

THE SUPREME COURT OF WASHINGTON

ORDER

IN THE MATTER OF THE ADOPTION OF THE
NEW CODE OF JUDICIAL CONDUCT

NO. 25700-A- 963

The Code of Judicial Conduct Task Force having recommended the adoption of the new Code of Judicial Conduct, and the Court having considered the new code and comments submitted thereto, and having determined that the proposed new Code of Judicial Conduct will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

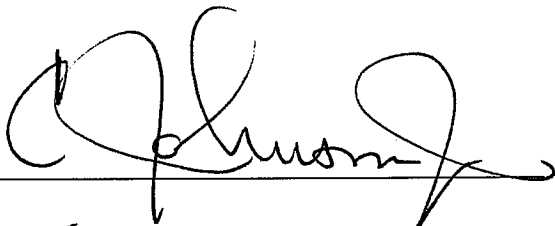
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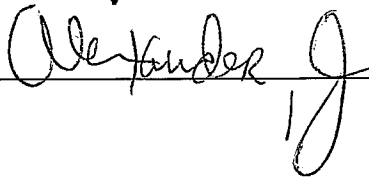
(a) That the new Code of Judicial Conduct as attached hereto is adopted. The current Code of Judicial Conduct is hereby rescinded as of January 1, 2011.

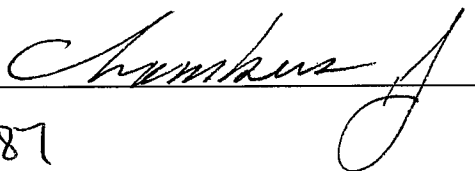
(b) That the new Code of Judicial Conduct will be published in the Washington Reports and will become effective on January 1, 2011.

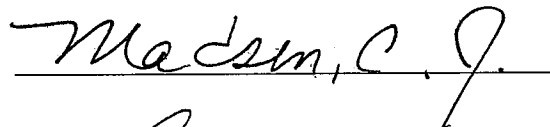
DATED at Olympia, Washington this 9th day of September, 2010.

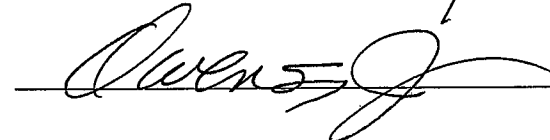
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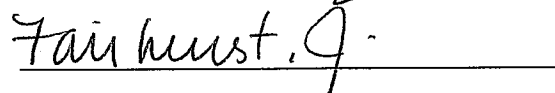


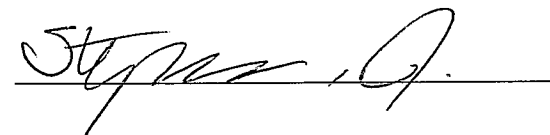












Washington State Code of Judicial Conduct

Preamble

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

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, an Application Section and Comments. The text of the Canons and the Sections, including the Terminology and Application Sections, is authoritative. The use of permissive language in various sections of the Code does not relieve judges from the other requirements of the Code that apply to specific conduct. The Comments provide explanation and guidance with respect to the purpose and meaning of the Canons and Sections. The Comments are not intended as a statement of additional rules nor as a basis for discipline.

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

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

The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them. It is not intended, however, that every transgression will result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether the activity was inadvertent, unintentional or based on a reasonable but mistaken interpretation of obligations under the Code, whether there is a pattern of improper activity and the effect of the improper activity on others or on the judicial system.

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

Terminology

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

~~"Candidate" is a person seeking election to judicial office. 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 authority, or authorizes solicitation or acceptance of contributions or support. See Preamble and Sections 7(A) and 7(B).~~

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

~~"De minimis" denotes an insignificant interest that could not raise reasonable question as to a judge's impartiality. See Section 3(E).~~

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

~~(i) ownership of an interest in a mutual or common investment fund that holds securities is not an economic interest in such securities unless the judge participates in the management of the fund or a proceeding pending or impending before the judge could substantially affect the value of the interest;~~

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

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

~~(iv) ownership of government securities is not an economic interest in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3(D)(1)(d) and 3(D)(2).~~

~~"Fiduciary" includes such relationships as executor, administrator, trustee and guardian. See Sections 3(D)(2) and 5(D).~~

~~"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. See Sections 3(C) and 3(D)(1).~~

~~"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the candidate maintains a close familial relationship. See Sections 7(B)(1)(a) and 7(B)(2).~~

~~"Member of the judge's family" denotes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Sections 5(D) and 5(F).~~

~~"Member of the judge's family residing in the judge's household" denotes any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Sections 3(D)(1) and 5(C)(5).~~

~~"Part-time judges." Part-time judges are judges who serve on a continuing or periodic basis, but are permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than a full-time judge. See Application Section (A)(1).~~

~~"Political organization." Political organization denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office or to support or oppose a ballot measure except those concerning the law, the legal system, and the administration of justice. See Sections 7(A)(1) and 7(A)(2).~~

~~"Pro tempore judges." Pro tempore judges are persons who are appointed to act temporarily as judges. See Application Section (A)(2).~~

~~"Require." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3(A)(3), 3(A)(5), 3(A)(6), 3(A)(9) and 3(B)(2).~~

