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SUPREME COURT NO. 200,271-4

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN THE MATTER OF THE COMMISSION
ON JUDICIAL CONDUCT PROCEEDINGS AGAINST

RICHARD B. SANDERS, SUPREME COURT JUSTICE

SUPPLEMENT TO RESPONDENT'S STATEMENT OF ADDITIONAL
AUTHORITIES

Disciplinary Counsel for the
Commission on Judicial Conduct

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ORIGINAL

Pursuant to RAP 10.8, Disciplinary Counsel for the Commission on Judicial Conduct submits the following supplement to Justice Sanders' additional authorities:

Respondent has offered materials that do not actually constitute additional authority, but rather, a proxy's argument that the conclusions of the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct are wrong. To the extent that the Court considers this material at all, the Court should consider the full relevant text of the Model Code Commission's description of that Commission's process and conclusions (to be presented to the ABA Midyear Convention in February 2007), attached here.

Dated this 22nd day of September, 2006.



Katrina Pflaumer, WSBA #223
Disciplinary Counsel

**ABA JOINT COMMISSION TO EVALUATE THE
MODEL CODE OF JUDICIAL CONDUCT**

INTRODUCTION TO FINAL DRAFT REPORT

DECEMBER, 2005

INTRODUCTION

In its “Final Draft Report” the American Bar Association Joint Commission to Evaluate the Model Code of Judicial Conduct (“Joint Commission” or “Commission”) proposes both format and substantive changes to the present ABA Model Code of Judicial Conduct. Created in July 2003 with a generous grant from the Joyce Foundation, the Joint Commission was appointed by and operates under the auspices of the ABA Standing Committees on Ethics and Professional Responsibility and on Judicial Independence. The Commission circulates the Final Draft Report at this time with a request that it be reviewed by all individuals and entities interested in judicial ethics and regulation, with a sincere hope that all those who have comments and suggestions regarding the provisions of the Final Draft will submit them to the Commission no later than March 15, 2006, to gkuhlman@staff.abanet.org, or by mail to George Kuhlman, Ethics Counsel, American Bar Association, Center for Professional Responsibility, 321 North Clark Street, Chicago 60610. After that time, and after a thorough review of all comments and suggestions it receives, the Commission intends to make such additional changes as may be appropriate and to submit a final Report with Recommendations to the ABA House of Delegates for consideration at the ABA 2006 Annual Meeting in Honolulu, Hawaii.

It has been eighteen years since the judicial ethics policies of the ABA were subjected to comprehensive review. Between 1987 and 1990 a Subcommittee of the Standing Committee on Ethics and Professional Responsibility conducted an extensive review process that led to adoption of the present ABA Model Code of Judicial Conduct in 1990. Since that time, several developments have occurred that suggested the need for a reconsideration of the Model Code. First among them was the reported collective experience of judges, judicial ethics commissions and judicial regulators that have worked with the existing Code for over a decade-and-a-half. The Commission was motivated as well by issues that continue to arise as a result of the variety of methods utilized in the judicial selection process, the development of new types of courts and court processes, and the increasing frequency of *pro se* representation in the courts.

The ABA Joint Commission to Evaluate the Model Code of Judicial Conduct is chaired by Mark I. Harrison of Phoenix, Arizona. Mr. Harrison is a former member of the ABA Standing Committees on Ethics and Professional Responsibility and former chair of the Standing Committee on Professional Discipline. He has had a distinguished career in all aspects of lawyer and judicial regulation, including representation of the Arizona Judicial Conduct Commission as well as judges in judicial discipline proceedings. The Commission membership is comprised of ten distinguished judges and lawyers whose

breadth of experience in various courts and areas of practice ensures a thorough and multi-dimensional review of the Judicial Code's provisions. It also includes a public member whose participation in a wide array of civic, business and charitable affairs brought to the review process a valuable public perspective; and eleven advisors having extensive experience in judicial ethics and discipline matters, many of whom served as formal liaisons from organizations interested in different aspects of judicial conduct. The Commission has been supported in its evaluative work by two Reporters and by counsel from the ABA Center for Professional Responsibility and the ABA Justice Center. A roster of the Commission members, advisors, reporters and counsel appears at <http://www.abanet.org/judicialethics/roster.html>.

