to come before ~~the~~ any Massachusetts 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~~ personnel* to refrain from making statements that the judge would be prohibited from making by ~~paragraphs~~ Paragraphs (A) and (B).

(D) ~~Notwithstanding~~ Subject to the restrictions in ~~paragraph~~ Paragraph (A), a judge may make ~~public~~ statements ~~in the course of official duties, may that~~ explain ~~court~~ the procedures of the court, general legal principles, or what may be learned from the public record in a case, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of ~~paragraph~~ Paragraph (A), a judge may respond directly or through a third party to ~~allegations in~~ public criticisms of the media or elsewhere concerning judge's behavior, but shall not respond to public criticisms of the ~~judge's conduct~~ substance of the judge's rulings other than by statements consistent with Paragraph (D).

(F) Subject to the requirements of Paragraph (A), a judge may speak, write, or teach about issues in pending* or impending* matters, but not matters pending* or impending* before that judge, when such comments are made in a matter. legal education programs and materials, scholarly presentations and related materials, or learned treatises, academic journals, and bar publications.

COMMENT

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

[2] Paragraph (A) does not apply to any oral or written statement or decision by a judge in the course of adjudicative duties. A judge is encouraged to explain on the record at the time decisions are made the basis for those decisions or rulings, including decisions concerning bail and sentencing. By helping litigants to understand the basis for decisions in cases, the judge also promotes public understanding of judicial proceedings.

[3] "[A]ny Massachusetts court" for purposes of this Rule means any state or federal court within the Commonwealth of Massachusetts.

[4] The requirement that a judge abstain from statements regarding a pending* or impending* matter continues throughout the appellate process and until final disposition.

[5] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity, ~~or represents a client as permitted by these Rules. 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.~~ However, even in such instances, a judge must act in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety* and the appearance of impropriety.*

[6] Paragraph (D) permits the dissemination of public information to educate and inform the public, while assuring the public that cases are tried only in the judicial forum devoted to that purpose. A judge may explain to the media or general public the procedures of the court and general legal principles such as the procedures and standards governing a “dangerousness hearing” under G. L. c. 276, § 58A, or restraining orders under G. L. c. 209A. A judge may also explain to the media or the general public what may be learned from the public record in a particular case. For example, a judge may respond to questions from a reporter about a judicial action that was taken and may correct an incorrect media report by referring to matters that may be learned from pleadings, documentary evidence, and proceedings held in open court. Paragraph (D) permits similar responsive comments or explanations by a judge acting in accordance with the judge’s administrative duties.

[7] As used in Paragraph (E), “behavior” does not include the substance of a judge’s rulings. For example, a judge may respond to criticism that the judge is disrespectful to litigants, but may not respond to criticism that the judge made an incorrect ruling.

[8] The authorizations to comment in this Rule are permissive, not suggestive. A judge is not required to respond to statements in the media or elsewhere. Depending upon the circumstances, the judge should consider the timing of any response and whether it may be preferable for a third party, rather than the judge, to respond ~~or~~.

[9] When speaking, writing, or teaching about issues in cases or matters, a judge must take care that the judge’s comments do not impair public confidence in the independence,* integrity,* or impartiality* of the judiciary.

[10] When a judge orally renders a decision and intends to explain the judge’s reasons in a written memorandum of law,* the judge should simultaneously inform the parties that an explanatory memorandum will be forthcoming. When a judge has not indicated at the time the judge issues the underlying order that a written explanatory comment will be forthcoming and such a memorandum has not been requested by a party or by an appellate single justice or court, a judge has the discretion to issue ~~statements in connection with allegations concerning the judge’s conduct in a matter~~ an explanatory memorandum. The exercise of that discretion should be informed by the following guidance.

(i) A judge should weigh, at a minimum, the following factors:

- the importance of avoiding or alleviating the parties’ or the public’s misunderstanding or confusion by supplementing the record to reflect in more detail the reasons in support of the judge’s earlier decision;
- the amount of time that has elapsed since the order was issued and the extent to which the judge’s reasons for the decision remain fresh in the judge’s mind;
- the risk that an explanatory memorandum may unfairly affect the rights of a party or appellate review of the underlying order; and
- the danger that the issuance of an explanatory memorandum would suggest that judicial decisions are influenced by public opinion or criticism voiced by third parties, and would not promote confidence in the courts and in the independence,* integrity,* and impartiality* of judges.

(ii) A judge should not issue an explanatory memorandum solely to respond to public criticism of the decision. An explanatory memorandum is appropriate only if issued within a reasonable time of the underlying order and if the judge clearly recalls the judge's reasons for the decision. An explanatory memorandum should not rely on any information that was not in the record before the judge at the time of the underlying order.