~~Application of the Code of Judicial Conduct~~

~~(A) Anyone, whether or not a lawyer, who is an officer of a judicial system and who performs judicial functions, including an officer such as a magistrate, court commissioner, special master or referee, is a judge within the meaning of this Code. All judges should comply with this Code except as provided below.~~

~~(1) A Part-Time Judge~~

~~(a) is not required to comply:~~

~~(i) except while serving as a judge, with Section 3(A)(9); and~~

~~(ii) at any time with Sections 5(C)(2) and (3), 5(D), 5(E), 5(F), 5(G) and 6(C).~~

~~(b) should 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

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

~~(2) A Pro Tempore Judge~~

~~(a) is not required to comply:~~

~~(i) except while serving as a judge, with Sections 2(A), 2(B), 3(A)(9), 4(B), 4(C) and 7(A);~~

~~(ii) at any time with Sections 2(C), 5(B), 5(C)(2), 5(C)(3), 5(C)(4), 5(D), 5(E), 5(F), 5(G) and 6(C).~~

~~(b) A person who has been a pro tempore judge should not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto except as otherwise permitted by the Rules of Professional Conduct.~~

~~(B) Time for Compliance. Persons to whom this Code becomes applicable should arrange their affairs as soon as reasonably possible to comply with it.~~

Canons

- CANON 1 Judges shall uphold the integrity and independence of the judiciary.
- -
- CANON 2 Judges should avoid impropriety and the appearance of impropriety in all their activities.
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- CANON 3 Judges shall perform the duties of their office impartially and diligently.
- -
- CANON 4 Judges may engage in activities to improve the law, the legal system and the administration of justice.
- -
- CANON 5 Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties.
- -
- CANON 6 Judges shall regularly file reports of compensation received for quasi-judicial and extra-judicial activities.
- -
- CANON 7 Judges shall refrain from political activity inappropriate to their judicial office.
- -

CANON 1

Judges shall uphold the integrity and independence of the judiciary.

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

Comment

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depends in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

~~Judges should avoid impropriety and the appearance of impropriety in all their activities.~~

~~(A) Judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.~~

~~(B) Judges should not allow family, social, or other relationships to influence their judicial conduct or judgment. Judges should not lend the prestige of judicial office to advance the private interests of the judge or others; nor should judges convey or permit others to convey the impression that they are in a special position to influence them. Judges should not testify voluntarily as character witnesses.~~

Comment

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

~~The testimony of judges as character witnesses injects the prestige of their office into the proceeding in which they testify and may be misunderstood to be an official testimonial. This canon however, does not afford judges a privilege against testifying in response to a subpoena.~~

~~(C) Judges should not hold membership in any organization practicing discrimination prohibited by law.~~

CANON 3

~~Judges shall perform the duties of their office impartially and diligently.~~

~~The judicial duties of judges should take precedence over all other activities. Their judicial duties include all the duties of office prescribed by law. In the performance of these duties, the following standards apply:~~

~~(A) Adjudicative Responsibilities.~~

~~(1) Judges should be faithful to the law and maintain professional competence in it, and comply with the continuing judicial education requirements of GR-26. Judges should be unswayed by partisan interests, public clamor or fear of criticism.~~

~~(2) Judges should maintain order and decorum in proceedings before them.~~

~~(3) Judges should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom judges deal in their official capacity, and should require similar conduct of lawyers, and of the staff, court officials and others subject to their direction and control.~~

Comment

~~The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.~~

(4) Judges should accord to every person who is legally interested in a proceeding, or that person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. Judges, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before them, by amicus curiae only, if they afford the parties reasonable opportunity to respond.

Comment

The proscription against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude judges from consulting with other judges, or with court personnel whose function is to aid judges in carrying out their adjudicative responsibilities.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief amicus curiae.

(5) Judges shall perform judicial duties without bias or prejudice.

Comment

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

(6) Judges should dispose promptly of the business of the court.

Comment

Prompt disposition of the court's business requires judges to devote adequate time to their duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with them to that end.

(7) Judges shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

(8) Judges 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

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

(B) Administrative Responsibilities.

(1) Judges should diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) Judges should require their staff and court officials subject to their direction and control to observe the standards of fidelity and diligence that apply to them.

(3) Judges should not make unnecessary appointments. They should exercise their power of appointment only on the basis of merit, avoiding nepotism and favoritism. They should not approve compensation of appointees beyond the fair value of services rendered.

Comment

Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

(C) Disciplinary Responsibilities.

(1) Judges having actual knowledge that another judge has committed a violation of this Code should take appropriate action. Judges having actual knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(2) Judges having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action. Judges having actual knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's fitness as a lawyer should take or initiate appropriate corrective action, which may include informing the appropriate authority.

(D) Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, including but not limited to instances in which:

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

(b) the judge previously served as a lawyer or was a material witness in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter or such lawyer has been a material witness concerning it;

(c) the judge knows that, individually or as a fiduciary, the judge or the judge's spouse or member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or is an officer, director or trustee of a party or has any other interest that could be substantially affected by the outcome of the proceeding, unless there is a remittal of disqualification;

(d) the judge or the judge's spouse or member of the judge's family residing in the judge's household, or the spouse of such a person:

- (i) is a party to the proceeding, or an officer, director, or trustee of a party;
- (ii) is acting as a lawyer in the proceeding;
- (iii) is to the judge's knowledge likely to be a material witness in the proceeding.