THE EVALUATION PROCESS

Over the course of twenty-eight months, the Commission met in person 15 times and convened via teleconference 26 times. At its in-person meetings, (widely advertised in advance) the Commission sponsored public hearings at which it heard comments from several dozen individuals regarding their interests or the interests of entities they represented, on a broad range of judicial conduct issues. The Commission also received written comments from some of those who appeared in person and from a number of other interested persons. The Commission's developing work product, in the form of drafts of discrete portions of the Judicial Code, was posted periodically on a website maintained by the ABA, along with requests for responses and suggestions for further revisions. The Commission's work was also disseminated to representatives of sixteen entities whose work focuses on judicial conduct matters, and to over two-hundred fifty individuals who had expressed an interest in the process and asked that they be provided with electronic notification of all the Commission's recommendations. All told, thirty-five entities filed written comments with the Commission in relation to the existing Model Code or a "Preliminary Report" distributed by the Commission in June, 2005; in total, approximately three-hundred individuals filed comments with respect to the Commission's draft revisions to the Code.

The Final Draft Report is the result of vigorous and informed discussion and debate among the Commission members and advisors. The formulations contained in the Final Draft Report were established by vote of the members of the Commission. Although there was majority support for each of the proposed rules contained in the Final Draft Report, there was frequent disagreement, ranging from mild to strong, with the voting majority's formulation of particular proposed rules. All important areas of disagreement and all significant differences between the proposed Rules and the present Code are discussed, *infra*, in the section of this report titled "Principal Substantive Changes from the 1990 Code and Significant Controversies," with the expectation that this will stimulate further consideration and comment among all those who review this Final Draft Report.

MATERIALS CONTAINED IN THIS REPORT

To assist the reader with his or her review of the Final Draft Report, the Commission provides here a “clean copy” of the Commission’s proposed ABA Model Code of Judicial Conduct, including a “Preamble,” a “Terminology” section, a note on “Scope,” the Canons, Rules and their accompanying Comment, and an “Application” section.

The Commission will shortly make available by posting to its web site a redlined version of the Proposed Code that compares this Final Draft Report with the present Code, in traditional legislative format. It will also post a redlined version of the Proposed Code that indicates the differences between the Final Draft Report and the Commission’s Preliminary Report, circulated in June, 2005.

ORGANIZATIONAL CHANGES FROM THE 1990 CODE

The organization or format of the Final Draft Report presents two notable differences from the 1990 Code. First, the material treated under each of the Canons has been reorganized to provide what the Commission considers a more logical and helpful arrangement of topics. Canon 1 in the Preliminary Draft combines most of the subject matter of present Canons 1, 2 and 3, addressing both the obligation of judges to uphold the integrity, impartiality, and independence of the judiciary and to avoid impropriety and its appearance. Canon 2 of the Draft addresses solely the judge’s professional duties *qua* judge, which constitute part of Canon 3 in the present Code. Draft Canon 3 contains brief, general provisions governing a judge’s personal conduct, most of which appear in the present Code’s Canon 2. Draft Canon 4 addresses, as does present Canon 4, a judge’s “extra-judicial activities,” primarily civic or community involvement, business activities, and the acceptance of gifts. Finally, Canon 5 addresses, as does present Canon 5, acceptable political conduct of judges and judicial candidates.

A second change in the Code’s format is the presentation of Canons, which state overarching principles of judicial conduct, followed by specific “Rules.” In the 1990 Code, each Canon was followed by “sections” that discursively established the parameters of permissible and prohibited conduct. A consensus was reached by the Commission in its first year of deliberations that a structure more like that of the ABA Model Rules of Professional Conduct (which address permitted and prohibited conduct for lawyers) would be a more straightforward and user-friendly form for a Judicial Code. This consensus developed from consideration of the Commission members’ own experience in using the present Code both for guidance and for judicial discipline proceedings, and from the experience and testimony of numerous other individuals providing comment to the Commission. Similar to the organization of the Model Rules of Professional Conduct, the Rules in the Final Draft Report are usually followed by Comment that provides guidance and assists the user in interpreting and applying the Rules. The Comment neither adds to nor subtracts substantively from the force of the Rules themselves.