(iii) A judge may not issue an explanatory memorandum if the court no longer has authority to alter or amend the underlying order. For example, a judge may not issue an explanatory memorandum when:

- the underlying order is the subject of an interlocutory appeal, report, or other appellate proceeding that has already been docketed in the appellate court, unless such a memorandum has been requested by an appellate single justice or court;
- the case has been finally adjudicated in the trial court, no timely-filed post-judgment motions are pending,* and the time within which the court may modify its orders and judgments on its own initiative has passed; or
- in cases where an appeal has been taken from a final order or judgment, and the appeal has been docketed in the appellate court.

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 is 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 [insert number] year[s] made aggregate* contributions* to the judge's campaign in an amount that [is greater than \$[insert amount] for an individual or \$[insert amount] for an entity] [is reasonable and appropriate for an individual or an entity].**~~

~~(5)~~(4) The judge, while a judge or a judicial ~~candidate~~applicant or judicial nominee,* 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)~~(5) 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~~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 and without participation by the judge and court personnel,* whether to waive disqualification. If, following ~~the disclosure~~consultation that is free from coercion, express or implied, 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~~Paragraphs (A)(1) through ~~(6)~~(5) apply. ~~In many jurisdictions, By way of example, a judge shall disqualify himself or herself from any proceeding in which the term "recusal" judge is used interchangeably with a client of a party's lawyer or the term "disqualification." lawyer's firm. Whether a judge must continue to disqualify himself or herself after this attorney-client relationship has concluded should be determined by considering all relevant factors, including the terms on which the lawyer provided representation, the length of time since the representation concluded, the nature and subject matter of the representation, and the extent of the attorney-client relationship, including the length of the relationship and the frequency of contacts between the judge and the lawyer.~~

[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. If, however, under the circumstances, the judge's impartiality* might reasonably be questioned ~~under paragraph (A), or the 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);~~ then 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.~~

[6] The filing of a judicial discipline complaint during the pendency of a matter does not necessarily require disqualification of the judge presiding over the matter. The judge's decision to disqualify in such circumstances must be resolved on a case-by-case basis.

RULE 2.12

Supervisory Duties

(A) A judge shall require court ~~staff, court officials,~~ personnel* 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 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~~those under ~~his or her~~the judge's supervision administer their workloads promptly.

RULE 2.13

Administrative Appointments

- (A) In making administrative appointments, a judge shall:
- (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 \$[insert amount] within the prior [insert number] year[s] to the judge's election 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)~~ (B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1]- Appointees of a judge may include assigned counsel, ~~officials such as referees, commissioners~~guardians ad litem, special masters, receivers, and ~~guardians, and any court personnel such as clerks, secretaries, and bailiffs.*~~ subject to appointment by a judge. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by ~~paragraph (A).~~Paragraph (A). Compliance with court rules pertaining to fee-generating appointments satisfies the judge's obligations under Paragraph (A). See SJC Rule 1:07.

[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. See also Trial Court Personnel Policies and Procedures Manual, § 4.304

~~[3] — The rule against making administrative appointments of lawyers who have contributed in excess of a specified dollar amount to a judge's 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~~

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] [“Taking appropriate action to address disability or impairment pursuant to this rule is part of a judge's judicial duties.](#) 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. See also Rule 2.15.

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, integrity,* trustworthiness, or fitness as a judge in other respects shall inform the ~~appropriate authority.*~~ Chief Justice of the Supreme Judicial Court, the Chief Justice of the court on which the judge sits, and if the judge is a Trial Court judge, the Chief Justice of the Trial Court.

(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, integrity,* trustworthiness, or fitness as a lawyer in other respects shall inform the ~~appropriate authority~~ Office of Bar Counsel.

(C) A judge ~~who receives~~ having knowledge* of or receiving credible information indicating a substantial likelihood that another judge has ~~committed a violation of~~ otherwise violated this Code shall take appropriate action.

(D) A judge ~~who receives~~ having knowledge* of or receiving credible information indicating a substantial likelihood that a lawyer has ~~committed a violation of~~ otherwise violated the Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known* misconduct is part of a judge's obligation; judge's duties. 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, integrity, 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. If the lawyer is appearing before the judge, a judge may defer making a report until the matter has been concluded, but the report should be made as soon as practicable thereafter. However, an immediate report is compelled when a person will likely be injured by a delay in reporting, such as where the judge has knowledge* that a lawyer has embezzled client or fiduciary* funds and delay may impair the ability to recover the funds.