Comment

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "their impartiality might reasonably be questioned" under Canon 3(D)(1), or that the lawyer relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" may require the judge's disqualification.

(2) Judges should inform themselves about their personal and fiduciary economic interests, and make a reasonable effort to inform themselves about the personal economic interests of their spouse and minor children residing in their household.

(E) Remittal of Disqualification. A judge disqualified by the terms of Canon 3(D)(1)(c) or Canon 3(D)(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.

CANON 4

Judges may engage in activities to improve the law, the legal system and the administration of justice.

Judges, subject to the proper performance of their judicial duties, may engage in the following quasi-judicial activities, if in doing so they do not cast doubt on their capacity to decide impartially any issue that may come before them:

(A) They may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.

(B) They may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system and the administration of justice, and they may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(C) Judges may serve as members, officers or directors of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. They may assist such an organization in raising funds and may participate in their management and investment, but should not personally solicit contributions from the public. They may attend fund raising activities. They may make recommendations to public and private fund granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

Comment

~~As judicial officers and persons specially learned in the law, judges are in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that their time permits, they are encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.~~

~~Use of an organization's letterhead for fund raising or membership solicitation is permissible provided the letterhead lists only the judge's name and position in the organization, and if comparable designations are listed for other persons.~~

~~Judges must not be speakers or guests of honor at an organization's fund raising event, but attendance at such an event is permissible if otherwise consistent with this Code. Judges may pay to attend an organization's fund raising event.~~

~~Extrajudicial activities are governed by Canon 5.~~

CANON 5

~~Judges shall regulate their extrajudicial activities to minimize the risk of conflict with their judicial duties.~~

~~(A) **Avocational Activities.** Judges may write, lecture, teach and speak on nonlegal subjects, and engage in the arts, sports and other social and recreational activities, if such avocational activities do not detract from the dignity of their office or interfere with the performance of their judicial duties.~~

Comment

~~Complete separation of judges from extrajudicial activities is neither possible nor wise; they should not become isolated from the society in which they live.~~

~~(B) **Civic and Charitable Activities.** Judges may participate in civic and charitable activities that do not reflect adversely upon their impartiality or interfere with the performance of their judicial duties. Judges may serve as officers, directors, trustees or nonlegal advisors of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:~~

~~(1) Judges should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before them or will be regularly engaged in adversary proceedings in this state's courts. Comment The changing nature of some organizations and of their relationship to the law makes it necessary for judges to reexamine regularly the activities of each organization with which they are affiliated to determine if it is proper for them to continue their relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past.~~

~~(2) Judges should not use the prestige of their office to solicit contributions for any educational, religious, charitable, fraternal or civic organization, but they may be listed as officers, directors or~~

trustees of such an organization. They should not be speakers or the guest of honor at an organization's fund raising events, but they may attend such events.

Comment

Judges may pay to attend an organization's fund raising event. Participation in fund raising activities for organizations devoted to the law, the legal system, and the administration of justice are governed by Canon 4.

Use of an organization's letterhead lists only the judge's name and position in the organization, and if comparable designations are listed for other persons.

(C) Financial Activities.

(1) Judges should refrain from financial and business dealings that tend to reflect adversely on their impartiality, interfere with the proper performance of their judicial duties or exploit their judicial position.

(2) Judges should not involve themselves in frequent business transactions with lawyers or persons likely to come before the court on which they serve.

(3) Subject to the requirements of Canon 5(C)(1) and (2), judges may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as officers, directors, managers, advisors or employees of any business.

Comment

See Application of the Code of Judicial Conduct, Section (B).

(4) Judges should manage their investments and other financial interests to minimize the number of cases in which they are disqualified. As soon as they can do so without serious financial detriment, they should divest themselves of investments and other financial interests that might require frequent disqualification.

(5) Judges should not accept, and should urge members of their families residing in their households not to accept a gift, bequest, favor or loan from anyone except as follows:

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

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

(c) judges or members of their families residing in their households may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, and the judge reports it in the same manner as compensation is reported in Canon 6(C).

Comment

This canon does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

(6) Judges are not required by this Code to disclose their income, debts, or investments, except as provided in this canon and Canons 3 and 6 or as otherwise required by law.

Comment

Canon 3 requires judges to disqualify themselves in any proceeding in which they have a financial interest, however small; Canon 5 requires judges to refrain from engaging in business and from financial activities that might interfere with the impartial performance of their judicial duties; Canon 6 requires judges to report all compensation they receive for activities outside their judicial office. Judges have the rights of ordinary citizens, including the right to privacy of their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

(7) Information acquired by judges in their judicial capacity should not be used or disclosed by them in financial dealings or for any other purpose not related to their judicial duties.

(8) Subject to the limitations and requirements of Canon 6, judges may accept compensation and reimbursement of expenses for the solemnization of marriages, performed outside of regular court hours, pursuant to RCW 26.04.050.

(D) Fiduciary Activities. Judges shall not serve as executors, administrators, trustees, guardians or other fiduciaries, except for the estate, trust or person of members of their families, and then only if such service will not interfere with the proper performance of their judicial duties. As family fiduciaries judges are subject to the following restrictions:

(1) Judges shall not serve if it is likely that as a fiduciary they will be engaged in proceedings that would ordinarily come before them, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which they serve or one under its appellate jurisdiction.