PRINCIPAL SUBSTANTIVE CHANGES FROM THE 1990 CODE, AND SIGNIFICANT CONTROVERSIES

CANON 1

The Commission heard presentations and received numerous written communications on the question, identified by the Commission itself as an important one at the beginning of the project, of whether the “appearance of impropriety” concept contained in the present Code should be retained. A majority of commentators on the subject, citing to judicial discipline cases decided over a three-decade period, urged that the concept be retained. Others, notably lawyers who represent judges and judicial candidates in disciplinary proceedings, voiced concerns that the concept is not clearly definable and does not provide judges and judicial candidates with adequate notice about what conduct might constitute a disciplinable offense. Some of those commentators questioned whether that aspect of the provision might also make it subject to attack on constitutional grounds. The Commission was persuaded by the former group of commentators. Thus the Final Draft places the admonishment that judges avoid not only impropriety but also its appearance in two places: in the text of Canon 1 and in Rule 1.02. The explicating Comment language relating to impropriety and its appearance are substantially as they appear in the present Code.

CANON 2

Rule 2.08, “Demeanor and Decorum,” contains a new Comment to accommodate recently developed formal or informal procedures the Commission has learned of whereby judges engage in a “debriefing” process with jurors after their jury service has been concluded. As drafted, the proposed Comment essentially provides examples of matters that must not be discussed in such a debriefing.

The Comment to Rule 2.09, “Ensuring the Right to be Heard,” discusses judges’ actions in encouraging parties and their lawyers to settle disputes where possible, cautioning that judges should not use coercion in doing so. Whether a judge who participates in facilitating settlement of a matter pending before him or her should be permitted to hear that matter if settlement efforts are unsuccessful has been the subject of conflicting testimony and comment to the Commission, but the Final Draft does not propose to address this question specifically.

Rule 2.10(B) in the draft, “Ex Parte Communications,” prohibits a judge from “independently investigat[ing] facts in a case.” The Comment to the Rule states that the prohibition extends to a judge’s use of electronic research methods, which include Internet research. *The Commission is interested in hearing responses to this specific language.*

Several commentators informed the Commission that developing practices in recently-created “specialized courts,” such as drug courts, domestic abuse courts, and others, encourage or require judges to engage in communications with individuals and entities

outside the court system itself that they fear may run afoul of traditional restrictions on ex parte communications. The Final Draft addresses this issue in new Comment [5] to Rule 2.10.

The Comment to Rule 2.12, "Disqualification," states that a judge "should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, *even if the judge believes there is no real basis for disqualification.*" There was disagreement among the Commission as to whether such an application of the disqualification rule is necessary or desirable, and specifically whether such an interpretation may work a hardship on one or both of the lawyers in a proceeding.

Rule 2.20 in the Final Draft is a new Rule that addresses the duty of a judge to cooperate with judicial and lawyer disciplinary authorities.

CANON 3

Comment [2] to Rule 3.01, "Misusing of the Prestige of Judicial Office," retains the concept presently in Commentary to Section 2B whereby letters of recommendation submitted by a judge on behalf of another person may be based on any "personal knowledge" the judge has. In an earlier draft of this provision, the Commission had proposed, based on considerable discussion and the comments of numerous witnesses, that only knowledge obtained by a judge *in his or her official capacity* ought to be used in letters of recommendation. This subject continues to provoke discussion.

In Rule 3.04, "Affiliation with Discriminatory Organizations," the Final Draft adds "ethnicity" and "sexual orientation" to the list of factors that must not be the basis for discrimination in the policies of clubs and other membership entities to which judges seek to belong. These bases of discrimination are presently contained in the 1990 Code's prohibition against the manifestation of bias in the court, but do not appear with respect to organizational memberships held by a judge. Notwithstanding the addition of these two factors, the Comment provides instruction, taken directly from the present Code, that a judge may belong to "any organization dedicated to the preservation of religious, ethnic or legitimate cultural values of common interest to its members."