[2] A judge who ~~does not have actual~~ has knowledge ~~that another judge*~~ or a lawyer may have committed misconduct, but receives credible information indicating a substantial likelihood ~~of such misconduct~~ that a judge has otherwise violated this Code, or that a lawyer has otherwise violated the Rules of Professional Conduct, is required to take appropriate action under ~~paragraphs~~ Paragraph (C) ~~and/or~~ (D). Appropriate action pursuant to Paragraph (C) may include, but is not limited to, reporting to the first justice or regional administrative justice of the court where the violation occurred or where that judge often sits, reporting to the Chief Justice of that judge's court, and/or speaking to Judges Concerned for Judges or calling the judicial hotline maintained by Lawyers Concerned for Lawyers. Appropriate action pursuant to Paragraph (D) may include communicating directly with the ~~judge who may have violated this Code, communicating with a supervising~~ lawyer, reporting to the lawyer's supervisor or employer, and/or reporting to the Office of Bar Counsel. These lists of actions are illustrative and not meant to be limiting. If the lawyer is appearing before the judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be a judge may defer taking action until the matter has been concluded, but action should be taken in response to information indicating that a lawyer has committed as soon as practicable thereafter. Reporting 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. is especially important where the victim is unlikely to discover the offense, and an immediate report is compelled when a person will likely be injured by a delay in reporting.

RULE 2.16

Cooperation with Disciplinary Authorities

- (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary ~~agencies~~ authorities.
- (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~~authorities, as required in ~~paragraph~~Paragraph (A), instills confidence in judges' commitment to the integrity* of the judicial system and the protection of the public.

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~~are reasonably likely to interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that ~~will~~are reasonably likely to lead to ~~frequent~~recurrent 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 use of court premises, staff, stationery, equipment, or other resources, except for use that is reasonable in scope, not prohibited by law,* and incidental use forto 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 Rule 3.7.~~

[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. See Rule 3.7.

[2] This Rule emphasizes that when engaging in any extrajudicial activity, a judge must consider the obligations of judicial office and avoid any activities that are reasonably likely to interfere with those obligations.

[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 independence,* integrity~~and,* or impartiality.~~* Examples include jokes or other remarks that demean individuals based upon their race, sex, gender identity, religion, nationality, national origin, ethnicity, ancestry, disease or disability, age, sexual orientation, ~~or~~marital status, socioeconomic status, or political affiliation. 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~~ For example, a judge's urging a lawyer who appears in the judge's court to assist on a time-consuming extrajudicial project would create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

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; or**
- ~~**(B) — in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or**~~
- (~~C~~B) 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: by, for example, proposing new legislation, commenting on new legislation proposed by others, or proposing or commenting on amendments to existing law. Examples of topics that a judge may address include but are not limited to: court facilities, funding, staffing, resources, and security; terms of employment, compensation, and other benefits of judges and court personnel;^{*} personal safety of judges and court personnel;^{*} court jurisdiction and procedures; the work of problem-solving or therapeutic courts; the admissibility or inadmissibility of evidence; judicial discretion in sentencing; funding for the legal representation of indigents; and access to justice.

[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 which prohibits~~ judges from using the prestige of office to advance their own or others' interests, Rule 2.10, ~~governing which governs~~ public comment on pending^{*} and impending matters,^{*} and Rule 3.1(C), ~~prohibiting which prohibits~~ 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.

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.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness ~~abuses~~lends 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.

[2] This rule does not preclude a judge from voluntarily testifying or otherwise vouching for the qualifications, including the character, of an applicant or nominee for judicial or court-related office, as long as the judge's observations are based on the judge's personal knowledge. See Rule 1.3.

[3] This rule does not preclude a judge from providing a character reference based on personal knowledge for an applicant to the bar of any state.

[4] This rule does not preclude a judge from responding based on personal knowledge to an inquiry from any state or federal entity, or a contractor for such an entity, conducting a background investigation in connection with an application for public employment or for security clearance.

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,⁵* the legal system, or the administration of justice.

COMMENT

[1] This Rule—3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law,⁵* 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~~respect the separation of powers, to uphold the independence,* integrity,* and impartiality* of the judiciary, and to minimize judicial disqualification. Furthermore, acceptance of extrajudicial appointments is subject to applicable restrictions relating to multiple office

holding set forth in the Constitution of the Commonwealth. See Part 2, Chapter 6, Article II and Article VIII of the Amendments to the Constitution. A judge should regularly reexamine the propriety of continuing in the appointed position, as the composition and/or mission of any such committee, board, or commission may change.

[2] A judge may represent ~~his or her~~the judge's 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.

RULE 3.5

Use of Nonpublic Information

A judge shall not **intentionally**knowingly* 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~~the performance of 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 any other ~~judicial officers~~person if consistent with other provisions of this Code.