(2) While acting as a fiduciary, judges are subject to the same restrictions on financial activities that apply to them in their personal capacities.

Comment

Judges' obligations under this canon and their obligations as a fiduciary may come into conflict. For example, judges should resign as trustees if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(C)(4).

(E) Arbitration. Judges should not participate as arbitrators or mediators or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

(F) Practice of Law. Judges shall not practice law. Notwithstanding this prohibition, judges may act pro se and may, without compensation, give legal advice to and draft or review documents for members of their families.

~~(G) Extrajudicial Appointments.~~ Judges should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. Judges, however, may represent their country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.

Comment

~~Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in the light of the demands on the judiciary created by today's crowded dockets and the need to protect the courts from involvement in extrajudicial matters that may prove to be controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the efficiency, effectiveness and independence of the judiciary.~~

CANON 6

~~Judges shall regularly file reports of compensation received for quasi-judicial and extra-judicial activities.~~

Judges may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judges in their judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

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

~~(B) Expense Reimbursement.~~ Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse. Any payment in excess of such an amount is compensation.

~~(C) Public Reports.~~ A judge shall make such financial disclosures as required by law.

Comment

~~The Code does not prohibit judges from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. Judges should ensure, however, that no conflicts are created by the arrangement. Judges must not appear to trade on their judicial position for personal advantage. Judges should not spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payments must not raise any question of undue influence or the judges' ability or willingness to be impartial.~~

CANON 7

~~*Judges shall refrain from political activity inappropriate to their judicial office.*~~

~~(A) Political Conduct in General.~~

~~(1) Judges or candidates for election to judicial office shall not:~~

~~(a) act as leaders or hold any office in a political organization;~~

~~(b) make speeches for a political organization or nonjudicial candidate or publicly endorse a nonjudicial candidate for public office;~~

~~(c) solicit funds for or pay an assessment or make a contribution to a political organization or nonjudicial candidate;~~

~~(d) attend political functions sponsored by political organizations or purchase tickets for political party dinners or other functions, except as authorized by Canon 7(A)(2);~~

~~(e) identify themselves as members of a political party, except as necessary to vote in an election;~~

~~(f) contribute to a political party, a political organization or nonjudicial candidate.~~

~~(2) During judicial campaigns, judges or candidates for election to judicial office may attend political gatherings, including functions sponsored by political organizations, and speak to such gatherings on their own behalf or that of another judicial candidate.~~

~~(3) Judges may contribute to, but shall not solicit funds for another judicial candidate.~~

~~(4) Judges shall resign from office when they become candidates either in a primary or in a general election for a nonjudicial office, except that they may continue to hold office while being a candidate for election to or serving as a delegate in a state constitutional convention, if they are otherwise permitted by law to do so.~~

Comment

See State ex. rel. Reynolds v. Howell, 70 Wash. 467, 126 Pac. 954 (1912) and State ex. rel. Chandler v. Howell, 104 Wash. 99, 175 Pac. 569 (1918).

~~(5) Judges should not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice.~~

~~(B) Campaign Conduct.~~

~~(1) Candidates, including an incumbent judge, for a judicial office;~~

~~(a) should maintain the dignity appropriate to judicial office, and should encourage members of their families to adhere to the same standards of political conduct that apply to them;~~

~~(b) should prohibit public officials or employees subject to their direction or control from doing for them what they are prohibited from doing under this canon; and except to the extent authorized under~~

Canon 7(B)(2) or (B)(3), they should not allow any other person to do for them what they are prohibited from doing under this canon;

(c) should not

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent.

Comment

Section 7(B)(1)(c) prohibits a candidate for judicial office from making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. See also Section 3(A)(6), the general rule on public comment by judges. Section 7(B)(1)(c) does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this Section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This Section applies to any statement made in the process of securing judicial office.

(2) Candidates, including incumbent judges, for a judicial office that is filled by public election between competing candidates shall not personally solicit or accept campaign contributions. They may establish committees of responsible persons to secure and manage campaign funds and to obtain public statements of support. Such committees may solicit campaign contributions and public support from lawyers and others. Candidates' committees may solicit contributions no earlier than 120 days from the date when filing for that office is first permitted and no later than 60 days after the final election in which the candidate participated. Candidates shall not use or permit the use of campaign contributions for the private benefit of themselves or members of their families. Candidates shall comply with all laws requiring public disclosure of campaign finances, which may require knowledge of campaign contributions. When an unsolicited contribution is delivered directly to the candidate, receipt and prompt delivery of the contribution to the appropriate campaign official is not prohibited.

Comment

Although campaign contributions of which a judge has knowledge are not prohibited, these contributions may be relevant to recusal.

(3) An incumbent judge who is a candidate for office without a competing candidate, may obtain public support and campaign contributions in the manner provided in Canon 7(B)(2).

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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 of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.
- [2] Judges should maintain the dignity of judicial office at all times, and 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 Washington State Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through the Commission on Judicial Conduct.

SCOPE

- [1] The Washington State 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. They provide important guidance in interpreting the Rules. A judge may be disciplined only for violating a Rule.
- [3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.
- [4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.
- [5] The Rules of the Washington State Code of Judicial Conduct are rules of reason that should be applied consistent 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. It is recognized, for example, that it would be unrealistic to sanction judges for minor traffic or civil infractions. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules. The relevant factors for consideration should include the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, including the willfulness or knowledge of the impropriety of the action, 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.