The Final Draft also adds to the black-letter of Rule 3.04 a statement that a judge's attendance at an event in a facility of a group that he or she could not join as a member under the Rule does not constitute a Rule violation when it is an isolated event that "could not reasonably be perceived as an endorsement of the organization

Finally, with respect to Rule 3.04, Comment [3] interprets the black-letter to require that a judge immediately resign from an organization to which he or she belongs upon discovering that it engages in invidious discrimination. In the 1990 Code, the prohibition against membership in discriminatory organizations was being newly introduced, and Commentary provided that a judge be given one year to withdraw from membership, unless he or she was successful in influencing the organization to abandon its

discriminatory policies. The Commission considers that both the policy and practice of prohibiting judges from belonging to discriminatory organizations are now well-established, so that a *per se* prohibition is appropriate.

CANON 4

Rule 4.10, "Solicitation, Acceptance and Reporting of Gifts." Although the text of this Rule remains largely unchanged from its former presentation in Section 4D(5) of the 1990 Code, the Rule's basic structure has been revised. The term "gift" is described both in this Rule and in the Terminology Section. The slightly revised description of gifts excludes several items that are not, in common parlance, thought of as gifts, including but not limited to: ordinary social hospitality; trivial tokens of appreciation; and loans, discounts, prizes, and scholarships that judges receive for reasons generally unrelated to their being judges.

Rule 4.10(A)(7) remains substantially similar to the present Code, but includes several important changes. The new Rule would prohibit judges from accepting gifts in excess of dollar limits that would be established by individual jurisdictions. The present rule simply requires that gifts be reported. The provision enables judges to receive modest and innocuous gifts not excepted elsewhere in the Rules, but prohibits gifts of unlimited size. Finally, the Rule has been revised to limit the ban on gifts from persons who previously appeared before the judge to a period of three years, and likewise limiting its application to those who may come before the judge "later" to the foreseeable future.

Rule 4.10(C) is new, imposing a reporting requirement upon judges who receive gifts in excess of an amount to be specified by each jurisdiction.

Rule 4.11, "Reimbursement or Waiver of Charges for Travel-related Expenses of the Judge, the Judge's Spouse, Domestic Partner or Guest" addresses only that portion of the present Code's Section 4H(1) that relates to reimbursement, leaving treatment of compensation to a new Rule 4.12. It continues to allow judges to be reimbursed for travel associated with their attendance at programs or with other permissible extrajudicial activities. Several changes are proposed, however. First, Rule 4.11(A) would apply to waiver of charges as well as reimbursement of expenses. Second, permissible reimbursement is specifically limited to necessary travel and lodging. Third, the condition precedent to accepting reimbursement or waiver of charges - that it not create an appearance of impropriety - has been amended to identify specifically the potential that the acceptance of gifts has for creating the perception that judicial integrity, impartiality or independence may be compromised.

The Comment explicating this Rule is designed to provide judges with greater guidance when analyzing whether their reimbursement for attendance at a given event may be perceived as casting doubt on their integrity, impartiality or independence. The sources of funding for an event, the reasonableness of the expenses paid, and the identity of the sponsor are all among factors that judges are urged to consider when deciding whether to attend expense-paid seminars. The Comment also emphasizes the importance of

transparency in judges' acceptance of such reimbursements, focusing on the need for public access to information relevant to judicial participation in such events, including information about reimbursement and waiver of expenses.

Rule 4.13, "Reporting of Compensation, Reimbursement of Expenses, and Waiver of Charges," is similar to the provision in the present Code, with one important difference: the Rule requires some just reporting to be made quarterly, rather than annually, on the relevant court's or office's web site, if feasible.

CANON 5

Throughout its deliberations, the Joint Commission has sought to find a balance that accommodates the political realities of judicial selection while ensuring that the concepts of judicial integrity, independence, and impartiality are not undermined by the inappropriate participation of judges and judicial candidates in political activity. The Commission has added extensive comment to the Rules it proposes in the Final Draft Report, confident that it will enhance compliance and enforcement of the Rules.