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 identity, 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~~be aware that the organization practices invidious discrimination on one or more of the bases identified in ~~paragraph~~Paragraph (A). A judge's attendance at an event in a facility of ansuch organization ~~that the judge is not permitted to join~~ 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~~discriminates invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender identity, 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~~must 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.~~

~~[3] — that do not stigmatize any excluded persons as inferior and therefore unworthy of membership. The purpose of this rule is to prohibit judges from joining organizations practicing invidious discrimination, whether or not an organization's membership practices are constitutionally protected.~~ When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[3] Whether an organization engages in invidious discrimination is a threshold issue but not the end of the judge's inquiry. Even an organization that does not engage in invidious discrimination may engage in practices such that a judge's membership in the organization might erode public confidence in the impartiality* of the judiciary. Before holding membership in any organization, a judge must consider whether membership would appear to undermine the judge's impartiality* in the eyes of a reasonable litigant. See Rules 3.1 and 3.7.

[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.

RULE 3.7

Participation in Legal, 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 of or governmental entities concerned with the law, the legal system, or the administration of justice, and those~~ sponsored by or on behalf of (i) legal, educational, religious, charitable, fraternal, or civic organizations, which are not conducted for profit, including or (ii) governmental entities, which are concerned with the law,* the legal system, or the administration of justice. Permitted participation includes but is not limited to the following activities:

~~(1) — assisting such an~~ A judge may serve as a member of the organization or entity;

(2) A judge may plan and attend events and activities of the organization;

(3) A judge may participate in ~~planning~~ internal discussions related to ~~fund-raising, and participating~~ fundraising. However, a judge may not otherwise participate in ~~the management~~ fundraising, and ~~investment of the organization's~~ may not manage or ~~entity's~~ invest funds; belonging to or raised by the organization unless the organization is composed entirely or

predominantly of judges and exists to further the educational or professional interests of judges.

~~(2) — soliciting* (4) A judge may not solicit contributions* or members for such anthe organization or entity, but onlyexcept from members of the judge'sjudge'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) — servingA judge may serve as an officer, director, trustee, or nonlegal advisor of such anthe 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.~~

(6) A judge may serve as a keynote or featured speaker at, receive an award or other comparable recognition at, be featured on the program of, and permit the judge's title to be used in connection with the promotion of an organization's event that is not a fundraising event*, but may not do so at a fundraising event* except as permitted in Paragraph (6A).

(6A) A judge may serve as a keynote or featured speaker at, receive an award or other comparable recognition at, be featured on the program of, and permit the judge's title to be used in connection with the promotion of a fundraising event* only if the event is sponsored by an organization concerned with the law,* the legal system, or the administration of justice, and that organization promotes the general interests of the judicial branch of government or the legal profession, including enhancing the diversity and professionalism of the Bar.

(7) A judge may make recommendations to public or private fund-granting organizations or agencies for programs and projects, but only on behalf of organizations that are concerned with the law,* the legal system, or the administration of justice.

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

(C) A judge may, as a parent or guardian, assist minor children in their fund-raising activities if the procedures employed are not coercive and the sums solicited are modest.

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~~

[1] This rule governs a judge's participation in a variety of activities sponsored by organizations not conducted for profit, whether public or private, and by governmental entities (collectively referred to as "organizations"). Paragraph (A) identifies the types of organizations covered by this rule. Examples include bar associations, other not-for-profit private organizations, court-created commissions, and public educational institutions. The first clause of Paragraph (A), "subject to the requirements of Rule 3.1," emphasizes that even with respect to activities that are explicitly permitted by Rule 3.7, a judge must always consider whether participation in any extrajudicial activity would violate Rule 3.1.

[1A] In considering whether participation in any extrajudicial activity would violate Rule 3.1, a judge should consider ~~whether all relevant factors, including~~ 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 or event, whether or not the organization or its members typically advocate on one side of issues before or likely to come before the court of which the judge is a member or any court subject to the appellate jurisdiction of the court of which the judge is a member, and the number, diversity, and identity of the financial supporters of the organization or sponsors of a particular event serves a fund-raising purpose. Although activities permitted under this rule must be of or sponsored by an organization not conducted for profit, this requirement does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as preclude the judge from participating in events of 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. organization that receives sponsorship or financial support from for-profit entities. A judge must avoid giving the impression that the organization, its members, or an event's sponsors are in a special position to influence the judge, and, where appropriate, a judge must avoid giving the impression that the judge favors the organization's mission.~~[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]—~~

[1B] The Code explicitly encourages certain activities where the nature of a judge's participation will promote public understanding of and confidence in an independent* judiciary, foster collegiality among the bar and communication and cooperation between the judiciary and the bar, enhance the judge's ability to perform judicial or administrative duties, or otherwise further the goals of the courts. See, e.g., Rule 1.2, comments [4] and [6]. So, for example,

judges are encouraged to speak about the administration of justice to not-for-profit groups, including business and community groups and bar associations. Such speaking engagements ordinarily will not raise an issue under Rule 3.1 even when an event or program is held in space provided by a law firm or is financially supported or sponsored by one or more for-profit entities, such as law firms or legal vendors that do substantial business in the court on which the judge sits. If, however, fundraising is a chief objective of the event or program, Paragraph (6A) governs whether a judge may be a keynote or featured speaker. Giving a presentation at an educational conference where the judge's involvement would help to further the goals of the court system is another example of encouraged participation. Such participation would not ordinarily raise an issue under Rule 3.1 even when the conference is financially supported or sponsored by organizations or vendors that do business in the court on which the judge sits.