APPLICATION

The Application section establishes when the various Rules apply to a judge, court commissioner, judge pro tempore or judicial candidate.

I. APPLICABILITY OF THIS CODE

- (A) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, referee, part-time judge or judge pro tempore.
- (B) The provisions of the Code apply to all judges except as otherwise noted for part-time judges and judges pro tempore.
- (C) All judges who hold a position that is subject to election shall comply with all provisions of Rules 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), 4.4 (Campaign Committees), and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial Office). Rules 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General), 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office) and 4.4 (Campaign Committees) apply to judicial candidates.
- (D) All judges shall comply with statutory requirements applicable to their position with respect to reporting and disclosure of financial affairs.

COMMENT

- [1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.
- [2] This Code and its Rules do not apply to any person who serves as an administrative law judge or in a judicial capacity within an administrative agency.
- [3] The determination of whether an individual judge is exempt from specific Rules depends upon the facts of the particular judicial service.
- [4] The Legislature has authorized counties to establish and operate drug courts and mental health courts. Judges presiding in these special courts are subject to these Rules, including Rule 2.9 (A)(1) on ex parte communications, and must continue to operate within the usual judicial role as an independent decision maker on issues of fact and law. But the Rules should be applied with the recognition that these courts

may properly operate with less formality of demeanor and procedure than is typical of more traditional courts. Application of the rules should also be attentive to the terms and waivers in any contract to which the individual whose conduct is being monitored has agreed in exchange for being allowed to participate in the special court program.

II. PART-TIME JUDGE

- (A) A part-time judge is not required to comply:
- (1) with Rule 2.10 (Judicial Statements on Pending and Impending Cases), except while serving as a judge; or
 - (2) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), and 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges).
- (B) A part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.
- (C) When a person who has been a part-time judge is no longer a part-time judge, that person may act as a lawyer in a proceeding in which he or she served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

COMMENT

- [1] Part-time judges should be alert to the possibility of conflicts of interest and should liberally disclose on the record to litigants appearing before them the fact of any extrajudicial employment or other judicial role, even if there is no apparent reason to withdraw.
- [2] In view of Rule 2.1, which provides that the judicial duties of judges should take precedence over all other activities, part-time judges should not engage in outside employment which would interfere with their ability to sit on cases that routinely come before them.

III. JUDGE PRO TEMPORE

A judge pro tempore is not required to comply:

- (A) except while serving as a judge, with Rule 1.2 (Promoting Confidence in the Judiciary), Rule 2.4 (External Influences on Judicial Conduct), Rule 2.10 (Judicial Statements on Pending and Impending Cases); or Rule 3.1 (Extrajudicial Activities in General); or

- (B) at any time with Rules 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials), 3.3 (Acting as a Character Witness), or 3.4 (Appointments to Governmental Positions), or with Rules 3.6 (Affiliation with Discriminatory Organizations), 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities), 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (Financial, Business, or Remunerative Activities), or 3.12 (Compensation for Extrajudicial Activities).
- (C) A judge pro tempore 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.
- (D) When a person who has been a judge pro tempore is no longer a judge pro tempore, that person may act as a lawyer in a proceeding in which he or she served as a judge or in any other proceeding related thereto only with the express consent of all parties pursuant to the Rules of Professional Conduct.

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.

TERMINOLOGY

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

“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in-kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election 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, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. See Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. See Rule 2.11.

“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.

“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 and 2.11.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

“Financial Support” shall mean the total of contributions to the judge’s campaign and independent expenditures in support of the judge’s campaign or against the judge’s opponent as defined by RCW 42.17.020.

See Rule 2.11.

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

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

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

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

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

“Invidious discrimination” is a classification which is arbitrary, irrational, and not reasonably related to a legitimate purpose. Differing treatment of individuals based upon race, sex, gender, religion, national origin, ethnicity, sexual orientation, age, or other classification protected by law, are situations where invidious discrimination may exist. See Rules 3.1 and 3.6.

“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.

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

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

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

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

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

"Part-time judge" Part-time judges are judges who serve on a continuing or periodic basis, but are permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than a full-time judge. A person who serves part-time as a judge on a regular or periodic basis in excess of eleven cases or eleven dockets annually, counted cumulatively without regard to each jurisdiction in which that person serves as a judge, is a part-time judge.

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

"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 political office. 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.

"Pro tempore judge" Without regard to statutory or other definitions of a pro tempore judge, within the meaning of this Code a pro tempore judge is a person who serves only once or at most sporadically under a separate appointment for a case or docket. Pro tempore judges are excused from compliance with certain provisions of this Code because of their infrequent service as judges. A person who serves or expects to serve

part-time as a judge on a regular or periodic basis in fewer than twelve cases or twelve dockets annually, counted cumulatively without regard to each jurisdiction in which that person serves as a judge, is a pro tempore judge.

“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.

CANON 1

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

RULE 1.1

Compliance with the Law

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

COMMENT

See Scope [6].