The structure of Canon 5 has been significantly modified. Although it begins with a Rule that addresses generally the prohibitions against political activity that apply to all judges and judicial candidates, as does the present Canon, it then provides additional Rules that separately treat each of the various types of judicial selection processes. The most noticeable feature of this reorganization is the clearer distinction that is drawn among partisan elections, non-partisan and retention elections, and appointments to judicial office; each involves a different level of restrictions on political activity.

A fundamental part of these restrictions on political activity is the concept of "political organizations." This draft, in its "Terminology" section, retains the concept in the present Code that a political organization is a political party or other group, the primary purpose of which is the election or appointment of a candidate for judicial office, but this draft adds language to make it clear that candidates' campaign committees are not political organizations for the purposes of Canon 5.

Rule 5.01, "Restrictions on Political Activities of Judges and Candidates for Judicial Office," prohibits judges and judicial candidates, except when running for judicial office in a partisan election, to purchase tickets for political functions. Even where the judge is running in a partisan election, he or she may purchase such tickets only for their personal use, and only if the cost of the tickets does not exceed the reasonable value of the goods and services received

The Comments to Rule 5.01 have been revised to address the right of a judicial candidate to respond publicly to personal attacks or attacks on a candidate's record during the course of a campaign. That subject is addressed by black-letter language in the current Code. The Commission believes that the discussion of the issue is primarily informative, and that the topic ought not be made the subject of disciplinary charges.

In Rule 5.03, “Permitted Political and Campaign Activities of Candidates for Judicial Office in Non-partisan Public Elections,” the Commission proposes Comment that interprets the Rule as prohibiting a candidate in a non-partisan election from completing and submitting questionnaires when the judge knows, or has reason to know, that the purpose of the questionnaire is for a political organization to decide whom to endorse in a non-partisan election.

The Commission encourages all those who are interested in its work to review the Final Draft Report containing the Commission’s current draft of the entire Code carefully and to provide comments and suggestions to the Commission as soon as possible, but in no event later than March 15, 2006. *Specific language changes* that give effect to commentators’ concerns will be extremely helpful to the Commission

We hope that the work already completed by the Commission will be supplemented with suggestions from every quarter, so that our final recommendations for revision to the Code, when presented to the ABA House of Delegates in August 2006 for consideration and adoption, will represent a consensus that will have been reached among the judiciary, the legal profession, and the public.

PREAMBLE

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The American legal system is based on the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in defining and establishing the American concepts of justice and the rule of law. Inherent in all of the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in our legal system.

As highly visible symbols of government under the rule of law, judges should expect to be the subject of public scrutiny, and should freely and willingly accept certain restrictions on their conduct that might be viewed as burdensome by ordinary citizens. In particular, judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives.

The Model Code of Judicial Conduct is intended to establish standards for the ethical conduct of judges and judicial candidates. It consists of broad statements called Canons, specific Rules set forth under each Canon, and Comments to the Rules. The Scope, Terminology, and Application sections provide additional interpretive guidance.

This Code is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are also governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to provide guidance to assist them in maintaining the highest standards of judicial and personal conduct.

SCOPE

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3 [1] The Model Code of Judicial Conduct consists of five Canons, numbered Rules
4 under each Canon, and Comments that accompany and explicate each Rule. This Scope
5 section and a Terminology section provide additional guidance in interpreting and
6 applying the Code. At the end of the Code, an Application section identifies those
7 persons who must comply with the Rules, including full-time judges and others who hold
8 judicial office on other than a full-time basis.

9
10 [2] The Canons state overarching principles of judicial ethics. Although the Canons
11 are cast in mandatory terms, it is the Rules that establish binding or enforceable standards
12 of conduct. Where the Rules use the terms “shall” or “shall not,” they establish
13 mandatory standards to which judges and candidates for judicial office will be held. The
14 enforcement of these standards is effected through appropriate disciplinary procedures.
15 Where a Rule uses permissive terms, such as “may,” the matter being addressed is
16 committed to the personal and professional discretion of the judge or candidate in
17 question.