[2] The restrictions in Paragraph (A)(4) are necessary because, depending on the circumstances, a judge's solicitation of contributions or members for an organization might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge. However, a judge may be identified by name and title as an organization's officer, director, trustee, non-legal advisor, or member on websites, emails, letterhead, and any other communication materials created and issued by others within the organization to solicit or accept donations or to enroll members so long as comparable designations are used for other persons.

[3] As used in paragraphs (6) and (6A), a fundraising event is one for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself. Unless that is the case, an event is not a fundraising event,* even if the revenues ultimately exceed the cost. A judge may attend a fundraising event* but may not participate in additional activities except as permitted by Paragraph (6A). However, a judge who attends a fundraising event* is not in violation of this rule merely because a laudatory reference to or about the judge, not announced in advance, is made at the event.

[4] Paragraph (6A) permits a judge to participate in additional activities (e.g., being a featured speaker or receiving an award at fundraising events*) of or sponsored by organizations concerned with the law,* the legal system, or the administration of justice that serve the general interests of the judicial branch of government and the legal profession, including organizations that enhance the diversity and professionalism of the bar. The nature of such organizations makes it unlikely that a judge's involvement would reflect adversely upon that judge's independence,* integrity,* or impartiality.* Organizations concerned with the general interests of the judicial branch of government and the legal profession include general purpose and minority bar associations (e.g., county bar associations, bar associations composed exclusively or primarily of members of an ethnic minority, bar associations specializing in particular practice areas but whose members take positions on both sides of disputed issues), organizations dedicated to enhancing the professionalism of the judicial branch (e.g., the National Center for State Courts), and organizations composed entirely or primarily of judges (e.g., the Massachusetts Judges Conference, the Flaschner Judicial Institute), but exclude organizations composed exclusively or primarily of lawyers who typically take one side of contested issues (e.g., plaintiffs' personal injury bar, insurance defense bar), organizations dedicated to influencing opinion on contested legal or constitutional issues, or organizations that represent one constituency (e.g., prosecutors, criminal defense counsel).

[5] In addition to the types of participation expressly contemplated by this Rule, a judge's permissible extrajudicial activities often involve teaching or writing on law-related

subjects and, on occasion, non-law-related subjects. See Rule 1.3 for special considerations that arise when a judge writes or contributes to publications of a for-profit entity. Similar considerations also may arise if a judge teaches for a for-profit entity.

[6] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, as authorized by law,* a judge may promote broader access to justice by encouraging lawyers to ~~participate in~~ provide pro bono publico or reduced fee 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.

[7] Paragraph (C) is intended to allow a judge to participate in a child's normal, daily activities. Thus, for example, a judge may accompany the judge's child while the child sells Girl Scout cookies or collects UNICEF donations, or may work at a refreshment stand at a school-sponsored sports event intended to raise money to finance a class trip. On the other hand, this provision does not permit a judge to participate in fundraising activities for the primary or exclusive benefit of the judge's own child, such as raising funds so that the judge's child may participate in a school-sponsored trip. The word "assist" is intended to convey that a judge should not engage in direct solicitations on behalf of the child other than from members of the judge's family.* A judge may not, for example, sell Girl Scout cookies in the workplace.

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 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 comply with this Rule as soon as reasonably ~~practicable, but~~ possible and in ~~no any~~ event ~~later than~~ within 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.~~ In such circumstances, a judge should resign as fiduciary; as soon as reasonably possible and in any event within one year. 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; ~~.~~ *

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, conciliation, 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.*

RULE 3.10

Practice of Law

A judge shall not practice law,* except that:

(A) 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~~ judge's family,* but is prohibited from serving as the family ~~member's~~ member's lawyer in any forum., and

(B) A judge may serve as a judge advocate general in the context of a judge's service in the United States Armed Forces, the reserve components of the United States Armed Forces, or the National Guard.

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.

[2] A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[3] While performing legal services in the context of a judge's military service, the judge must confine that conduct to authorized activities.

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

- ~~(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~~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]~~ [1] 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.