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. 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 the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary.
- [4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.
- [5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

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

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 position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.
- [2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.
- [3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.
- [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 SHOULD PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Precedence to the Duties of Judicial Office

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

COMMENT

- [1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.
- [2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

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, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.
- [4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

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, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.
- (C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, against parties, witnesses, lawyers, or others.
- (D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making reference to factors that 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.
- [2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.
- [3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.
- [4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.
- [5] "Bias or prejudice" does not include references to or distinctions based upon race, color, sex, religion, national origin, disability, age, marital status, changes in marital status, pregnancy, parenthood, sexual orientation, or social or economic status when these factors are legitimately relevant to the advocacy or decision of the proceeding, or, with regard to administrative matters, when these factors are legitimately relevant to the issues involved.

RULE 2.4

External Influences on Judicial Conduct

- (A) A judge shall not be swayed by public clamor, or fear of criticism.

- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.
- (C) A judge shall not convey or authorize others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

- [1] Judges shall 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.

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] In accordance with GR 29, 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, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.
- [4] In disposing of matters promptly and efficiently, 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.*

- (B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should 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 should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.
- [3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification or recusal 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 or recusal 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 or recusal 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, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

- [1] The duty to hear 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 may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.
- [3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

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,* before that judge's court except as follows:
 - (1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, or ex parte communication pursuant to a written policy or rule for a mental health court, drug court, or other therapeutic court, 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 affords the parties a reasonable opportunity to object and respond to the advice received.
 - (3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.
 - (4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.
 - (5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* to do so.
- (B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.
 - (C) A judge shall not investigate facts in a matter pending or impending before that judge, and shall consider only the evidence presented and any facts that may properly be judicially noticed, unless expressly authorized by law.
 - (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.

COMMENT

- [1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.
- [2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.
- [3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

- [4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.
- [5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.
- [6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.
- [7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

RULE 2.10

Judicial Statements on Pending and Impending Cases

- (A) A judge shall not make any public statement that would 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 would reasonably be expected to substantially interfere with a fair trial or hearing.
- (B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.
- (C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).
- (D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.
- (E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

- [1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.
- [2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.
- [3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.
- [4] A judge should use caution in discussing the rationale for a decision and limit such discussion to what is already public record or controlling law.

RULE 2.11
Disqualification

- (A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:
- (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.
 - (2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:
 - (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
 - (b) acting as a lawyer in the proceeding;
 - (c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or
 - (d) likely to be a material witness in the proceeding.
 - (3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to the proceeding.
 - (4) [Reserved]

- (5) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits the judge to reach a particular result or rule in a particular way in the proceeding or controversy.
- (6) The judge:
 - (a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer or a material witness in the matter during such association;
 - (b) served in governmental employment, and in such capacity participated personally and substantially as a 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 disqualified by the terms of Rule 2.11(A)(2) or Rule 2.11(A)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing or on the record that the judge's relationship is immaterial or that the judge's economic interest is de minimis, the judge is no longer disqualified, and may participate in the proceeding. When a party is not immediately available, the judge may proceed on the assurance of the lawyer that the party's consent will be subsequently given.
- (D) A judge may disqualify himself or herself if the judge learns by means of a timely motion by a party that an adverse party has provided financial support for any of the judge's judicial election campaigns within the last six years in an amount that causes the judge to conclude that his or her impartiality might reasonably be questioned. In making this determination the judge should consider:
 - (1) the total amount of financial support provided by the party relative to the total amount of the financial support for the judge's election,
 - (2) the timing between the financial support and the pendency of the matter, and
 - (3) any additional circumstances pertaining to disqualification.

COMMENT

- [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. In many jurisdictions in Washington, the term "recusal" is used interchangeably with the term "disqualification."
- [2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.
- [3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.
- [4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, 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), 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.

[7] [Reserved]

[8] [Reserved]

RULE 2.12
Supervisory Duties

- (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act with fidelity and in a diligent 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 under his or her supervision administer their workloads promptly.

RULE 2.13
Administrative Appointments

- (A) In making administrative appointments, a judge:
- (1) shall exercise the power of appointment impartially* and on the basis of merit; and
 - (2) shall avoid nepotism and unnecessary appointments.
- (B) A judge shall not appoint a lawyer to a position under circumstances where it would be reasonably to be interpreted to be quid pro quo for campaign contributions or other favors, unless:
- (1) the position is substantially uncompensated;

- (2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions; or
 - (3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.
- (C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

- [1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).
- [2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

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] "Depending upon the gravity of 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. 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.

RULE 2.15

Responding to Judicial and Lawyer Misconduct

- (A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects should inform the appropriate authority.*
- (B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects should inform the appropriate authority.
- (C) A judge who receives credible information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.
- (D) A judge who receives credible information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

COMMENT

- [1] Judges are not required to report the misconduct of other judges or lawyers. Self regulation of the legal and judicial professions, however, creates an aspiration that judicial officers report misconduct to the appropriate disciplinary authority when they know of a serious violation of the Code of Judicial Conduct or the Rules of Professional Responsibility. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary violation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.
- [2] While judges are not obliged to report every violation of the Code of Judicial Conduct or the Rules of Professional Conduct, the failure to report may undermine the public confidence in legal profession and the judiciary. A measure of judgment is, therefore, required in deciding whether to report a violation. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware. A report should be made when a judge or lawyer's conduct raises a serious question as to the honesty, trustworthiness or fitness as a judge or lawyer.
- [3] Appropriate action under sections (C) and (D) may include communicating directly with the judge or lawyer who may have violated the Code of Judicial Conduct or the Rules of Professional Conduct, communicating with a supervising judge or reporting the suspected violation to the appropriate authority or other authority or other agency or body.
- [4] Information about a judge's or lawyer's conduct may be received by a judge in the course of that judge's participation in an approved lawyers or judges assistance program. In that circumstance there is no requirement or aspiration of reporting (APR 19(b) and DRJ 14(e)).