18
19 [3] The Comments that accompany the Rules serve two functions. First, they provide
20 guidance with respect to the purpose, meaning, and proper application of the Rule. They
21 contain explanatory material and in some instances provide examples of permitted or
22 prohibited conduct. Comments neither add to nor subtract from the binding obligations
23 set forth in the Rules. Therefore, when a Comment uses the term “must,” it does not
24 mean that the Comment itself is binding or enforceable; it signifies instead that the Rule
25 in question, properly understood, is obligatory as to the point in issue.

26
27 [4] The Comments also identify aspirational goals for judges. To implement fully the
28 principles of this Code as articulated in the Canons, judges should strive to exceed the
29 standards of conduct established by the Rules, holding themselves to the highest ethical
30 standards, seeking to achieve those aspirational goals, and thereby enhancing the dignity
31 of the judicial office.

32
33 [5] The Canons and Rules are rules of reason. They should be applied consistent with
34 constitutional requirements, statutes, other court rules, and decisional law and with due
35 regard for all relevant circumstances. The Code is to be interpreted so as not to impinge
36 on the essential independence of judges in making judicial decisions.

37
38 [6] Although the text of each Rule is binding and enforceable, it is not contemplated
39 that every transgression will result in disciplinary action. Whether disciplinary action is
40 appropriate, and if so the degree of discipline to be imposed, should be determined
41 through a reasonable and reasoned application of the text, and should depend on such
42 factors as the seriousness of the transgression, whether there is a pattern of improper
43 activity, and the effect of the improper activity on the judicial system or others.

44
45 [7] The Code is not designed or intended as a basis for civil liability or instituting
46 criminal prosecution. Neither is it intended to serve as the basis for litigants to seek

- 1 collateral remedies against each other or to obtain tactical advantages in proceedings
- 2 before a court.

TERMINOLOGY

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

4 “Aggregate” in relation to contributions for a candidate denotes not only contributions in
5 cash or in kind made directly to a candidate’s committee or treasurer, but also, except in
6 retention elections, all contributions made indirectly with the understanding that they will
7 be used to support the election of a candidate or to oppose the election of the candidate’s
8 opponent. See Rules 2.12(A)(4) and 5.06(B) and (D).

9 “Appropriate authority” denotes the authority having responsibility for initiation of
10 disciplinary process with respect to the violation to be reported. See Rules 2.17 and 2.18.

11 “Candidate for judicial office” describes a person seeking selection for or retention in
12 judicial office by election or appointment. A person becomes a candidate for judicial
13 office as soon as he or she makes a public announcement of candidacy, declares or files
14 as a candidate with the election or appointment authority, authorizes or, where permitted,
15 engages in solicitation or acceptance of contributions or support, or is nominated for
16 election or appointment to office. A person does not become a candidate earlier than one
17 year prior to the date of the election or appointment whereby the person seeks to obtain
18 judicial office. See Preamble, Scope, and Rules 5.01 through 5.07.

19 “Contribution” denotes both financial and in-kind contributions, such as goods,
20 professional services, advertising, campaign committee work, or other types of
21 assistance, which, if obtained by the recipient otherwise, would require a financial
22 expenditure. See Rules 2.12, 2.16, 4.04, 5.01, and 5.06.

23 “De minimis,” in the context of a judge’s interests, denotes an insignificant interest that
24 could not raise a reasonable question as to the judge’s impartiality. See Rule
25 2.12(A)(2)(c).

26 “Domestic partner” denotes a person with whom another person maintains a household
27 and conjugal relations, other than a person to whom he or she is legally married. See
28 Rules 2.12, 2.16 Comment [2], 4.10, and 4.11.