RULE 3.12

Compensation for Extrajudicial Activities

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.*

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,~~A judge shall ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. See Rule 1.3. In addition, the source, amount and timing of the payment, alone or in combination, must not raise any question of undue influence or undermine the judge’s ability to act independently,* with integrity,* and impartiality.* The judge should also be mindful that judicial duties must take precedence over other activities. See Rule 2.1.

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

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~~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;~~

(1) a gift, award, or other benefit incident to public recognition of the judge, provided the gift is not of substantial value as that term is defined by the State Ethics Commission, see 930 C.M.R. 5.05;*

(2) gifts, loans, bequests, benefits, or other things of value from close personal friends,* or relatives,~~or other persons, including lawyers,~~ whose appearance or interest in a proceeding~~matter~~ 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~~ a luncheon, dinner, reception, award ceremony, or similar event, held in Massachusetts, of a bar association or other activity relating to non-profit organization concerned with the law,* the legal system, or the administration of justice; ~~or and~~
- ~~(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.~~
- (10) discounted or free membership to a bar association or other non-profit organization concerned with the law,* the legal system, or the administration of justice.

~~(C)[1] — Whenever a judge accepts a gift~~ Unless otherwise prohibited by law* or by Paragraph (A), a judge may accept, but must publicly report in the manner required under Rule 3.15, any gift, loan, bequest, benefit, or other thing of substantial value not exempted from disclosure by Paragraph (B). See Rule 3.15.

COMMENT

[1] This Rule addresses whether and in what circumstances a judge may accept a gift or other item of value (“gift” or “benefit”) without paying fair market value. Whenever a judge accepts a gift without paying fair market value, there is a risk that the ~~benefit might be viewed as intended~~ public may regard the gift as given either because of the judge's official position or in an attempt to influence the ~~judge’s decision~~ judge in a case. the performance of judicial duties. This Rule ~~3.13~~ imposes restrictions upon the acceptance of such ~~benefits, gifts~~ according to the magnitude of the risk. Paragraph ~~(B) identifies circumstances in which the risk that the~~ (A) requires a judge to reject any gift if its acceptance is prohibited by law* or, even if not prohibited by law, would nevertheless appear to a reasonable person 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,*~~ Paragraph (B) identifies limited circumstances in which a gift may be accepted and not disclosed. Paragraph (C) ~~to publicly report it~~ allows for additional instances when a judge may accept a gift of substantial value, but the public interest requires disclosure. Disclosure in these instances fosters public confidence in the independence,* integrity,* and impartiality* of the judiciary.

~~[2] — Gift giving between friends~~ [2] A judge's acceptance of a gift from a lawyer or law firm who is appearing before the judge is an example of a gift prohibited by Paragraph (A), as such a gift would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.* A judge's acceptance of a gift or other thing of value from a party when the party's interests are before the judge raises the same concerns. The same concerns also are raised when the lawyer or law firm has appeared before, or the party's interests have come

before, the judge in the reasonably recent past or are likely to come before the judge in the future.

[3] Paragraph (B)(1) permits a judge to accept and not report certain gifts incident to public recognition of the judge. Examples might include plaques, trophies, and certificates, so long as the item is not of substantial value. Some items (e.g., plaques and trophies) may, due to the inscription honoring the judge, have little value once so inscribed. Gifts incident to public recognition of the judge that are of substantial value, but which would not appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality* must be disclosed pursuant to Paragraph (C).

[4] Gift-giving between close personal friends* and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety* or cause a reasonable person to believe that the judge's independence,* integrity,* or impartiality* has been compromised. ~~In addition, even when the appearance of friends close personal friend or relatives in relative is 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 lawyer.~~ Paragraph (B)(2) generally 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. When the appearance of close personal friends* or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift or other thing of value to influence the judge's decision making nor would a reasonable person believe that the gift was given due to the judge's official position.

~~¶~~[5] “Ordinary social hospitality” consists of those social events and routine amenities, gifts and courtesies which are normally attended by or exchanged between friends, colleagues, and acquaintances, and which would not create an appearance of impropriety* to a reasonable, objective observer. The test is objective, not subjective, and the touchstone is a thoughtful consideration of social custom. Paragraph (B)(3) permits that type of social event or gift which is so common among people in the judge's community that no reasonable person would believe that: (1) the host/giver was intending to or would obtain any advantage; or (2) the guest/recipient would believe that the host/giver intended to obtain any advantage.

[6] 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. Paragraphs (B)(4) - (B)(6) provide that 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 a below-market interest rates rate 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]—~~[7] This Rule 3.13 applies only to acceptance of gifts or other things of value benefits 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 this 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, and Paragraph (8) does not require disclosure. 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.~~

[8] This Code encourages judges to participate in bar associations and other non-profit organizations concerned with the law,* the legal system, and the administration of justice. See Rules 3.1 and 3.7. Paragraph (B)(9) encourages such participation by permitting judges to attend without charge luncheons, dinners, receptions, award ceremonies, or similar events held in Massachusetts.