RULE 2.16

Cooperation with Disciplinary Authorities

- (A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.
- (B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

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

CANON 3

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

RULE 3.1

Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge; except activities expressly allowed under this code. This rule does not apply to national or state military service;
- (C) participate in activities that would undermine the judge's independence,* integrity,* or impartiality;*
- (D) engage in conduct that would be coercive; or
- (E) make extrajudicial or personal use of court premises, staff, stationery, equipment, or other resources, except for incidental use permitted by law.

COMMENT

- [1] 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. 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] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status.

For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination.

- [3] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.
- [4] Before speaking or writing about social or political issues, judges should consider the impact of their statements under Canon 3.

RULE 3.2

Appearances before Governmental Bodies and Consultation with Government Officials

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

- (A) in connection with matters concerning the law, the legal system, or the administration of justice;
- (B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or
- (C) when the judge is acting in a matter involving the judge's, the judge's marital community's, or the judge's domestic partnership's legal or economic interests, or those of members of the judge's immediate family residing in the judge's household, or when the judge is acting in a fiduciary* capacity. In engaging in such activities, however, judges must exercise caution to avoid abusing the prestige of judicial office.

COMMENT

- [1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.
- [2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

RULE 3.3
Acting as a Character Witness

A judge shall not act 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, acts as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to act as a character witness.
- [2] This rule does not prohibit judges from writing letters of recommendation in non-adjudicative proceedings pursuant to Rule 1.3, comments [2] and [3].

RULE 3.4
Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice. A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

COMMENT

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

RULE 3.5
Use of Nonpublic Information

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

COMMENT

- [1] This rule is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this Code and/or law.

RULE 3.6

Affiliation with Discriminatory Organizations

- (A) A judge shall not hold membership in any organization that practices invidious discrimination on the bases of race, sex, gender, religion, national origin, ethnicity, sexual orientation or other classification protected by law.
- (B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join 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] Whether an organization practices invidious discrimination is a complex question to which judges should be attentive at all times, given the prevailing state and federal law. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends on how the organization selects members, as well as other relevant factors, such as the organization's purposes or activities, and whether the organization is dedicated to the preservation or religious, ethnic, or cultural values of legitimate common interest to its members.
- [3] If a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.
- [4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

RULE 3.7

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

Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the

administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

- (A) assisting such an organization or entity in planning related to fundraising, and participating in the management and investment of the organization's or entity's funds, or volunteering services or goods at fundraising events as long as the situation could not reasonably be deemed coercive;
- (B) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;
- (C) 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 fundraising purpose, the judge may do so only if the event concerns the law, the legal system, or the administration of justice;
- (D) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:
 - (1) will be engaged in proceedings that would ordinarily come before the judge; or
 - (2) 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.

COMMENT

- [1] The activities permitted by Rule 3.7 generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.
- [2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.
- [3] Mere attendance at an event, whether or not the event serves a fundraising purpose, does not constitute a violation of paragraph (C). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fundraising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

- [4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fundraising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.
- [5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono 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 legal work, and participating in events recognizing lawyers who have done pro bono work.
- [6] A judge may not directly solicit funds, except as permitted under Rule 3.7(B), however a judge may assist a member of the judge's family in their charitable fundraising activities if the procedures employed are not coercive and the sum is de minimis.
- [7] [Reserved.]
- [8] A judge may provide leadership in identifying and addressing issues involving equal access to the justice system; developing public education programs; engaging in activities to promote the fair administration of justice; and convening, participating or assisting in advisory committees and community collaborations devoted to the improvement of the law, the legal system, the provision of services, or the administration of justice.
- [9] A judge may endorse or participate in projects and programs directly related to the law, the legal system, the administration of justice, and the provision of services to those coming before the courts, and may actively support the need for funding of such projects and programs.

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 in no event later than one year after becoming a judge.

COMMENT

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

RULE 3.9

Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions in a private capacity unless authorized by law.*

COMMENT

- [1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is authorized by law.
- [2] Retired, part-time, or pro tempore judges may be exempt from this section. (See Application)

RULE 3.10

Practice of Law

- (A) A judge shall not practice law. A judge may act pro se or on behalf of his or her marital community or domestic partnership and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any adjudicative forum.
- (B) This rule does not prevent the practice of law pursuant to national or state military service.

COMMENT

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

RULE 3.11

Financial, Business, or Remunerative Activities

- (A) A judge may hold and manage investments of the judge and members of the judge's family.*
- (B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:
- (1) a business closely held by the judge or members of the judge's family; or
 - (2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.
- (C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:
- (1) interfere with the proper performance of judicial duties;
 - (2) lead to frequent disqualification of the judge;
 - (3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or
 - (4) result in violation of other provisions of this Code.
- (D) 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.