29 “Economic interest” denotes ownership of more than a de minimis legal or equitable
30 interest, but does not extend to a judge’s holdings or interests in mutual or common
31 investment funds, deposits a judge maintains in financial institutions, mutual savings
32 associations, or credit unions, or government securities owned by a judge, unless a
33 proceeding pending or impending before the judge could substantially affect the value of
34 such holdings or interests, or the judge is involved in the management of such entities’
35 holdings. The fact that securities might be held by an educational, charitable, fraternal, or
36 civic organization in whose service the judge or the judge’s spouse, domestic partner,
37 parent, or child may serve as a director, officer, advisor, or other participant does not

1 thereby give the judge an economic interest in such an organization for the purposes of
2 this Code. See Rules 2.12(A)(2) and (3) and (B).

3 “Fiduciary” includes such relationships as executor, administrator, trustee, or guardian.
4 See Rules 2.12(A)(3) and (B).

5 “Gift” denotes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance,
6 bequest, or anything of monetary value, but does not include:

7 (A) ordinary social hospitality common among people in the judge’s
8 community, extended for a non-business purpose by an individual, not a corporation,
9 and limited to the provision of modest items, such as food and refreshments.

10 (B) items having little intrinsic value that are intended solely for presentation,
11 such as plaques, certificates, trophies, and greeting cards;

12 (C) bank and other financial institution loans that are made available on the
13 same terms and based on the same criteria applied to applicants who are not judges;

14 (D) opportunities and benefits, including favorable rates and commercial
15 discounts, made available on the same terms and based on the same criteria applied to
16 applicants who are not judges;

17 (E) rewards and prizes that are given to competitors in random drawings,
18 contests, or other events that are open to the public, awarded on the same terms and
19 based on the same criteria applied to other competitors;

20 (F) scholarships and fellowships awarded on the same terms and based on the
21 same criteria applied to applicants who are not judges;

22 (G) reimbursement or waiver of charges for travel-related expenses governed
23 by Rule 4.11; or

24 (H) compensation for extra-judicial activities that is governed by Rule 4.12.
25 See Rule 4.13.

26 “Impartiality” or “impartial” denotes the condition of being without bias or prejudice in
27 favor of, or against, particular parties or classes of parties, or their representatives, and of
28 maintaining an open mind in considering issues that may come before the judge. See
29 Canon 1 and Rule 1.01, Canon 2 and Rule 2.12, Rules 4.01, 4.04 Comment [8], 4.11,
30 4.12, and 4.13 Comment [1], and Canon 5.

31 “Impending matter” is a matter that is anticipated but not yet commenced. A matter is
32 impending when there is reason to believe a case may be filed, for example, when a crime
33 is being investigated but no charges have been brought, or when someone has been

1 arrested but not charged, or when legislation has been passed that will probably be
2 challenged in the courts. See Rules 2.10 and 2.11.

3 “Impropriety” denotes conduct that compromises the ability of a judge to carry out
4 judicial responsibilities with independence, integrity, and impartiality, or otherwise
5 demeans the judicial office. See Canon 1 and Rule 1.02.

6 “Independence” denotes a judge’s freedom from influence, guidance, or controls other
7 than those established by law. See Canon 1 and Rule 1.01 and Rule 2.07 Comments.

8 “Integrity” denotes probity, fairness, honesty, uprightness, and soundness of character.
9 See Canon 1 and Rule 1.01.

10 “Knowingly,” “knowledge,” “known,” and “knows” denote actual knowledge of the fact
11 in question. A person’s knowledge may be inferred from circumstances. See Rule
12 5.01(A)(11).

13 “Law” encompasses court rules as well as statutes, constitutional provisions, and
14 decisional law. See Rules 1.03, 2.01, 2.05, 2.06, 2.09, 2.10(A)(4), 4.02(A), 4.03, 4.04(B),
15 4.06, 5.06(A), (D), and (E), and 5.07(A).

16 “Member of the candidate’s family” denotes a spouse, child, grandchild, parent,
17 grandparent, or other relative or person with whom the candidate maintains a close
18 familial relationship. See Rule 5.01, Comments [6] and [19].

19 “Member of the judge’s family” denotes a spouse, child, grandchild, parent, grandparent,
20 or other relative or person with whom the judge maintains a close familial relationship.
21 See Rules 4.05(A) and 4.08.