Unlike the invitations addressed in Rule 3.14, invitations under Paragraph (B)(9) may be accepted without obtaining a determination by the Chief Justice of the court on which the judge sits that acceptance will serve a legitimate public purpose, and that such public purpose outweighs any non-work related benefit to the judge or to the organization providing the payment or waiver of expenses. That is because the judge's attendance at the types of events identified in Paragraph (B)(9) is presumed to serve such a public purpose.

There may be occasions, such as when a bar association is honoring a judge, where it would be appropriate for a judge to accept a complimentary invitation for a spouse or domestic partner, or other guests, to attend the event. Under these circumstances, there is little risk that a reasonable person would consider the invitation to undermine the judge's independence, integrity, or impartiality; however, disclosure of such invitations is required by Paragraph (C), if they are of substantial value.

[9] Paragraph B(10) also encourages judges to participate in bar associations and other non-profit organizations concerned with the law,* the legal system, and the administration of justice by permitting judges to accept without disclosure discounted or free membership to such organizations.

[10] Whether a judge may accept a gift of free or discounted legal services depends on the circumstances. In all instances, legal services are a gift or benefit received from both the lawyer providing the services and that lawyer's firm.

Ordinarily Paragraph (A) prohibits a judge from accepting free or discounted legal services, as there is a significant risk that such a gift would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.* There are, however, limited circumstances in which a judge may accept and not disclose such a gift pursuant to Paragraph (B) or may accept but must disclose the gift pursuant to Paragraph (C).

A judge may accept free or discounted legal services from a relative or close personal friend* whose appearance in a matter would require the judge's disqualification if the lawyer is a sole practitioner or at a firm where all the lawyers are relatives or close personal friends* of the judge (e.g., a firm composed of two siblings who are both close personal friends* of the judge). The judge is not required to disclose acceptance of the legal services because Paragraph (B)(2) applies.

However, if the lawyer works at a firm where not all of the lawyers are relatives or close personal friends* of the judge, a different analysis is required. Whether the judge may accept the gift in such circumstances depends on the factors set forth in the next paragraph. If the judge may accept the gift, Paragraph (C) requires disclosure because the benefit is from both the lawyer and the lawyer's firm.

Where not all lawyers in the firm are relatives or close personal friends* of the judge, paragraph (A) prohibits the judge from accepting free or discounted legal services unless (i) the

same benefit is extended to non-judges in comparable circumstances and (ii) the lawyer, the lawyer's firm, and their interests are not before the judge and have not come before the judge in the reasonably recent past and are not likely to come before the judge in the reasonably near future. Where these two conditions are satisfied, a reasonable person would not view the judge's acceptance of free or discounted legal services as appearing to undermine the judge's independence,* integrity,* or impartiality.* However, disclosure would be required under Paragraph (C). For example, if a law firm offers discounted estate planning services to all persons over age 65, a judge over age 65 may accept this benefit. Similarly, if a law firm's policy is to extend professional courtesies to all former partners, a judge who is a former partner may accept legal services on these terms. Likewise, if the law firm's policy is to extend professional courtesies to the relatives of partners, a judge whose sibling is a partner at the firm may accept legal services on these terms. Also, if a lawyer offers discounted legal services both to lawyers facing proceedings before the Board of Bar Overseers and to judges facing proceedings before the Commission on Judicial Conduct, a judge may accept the discounted services. In each of these examples, so long as (ii) is also satisfied, the judge may accept but must disclose the free or discounted legal services.

[10A] Where a judge retains legal representation due to a matter before the Commission on Judicial Conduct, a judge may be entitled to the payment of reasonable attorneys' fees by the Commonwealth with the approval of the Supreme Judicial Court as provided by G.L. c. 211C, Section 7(15).

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)~~

(C) If the invitation to the judge is connected to the judge's official position or official action and is not covered by Rule 3.13(B)(9), a judge is required to notify the Chief Justice of the court on which the judge sits and obtain a determination that acceptance of the reimbursement or waiver serves a legitimate public purpose and such purpose outweighs any non-work related benefit to the judge or to the person or organization providing the payment or waiver of expenses.

(D) 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~~ This Rule applies specifically to a judge's attendance at tuition-waived and expense-paid seminars and similar events that may be sponsored by law-related organizations or by 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~~ is intended to ~~remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.~~ apply to events not described in Rule 3.13(B)(9).

[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:~~ * integrity,* or impartiality.* This decision involves consideration of the totality of circumstances, including, but not limited to the nature of the sponsor, the source of the funding, whether the sponsor or source of the funding frequently takes positions on issues before or likely to come before the court where the judge sits, and the content of the program or event, including whether differing viewpoints are presented.