COMMENT

- [1] Judges are generally permitted to engage in financial activities, subject to the requirements of this Rule and other provisions 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] There is a limit of not more than one (1) year allowed to comply with Rule 3.11(D).
(See Application Part IV)

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, 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 (A), a judge may accept the following:
- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
 - (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;
 - (3) ordinary social hospitality;

- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;
- (6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge.
- (9) gifts incident to a public testimonial;
- (10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:
 - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
 - (b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge.

COMMENT

- [1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits. Acceptance of any gift or thing of value may require reporting pursuant to Rule 3.15 and Washington law.
- [2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2)

places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances.

- [3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.
- [4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.
- [5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

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.

COMMENT

- [1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events.

Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

- [2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code and Washington law.
- [3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:
- (a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;
 - (b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;
 - (c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;
 - (d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;
 - (e) whether information concerning the activity and its funding source(s) 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.

RULE 3.15

Reporting Requirements

A judge shall make such financial disclosures as required by law.

CANON 4

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

RULE 4.1

Political and Campaign Activities of Judges and Judicial Candidates in General

- (A) Except as permitted by law,* or by Rules 4.2 (Political and Campaign Activities of Judicial Candidates in Public Elections), 4.3 (Activities of Candidates for Appointive Judicial Office), and 4.4 (Campaign Committees), 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 nonjudicial candidate;
 - (3) publicly endorse or oppose a nonjudicial candidate for any public office, except for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States pursuant to (5) below.
 - (4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a nonjudicial candidate for public office;
 - (5) publicly identify himself or herself as a member or a candidate of a political organization, except
 - (a) as required to vote, or
 - (b) for participation in a precinct caucus limited to selection of delegates to a nominating convention for the office of President of the United States.
 - (6) [Reserved]
 - (7) personally solicit* or accept campaign contributions other than through a campaign committee authorized by Rule 4.4, except for members of the judge's family or individuals who have agreed to serve on the campaign committee authorized by Rule 4.4 and subject to the requirements for campaign committees in Rule 4.4(B).
 - (8) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others except as permitted by law;
 - (9) use court staff, facilities, or other court resources in a campaign for judicial office except as permitted by law;

- (10) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;
 - (11) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or
 - (12) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.
- (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).

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. Therefore, 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 nonjudicial 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 judicial office. See Rule 4.2(B)(2).
- [5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no

"family exception" to the prohibition in paragraph (A)(3) against a judge or judicial candidate publicly endorsing nonjudicial candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they are using the prestige of the their judicial office to endorse any family member's candidacy or other political activity.

- [6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, is not prohibited by paragraphs (A)(2) or (A)(3) and is allowed by Paragraphs (A)(2) and (A)(5). Because Washington uses a caucus system for selection of delegates to the nominating conventions of the major political parties for the office of President of the United States, precluding judges and judicial candidates from participating in these caucuses would eliminate their ability to participate in the selection process for Presidential nominations. Accordingly, Paragraph (A)(3) and (5) allows judges and judicial candidates to participate in precinct caucuses, limited to selection of delegates to a nominating convention for the office of President of the United States. This narrowly tailored exception from the general rule is provided for because of the unique system used in Washington for nomination of Presidential candidates. If a judge or a judicial candidate participates in a precinct caucus, such person must limit participation to selection of delegates for various candidates.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

- [7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(10) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.
- [8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(10), (A)(11), or (A)(12), 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)(11), 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)(11) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

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

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

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

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)(12), 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 respond to questionnaires should post the questionnaire and their substantive answers so they are accessible to the general public. 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.

PERSONAL SOLICITATION OF CAMPAIGN FUNDS

[16] Judicial candidates should be particularly cautious in regard to personal solicitation of campaign funds. This can be perceived as being coercive and an abuse of judicial office. Accordingly, a general prohibition on personal solicitation is retained with a narrowly tailored exception contained in Paragraph (A)(7) for members of the judge's family and those who have agreed to serve on the judge's campaign committee. These types of individuals generally have a close personal relationship to the judicial candidate and therefore the concerns of coercion or abuse of judicial office are greatly diminished. Judicial candidates should not use this limited exception as a basis for attempting to skirt the general prohibition against solicitation of campaign contributions.

RULE 4.2

Political and Campaign Activities of Judicial Candidates in Public Elections

(A) A judicial candidate* in a nonpartisan, 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:

- (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) seek, accept, or use endorsements from any person or organization.

COMMENT

- [1] Paragraphs (B) permits judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1.
- [2] Despite paragraph (B), 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), (10), and (12).
- [3] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations on behalf of their own candidacy or that of another judicial candidate.
- [4] In endorsing or opposing another candidate for judicial office, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.
- [5] 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.

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.

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)(12).

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 amount allowed as provided for by law;
 - (2) not to solicit contributions for a candidate's current campaign more than 120 days before the date when filing for that office is first permitted and may accept contributions after the election only as permitted by law; and
 - (3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with the Public Disclosure Commission all reports as required by law.

COMMENT

- [1] Judicial candidates are generally prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. See Rule 4.1(A)(7). This Rule recognizes that 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.

RULE 4.5

Activities of Judges Who Become Candidates for Nonjudicial Office

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

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

COMMENT

- [1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.
- [2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.