22 “Member of a judge’s family residing in the judge’s household” denotes any relative of a
23 judge by blood or marriage or a person treated by a judge as a member of the judge’s
24 family who resides in the judge’s household. See Rule 2.12(A)(3) and 4.10(A)(4) and (B)
25 and Comments [3], [4], and [6].

26 “Nonpublic information” denotes information that is not available to the public.
27 Nonpublic information may include, but is not limited to, information that is sealed by
28 statute or court order or impounded or communicated *in camera*, and information offered
29 in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric
30 reports. See Rule 3.03.

31 “Pending matter” is a matter that has commenced. A matter continues to be pending
32 through any appellate process until final disposition. See Rules 2.10 and 2.11.

33 “Political organization” denotes a political party or other group sponsored by or affiliated
34 with a political party or candidate, the principal purpose of which is to further the election
35 or appointment of candidates for political office. For purposes of this Code, the term does

1 not include a judicial candidate's campaign committee created as authorized by Rule
2 5.06. See Rules 5.01 through 5.04.

3 "Public election" includes primary and general elections, partisan elections, nonpartisan
4 elections, and retention elections. See Rules 5.01, 5.02, 5.03, and 5.06

5 "Spouse" denotes an individual to whom a judge is married. See Rule 2.12 and Comment
6 [7] and Rule 4.10(A)(3) and (4).

7 "Third degree of relationship" includes the following individuals: great-grandparent,
8 grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild,
9 nephew, and niece. See Rule 2.12.

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CANON 1

A JUDGE SHALL UPHOLD THE INDEPENDENCE AND INTEGRITY OF THE JUDICIARY, SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE’S ACTIVITIES.

RULE 1.01: 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.

COMMENT

[1] Adherence to the judgments and rulings of courts depends upon public confidence in the independence, integrity, and impartiality of judges, which in turn depends upon judges acting without fear or favoritism in a manner free from self-interest or bias.

[2] An independent judiciary is indispensable to justice in our society. A judge should comply with high standards of judicial conduct to promote the independence of the judiciary and to foster public confidence in the administration of justice.

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

RULE 1.02: IMPROPRIETY* AND ITS APPEARANCE

A judge shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct by judges. The prohibition against acting with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. A judge must expect to be the subject of public scrutiny. A judge must therefore accept restrictions on the judge’s conduct that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly.

1 [2] The test for impropriety is whether the conduct compromises the
2 ability of the judge to carry out judicial responsibilities with
3 independence, integrity, impartiality, and competence. Examples of actual
4 improprieties under this Rule include violations of law, court rules, or
5 other specific provisions of this Code. The test for an appearance of
6 impropriety is whether the conduct of the judge would be perceived by a
7 reasonable person with knowledge of the circumstances to impair the
8 judge's ability to carry out judicial responsibilities with independence,
9 integrity, impartiality, and competence.

10 **RULE 1.03: COMPLIANCE WITH THE LAW***

11 **A judge shall respect and comply with the law.**

12 **COMMENT**

13 [1] A judge has an obligation to respect and comply with all
14 law, including the provisions of this Code.

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SUPREME COURT
STATE OF WASHINGTON

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON
BY C. J. MERRITT

In re the Matter of
Justice Richard B. Sanders
Washington State Supreme Court

SUPREME COURT NO.
200,271-4

CERTIFICATE OF
SERVICE

I do hereby certify that on September 22, 2006, at the direction of Katrina Pflaumer, I caused to be served a true and correct copy of the following:

Supplement to Respondent's Statement of Additional Authorities
by the method indicated below and addressed to the following:

BY: Hand Delivery to the address below:

C. J. Merritt, Clerk
Washington State Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

BY: United States Mail, first class, postage prepaid to the following:

Kurt Bulmer
Attorney at Law
740 Belmont Place E., #3
Seattle, WA 98102-4442

BY: [X] E-mail to Kurt Bulmer and John Strait.

DATED this 22nd day of September, 2006.



Judy Curler
Case Manager