- ~~(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.~~

[4] Paragraph (C) is intended to ensure that a judge obtains a determination from the Chief Justice of the court on which the judge sits that a legitimate public purpose is served by the judge's acceptance of the reimbursement or waiver when the invitation is connected to the judge's official position or official action. Contrast Rule 3.13(B)(9) where no such determination is required because a legitimate public purpose is presumed.

RULE 3.15

Reporting Requirements

~~(A) A judge shall publicly report annually complete the amount or~~ Public Report of Extra-Judicial Income in the form promulgated by the Supreme Judicial Court and the Statement of Financial Interests in the form promulgated by the Massachusetts State Ethics Commission.

(B) The Public Report of Extra-Judicial Income shall require the public reporting of the following items if they are of substantial value of:

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

(2) gifts and other things of value ~~as permitted~~ where disclosure is required 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.

~~(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.~~

COMMENT

[1] In addition to the disclosure requirements of this rule, Rule 3.14(C) imposes additional requirements before a judge may accept 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].~~ 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 court system, when the reason for reimbursement or waiver is connected to the judge's official position or official action.

CANON 4

~~A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN~~ A JUDGE SHALL REFRAIN FROM POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR, * IMPARTIALITY, * OR INTEGRITY* 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, a~~ 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 a political organization* or candidate;
- (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 or purchase tickets for dinners or other events sponsored by a political organization* or a candidate for public office; or intended to raise money or gather support for or against a political organization* or candidate.
- ~~(6) — publicly identify himself or herself~~
- ~~(7) — 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;~~
- ~~(10) — use court staff, facilities, or other court resources in a campaign for judicial office;~~
- ~~(11) — knowingly,* or with reckless disregard for the truth, make any false or misleading statement;~~
- ~~(12) — 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~~
- ~~(13) — 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~~

(B) A judge may engage in activity in support or on behalf of measures to improve the law,* the legal system, or the administration of justice, provided that the judge complies with the other provisions of this Code.

~~(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).~~

(C) On assuming a judicial office, a judge shall resign any elective public office then held.

COMMENT

[1] While judges have the right to participate as ~~a candidate of a~~ citizens in their communities and not be isolated from the society in which they live, judges must at all times act in a manner that promotes public confidence in their independence,* integrity,* and impartiality.* This rule imposes restrictions on a judge's political activities because public confidence in the judiciary is eroded if judges are perceived to be subject to political influence or give the impression of favoring the interests of a political organization; or candidate.

[2] The restrictions in Paragraph (A) prohibit a judge from engaging in any public display in support of or opposition to a political candidate, including displaying a bumper sticker on an automobile the judge regularly uses, posting a campaign sign outside the judge's residence, signing nomination papers for a political candidate or ballot issue, carrying a campaign sign, distributing campaign literature, or encouraging people to vote for or give money to a particular candidate or political organization.

[3] A judge may not avoid the restrictions imposed by this rule by making contributions or endorsements through a spouse, domestic partner,* or other member of the judge's family.* Political contributions by the judge's spouse or domestic partner* must result from that person's independent choice, and checks by which contributions are made must not include the name of the judge.

[4] Although members of the judge's family* are free to engage in their own political activity, including running for public office, 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~~a judge shall take, and should urge members of ~~their families~~the judge's family to take, reasonable steps to avoid any implication that ~~they endorse~~the judge endorses any family member's candidacy or other political activity.

[5] A judge may register as a member of a political party. A judge may also attend non-partisan events, such as a forum that is open to all candidates and is intended to inform the public.

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~~

~~[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)(11) 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), 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), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.~~

~~[10]—Paragraph (A)(12) 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)(13) 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 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 statements 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.~~

RULE 4.2

Political and Campaign Activities of Judicial Candidates in Public Elections

(A) — A judicial candidate* in a partisan, nonpartisan, or retention public election* shall:

- (1) — act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;**
- (2) — comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;**

~~(3) — 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; 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 endorsements 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.

[4] — In nonpartisan public elections or retention elections, paragraph (B)(5) prohibits a candidate from seeking, accepting, or using nominations or endorsements from a partisan political organization.

[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].~~

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 the office. See Rule 4.1(A)(13).~~

RULE 4.4

Campaign Committees

~~(A) — A judicial candidate* subject to public 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.~~

RULE 4.5

RULE 4.2

Activities of Judges Who Become Candidates for Nonjudicial Office

- (A) Upon becoming a candidate ~~for~~in a ~~nonjudicial~~primary or general election for 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 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~~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.

[2] Upon being appointed to any nonjudicial office except as permitted by Rule 3.4, a judge must resign from judicial office.